

Report to the Scottish Ministers

ANCIENT MONUMENTS AND ARCHAEOLOGICAL AREAS ACT 1979

Report by Iain G Lumsden MA(Hons) MSc MRTPI and John H Martin RIBA MRTPI, Reporters appointed by the Scottish Ministers

- Case reference: AMH/90254/1
- Site Address: Rowallan Castle, Kilmaurs, Ayrshire, KA3 2LP
- The works proposed: the conservation and restoration of the building to ensure habitable use
- Application for scheduled monument consent dated 31 August 2006
- Historic Scotland's letter indicating Scottish Ministers were provisionally minded to refuse the application, 10 May 2007
- Applicant indicated that he wished to exercise his right to be heard, on 17 May 2007
- Dates of inquiry by the Reporters: 8-11 and 15-18 April 2008

Date of this report and recommendations: 17 October 2008

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ANCIENT MONUMENTS AND ARCHAEOLOGICAL AREAS ACT 1979



Summary of Report of an Inquiry held in connection with an application for Scheduled Monument Consent at Rowallan Castle, Kilmaurs, Ayrshire, KA3 2LP

• Case reference	AMH/90254/1
• Case type	Scheduled Monument Consent
• Works proposed	Conservation and restoration of the building to ensure habitable use
• Reporters	Iain G Lumsden and John H Martin
• Date of application	31 August 2006
• Applicant	Mr Niall Campbell
• Other parties	Historic Scotland, Lord Rowallan and Mr J McFadzean
• Method of consideration and dates	Public Inquiry which took place on 8 to 11 and 15 to 18 April 2008
• Date of report	17 October 2008
• Reporters' recommendation	Scheduled Monument Consent should be refused

Reasons for the inquiry:

1. In May 2007 the applicant was informed that it was the provisional view of Scottish Ministers that scheduled monument consent for the works proposed at Rowallan Castle should be refused. The reasons given for reaching this view were that: (i) the Castle was of national significance and illustrated an approach to lairdly domestic architecture that was not known to survive with quite the same combination of elements elsewhere in Scotland. (ii) The works proposed were not considered to be the minimum necessary to secure the long-term preservation of the monument and could threaten its significance. As it was not considered that there were any exceptional circumstances that would justify the level of intervention proposed, the proposals were contrary to Scottish Government policy on the preservation of scheduled monuments. Subsequently, the applicant indicated that he wished to exercise his statutory right to appear before a person or persons appointed by Scottish Ministers before a final decision was made on the application. A public inquiry was therefore arranged.

The Site:

2. Rowallan Castle is located within the Rowallan Estate, which lies on the north side of the B751 some 4km to the north of Kilmarnock and midway between Kilmaurs and Fenwick. The Castle is in a rural location characterised by undulating farmland and woodlands. Rowallan Castle is a scheduled ancient monument under the provisions of the Ancient Monuments and Archaeological Areas Act 1979. To be scheduled, a



monument must be of 'national importance'. The Castle is also a property that is the subject of a Deed of Guardianship, signed in 1950, under which Scottish Ministers have responsibility for its preservation and management. In addition, the Castle is a Category A listed building. The property has lain vacant for more than 100 years.

3. The scheduled monument comprises a medieval lairdly residence that has been transformed into a renaissance house that has the appearance of a 16th century courtyard building. In addition, there is evidence that the location has attracted settlement since the Iron Age and a 'castle' in various forms has existed on the site since at least the 14th century. The monument therefore exhibits at least 7 different periods of construction, which demonstrate the changing styles of domesticated and castellated architecture in Scotland from the 13th to the 18th century. The monument represents one of the most complete castle complexes of its type to survive down to the present day.

Description of the works in the scheduled monument consent application

4. Consent is sought for the conservation and restoration of Rowallan Castle to ensure habitable use. Externally, the works proposed would include the re-pointing and harling of the walls, repairs to the roofs and entrance steps, the replacement of windows and repairs to the ruined tower. Internally, the proposals aim to correct previous inappropriate interventions, replace lime plaster to previously stripped walls and ceilings and where possible to reinstate original panelling. A number of the rooms would be finished in paint and fabric wall linings to replicate their likely former state. In addition, electrical power and lighting circuits together with heating would be installed in most rooms. Water and drainage services would also be provided to the proposed kitchen and new bathrooms. It is proposed that the building would be used for residential purposes.

The case for the Applicant:

5. It was submitted that the applicant has the experience, commitment and financial resources to undertake the sensitive restoration of Rowallan Castle and to return the property to residential use. It was emphasised that the costs of this work would be borne entirely by the applicant and that this should result in a saving to the public purse. There was no substantive difference of views with HS over the cultural significance of the Castle or its national importance. The application did however highlight the dilemma which exists between the competing claims of the owner and HS regarding the future use of Castle. The owner is seeking to return the property to active residential use while HS is content for it to remain as a 'museum'. In the applicant's opinion, the proposals do not represent an extensive level of intervention in the fabric building and it was not considered that the works would not be so invasive that the character of the Castle would be irretrievably altered. The application was therefore believed to accord with the provisions of the Act and be consistent with the policy of Scottish Ministers on scheduled ancient monuments, as set out in SHEPs 2 and 4. The applicant considered that provided a full programme of investigation and recording was undertaken prior to the restoration it was not necessary for all the architectural and archaeological detail and evidence to be visible. While some of this detail may be obscured by the proposals, the works could if required be reversed.

6. It was acknowledged that the works that had been carried out by HS and its predecessors after the property had been taken into guardianship had probably saved the building. However, concern was expressed that much of this work was of a poor quality and that a number of the interventions had been inappropriate. As a result, the property was not being preserved in the state it was in prior to being taken into state care, but as it existed now following the unfortunate alterations. It was believed that the cultural significance of the property had been adversely affected by the work that had been

carried out. HS's view that any work to a scheduled monument should normally be restricted to the minimum required to preserve the monument was believed to be unnecessarily restrictive. Applying such a test, it was unlikely that any proposals involving a property in the care of the state that was in a sound physical condition could ever be supported. Consequently, HS was denying the owner the prospect of enjoying his property and preventing the public from properly appreciating an important historic building. It was submitted that the HS was no longer necessarily in the best position to preserve and maintain monuments such as Rowallan Castle.

Case for Historic Scotland:

7. Historic Scotland indicated that Rowallan Castle clearly satisfied the criteria for a property that was of national significance. As such, the property was correctly recognised under the legislation as a scheduled ancient monument and given an appropriate level of protection. Furthermore, HS considered that the historic importance and cultural value of the Castle also fully justified its inclusion as a guardianship site in the portfolio of properties of national significance that are under the care of Scottish Ministers. It was submitted that the monument demonstrated the development of domestic architecture in Scotland over the centuries and as such it was of considerable archaeological and historic interest and value. The property was considered to be an important and rare survivor of its type which merited preservation as it currently exists. With respect to the works included in the application, it was submitted that the proposals to conserve and restore the building and to introduce a residential use, would involve extensive interventions and alterations. It was noted that the proposed residential use would require the installation of modern facilities and the replastering of a number of interior walls. In HS's view, these works clearly exceed what is necessary to secure the preservation of the monument. In addition, the proposed works would mask much of the basic structure of the monument and obscure valuable archaeological evidence relating to the different periods of its construction. It was considered that the proposed scheme of works together with the change in use to residential would have a significant adverse effect on the cultural significance and value of the monument. The alterations would also detract from the character of the Castle.

8. It was emphasised that the monument was currently in a sound and safe condition and there was no evidence to support the view that it was at risk of falling into disrepair. This was in stark contrast to the situation when the property was taken into care when the castle was in such a poor condition that it was in danger of being lost. In the absence of any exceptional circumstances, it was considered that to grant consent for the application would be contrary to Scottish Ministers' policy on scheduled monuments, as contained in SHEPs 2 and 4.

Other Parties' Cases:

9. Mr McFadzean of Fenwick Community Council supported the proposed restoration of the Castle as the best way of securing its future and retaining the building as a local amenity and asset for the community. He considered that only by finding an active use for the restored building property could it make a positive contribution to the local economy and be of benefit to future generations.

10. Lord Rowallan was keen to ensure that his grandfather's wishes regarding the long term preservation of the Castle, as expressed in the Deed of Guardianship, were maintained. He was concerned that public access to the property in the past had been constrained as a result of the disputes between Mr Campbell and Historic Scotland. However, he believed that this was a matter that could be resolved with good will on all

sides. Lord Rowallan considered that the future of the castle would be best served by it remaining under the control and guardianship of Historic Scotland.

Reporters' Reasoning:

11. The regulation and control of works affecting scheduled ancient monuments under the 1979 Act are directed primarily at the preservation of the archaeological and historic interest of the sites. In this context, preservation means the maintenance of a property in its existing state, retarding deterioration and changing only where necessary to prevent further damage. Scottish Ministers' policy with respect to scheduled monuments, as set out in the recently published SHEPs 2 and 4, reflects the terms of the Act and the principle of the minimum level of intervention consistent with conserving what is culturally significant in a monument. In this case, the works proposed relate to the conservation and restoration of Rowallan Castle to ensure habitable use. In order to achieve these objectives, substantial changes are proposed to the exterior and interior of the property to create residential accommodation that would satisfy the requirements of modern day living. It is considered that the nature and extent of the proposed changes, involving the harling of the exterior and the replastering of internal walls, the installation of a modern kitchen and bathrooms, the provision of electric power and lighting circuits, heating and plumbing services, would materially change the type and level of use of the property and alter its character and appearance. The works would not therefore serve to preserve the monument in situ nor would they constitute the minimum level of intervention consistent with the conservation of its archaeological, historic and cultural significance.

12. There is evidence that there has been some form of settlement on the site since the Iron Age and that a 'castle' in various forms has been in existence for at least six centuries. Consequently, the property provides evidence of the changing styles of domesticated and castellated architecture in Scotland from the 13th to the 18th century and is considered to be one of the most complete castle complexes of its type to survive to the present day. The monument is of national historic and cultural significance and is considered to be worthy of preservation in its existing state. The property is in a sound structural condition and is maintained on behalf of Scottish Ministers by Historic Scotland. In these circumstances, the property is not currently at risk.

13. Scottish Ministers' policy on scheduled monument consent recognises that there can be exceptional circumstances in which the setting aside of an approach based on the principle of minimal intervention can be justified. These relate to situations where more extensive works would: provide important information that improves our knowledge and understanding of a site; secure the long term future of the property; or, provide the public with benefits that are of national importance. It is not believed that any such circumstances exist with respect of the present application and there are no matters that would justify exceptional treatment in this case. Furthermore, it is clear that there is no requirement that a scheduled monument should necessarily have an economic use or 'earn its keep'. The preservation of a scheduled ancient monument, whether as a complete or ruinous structure, can be justified on historic and cultural grounds alone.

14. Overall, it is not considered that the proposal would therefore be consistent with the provisions of government policy in relation to scheduled ancient monuments, as set out in SHEPs 2 and 4, or the requirements of the 1979 Act to secure their preservation.

Conclusion

15. The application for Scheduled Monument Consent for works at Rowallan Castle to conserve and restore the building to ensure habitable use should be refused.

**Directorate for Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Callendar Road
FALKIRK
FK1 1XR**

Ref: AMH/90254/1

17 October 2008

The Scottish Ministers
Victoria Quay
Edinburgh

Ministers

We have the honour to report that, in accordance with our minute of appointment dated 25 October 2007, we held a public local inquiry regarding an application for Scheduled Monument Consent for works to Rowallan Castle made by Mr Niall Campbell. The application for Scheduled Monument Consent, which was made under the Ancient Monuments and Archaeological Areas Act 1979, was submitted to Historic Scotland and dated 31 August 2006. On 10 May 2007, Historic Scotland advised the applicant that the provisional view of Scottish Ministers was that on the basis of the information then available and the advice given to the Ministers, Scheduled Monument Consent for the conservation and restoration of the monument to ensure habitable use should be refused.

The reasons given in the letter for Historic Scotland coming to this view were stated to be that: (i) Rowallan Castle was of national significance and illustrated an approach to lairdly domestic architecture that was not known to survive with quite the same combination of elements elsewhere in Scotland. It was indicated that the property had very few closely comparable peers when all of its salient characteristics are taken into account. (ii) The works proposed could not be considered to be the minimum necessary to secure the long-term preservation of the monument and there were a number of associated risks which would threaten its significance. Further, there were no exceptional circumstances which would justify the intervention entailed by the works proposed in the application. The proposals would therefore be contrary to Scottish Government policy on the matter.

In a letter dated 17 May 2007, the applicant indicated that he wished to exercise his right under Part 1 of the 1979 Act to have the opportunity of appearing before, and being heard by, a person or persons appointed by Scottish Ministers before a decision was taken on whether or not Scheduled Monument Consent should be granted for the works proposed in the application.

A pre-inquiry meeting was held on Monday 19 November 2007 at which administrative arrangements for the inquiry were agreed. The inquiry took place between 8 and 11 April and 15 and 18 April 2008 within the Fenwick Hotel, Fenwick. We made an unaccompanied inspection of the castle and the surrounding area on Monday 7 April and carried out accompanied site inspections on Friday 11 April and Thursday 17 April 2008.

This report is based primarily on matters as they stood at the end of the inquiry. Following the closure of the inquiry there was some post inquiry correspondence regarding certain outstanding drainage details. This exchange is included in the various items of correspondence between the applicant's agent (Simpson & Brown Architects) and Historic Scotland dated between 20 April and 14 May 2008 which have been included on the case file for reference purposes.

Chapter 1 of the report describes the application site, its surroundings and the works proposed in the application for scheduled monument consent. Chapter 2 sets out the statutory context, national policy guidance and advice, and the provisions of international conventions and treaties which are of relevance to a consideration of the application. Chapter 3 summarises the applicant's case in support of the application for scheduled monument consent. Chapter 4 sets out the position of Historic Scotland on the case. Chapter 5 deals with the evidence of Fenwick Community Council and Lord Rowallan and Chapter 6 summarises the written submissions made by the Kyle and Carrick Civic Society. Chapter 7 deals with the conditions that should be imposed if Ministers are minded to grant scheduled monument consent. Chapter 8 contains our Findings of Fact and Chapter 9 sets out our reasoning and recommendation.

Appendix 1 lists the conditions that we recommend should be imposed if Ministers decide to grant scheduled monument consent. Appendix 2 lists the core documents and other documents lodged by the parties.

IAIN G LUMSDEN

JOHN H MARTIN

Reporters

APPEARANCES

For the applicant

Mr John D Campbell QC, assisted by Mr John Carruthers, Advocate, who called:

Mr Niall Campbell - Applicant

Mr Tom Addyman MA(Cons) - Archaeologist and Partner, Simpson Brown Architects

Mr James Simpson OBE BArch FRIAS RIBA FSA (Scot) - Senior Partner, Simpson Brown Architects

Professor Charles McKean – Professor of Scottish Architectural History – University of Dundee

Prof. Michael Lynch FRS(Edin) FRHS FSAS

Mr John Sanders – BA(Hons) Dip. Conservation, Partner, Simpson Brown Architects

Mrs Jane Kennedy Dip Arch RIBA AABC IHBC FRSA – Partner, Purcell Miller Tritton Architects

For Historic Scotland

Ms Laura Dunlop QC, assisted by Ms Kay Springham, Advocate, who called:

Professor Richard Fawcett BA DPhil FRS(Edin) FSA (London and Scotland)

Mr Peter Bromley BSc(Hons) MSc FSAS – Director of Properties in Care

Ms Sarah Govan MA(Hons) MSc – Senior Inspector of Ancient Monuments

Mr Malcolm Cooper BA(Hons) MPhil DipMS MIFA MCIM FSA(Lond) FSA(Scot) FRSA – Chief Inspector of Historic Scotland

For Third Parties

Mr John McFadzean, Chairman of Fenwick Community Council

Lord Rowallan

Written Representations

Mr Michael Hitchon, President of Kyle and Carrick Civic Society

ABBREVIATIONS

AMBS	Ancient Monuments Board for Scotland
APP1	Applicant's Document 1 (sequential)
AMAA 1979 Act	Ancient Monuments and Archaeological Areas Act 1979 (CD1)
BS 7913:	BS 7913: Guide to the Principles of Conservation of Historic Buildings (1998)
CAAM	Conservation of Architectural Ancient Monuments: Guidance and Principles (CD7)
CD1	Core Document 1 (sequential)
CP	Conservation Plan (CD14)
DG	Deed of Guardianship (CD25)
GMA	Guardianship Monument Area
HEACS	Historic Environment Advisory Council for Scotland
HS	Historic Scotland
HS1	Historic Scotland Document 1 (sequential)
HSRP 1	HS Rebuttal Production (Document) 1
ICOMOS-UK	International Council on Monuments and Sites - UK
LB	Listed Building
LB&CA(S) Act	The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (CD2)
MGLB&CA	Memorandum of Guidance on Listed Buildings and Conservation Areas
MMP	HS Monument Management Plan (HS1)
MoW	Ministry of Works
NPPG5	National Planning Policy Guideline 5: Archaeology and Planning (CD3)
NTS	National Trust for Scotland
PAN(s)	Planning Advice Note(s)
PIC	Property in Care
PLI	Public Local Inquiry
RCAHMS	Royal Commission on Ancient and Historical Monuments of Scotland
SAM	Scheduled Ancient Monument
SHEP1	Scottish Historic Environment Policy 1: Scotland's Historic Environment
SHEP2	Scottish Historic Environment Policy 2: Scheduling: Protecting Scotland's Nationally Important Monuments
SHEP4	Scottish Historic Environment Policy 4: Scheduled Monument Consent
SHEP5	Scottish Historic Environment Policy 5: Properties in Care of Scottish Ministers
SMC	Scheduled Monument Consent
UCO	The Town and Country Planning (Use Classes)(Scotland) Order 1997

ROOM DESIGNATIONS

Room Designations (taken from CD14 and HS13) Historic Scotland Numbers and Applicant's descriptions

Basement

Room R1	Old Basement Kitchen
Room R2	Well
Room R3	Closet
Room R4	Stair to Room 46
Room R5	Stair to Room 20
Room R6	Pend
Room R&	Vault
Room R8	Vault
Room R9	Vault
Room R10	Intramural stair to Room 22
Room R11	External walled enclosure
Room R12	Area below Main Entrance Stair
Room R52	Basement Entrance

Entrance Floor Level

Room R4	Entrance Stair to West range
Room R16	Stair between Rooms 17 & 20
Room R17	Parlour
Room R18	Toilet
Room R19	Closet
Room R20	Entrance Hall
Room R21	Dining Hall
Room R22	Chamber
Room R24	Courtyard
Room R25	Stair to 1 st Floor
Room R26	Ruined Kitchen
Room R28	Entrance to Room 26
Room R29	Chamber
Room R30	Entrance Pend
Room R31	North Guardroom
Room R32	North Entrance Tower
Room R33	South Guardroom
Room R34	South Entrance Tower
Room R53	Ruined Tower House

1st Floor Level

Room R4	Stair from Courtyard
Room R25	Stair from Entrance Level
Room R35	North Bed Chamber
Room R36	Garderobe
Room R37	North Turret
Room R38	Corridor
Room R39	South Turret
Room R40	Lobby to East range

1st Floor Level

Room R41	Chamber
Room R42	Bed Chamber
Room R44	Bed Chamber
Room R45	Attic Space
Room R46	Bed Chamber
Room R47	Closet off Room 46

2nd Floor Level

Room R43	Stair from Room 25 below
Room R49	Gallery
Room R50	North Turret
Room R51	South Turret
Room R52	End of Basement pend
Room R53	Ruined Tower

1. BACKGROUND TO THE APPLICATION

The application site and its surroundings

1.1 The Rowallan Estate lies on the north side of the B751 about 4km north of Kilmarnock and midway between Kilmaurs and Fenwick. It is in a rural location of undulating farmland and woodlands. The central and more formally landscaped core of the estate, which extends to some 83ha, is included in the 1988 Inventory of Historic Gardens and Designed Landscapes in Scotland (CD14, Figure 2 and CD26). This area incorporates the landscaped setting of (i) Rowallan Castle, a scheduled monument and a Category A listed building; (ii) Rowallan House, a Category A listed building, with its Category B listed stables; and (iii) the Category B listed summer house and old walled garden, gardener's cottage and gatehouse. For the avoidance of doubt, the property that is the subject of the application for scheduled monument consent is referred to in the remainder of this report as Rowallan Castle, its historic name. The more recent Category A listed building, which was designed by Robert Lorimer, is referred to as Rowallan House. For the purpose of convenience, all the evidence in this report refers to the principal elevations of Rowallan Castle as being north, south, east and west, notwithstanding their precise orientation.

1.2 There is agreement between the parties that the application site is of considerable archaeological value with recent excavations revealing evidence of Neolithic and Bronze Age activities on the land, although these are concentrated in the area around the ruined tower house (R53). Geophysical surveys have revealed that there are many areas around the building still to be explored (CD14, pages 127 and 184).

1.3 Rowallan Castle is approached from the south through an arched gatehouse and along a driveway from which the Castle can be seen set in a curve of the Carmel Water. A narrow stone bridge provides access across the river to a segmental arched gateway in the north boundary wall. The mound with the remaining walls of the old tower house and the restored north-eastern corner of the house, where the former buttresses have been removed, are all clearly apparent from this viewpoint. Access to the property is through the gateway and up a prominent flight of stone stairs to the main entrance door set between a pair of turreted towers.

1.4 The layout of the Castle is determined by the raised mound on which the ruined 13th/14th century tower house stands. This sets the level of the enclosed courtyard. However, stone semi-basement vaults were erected along the south range in the 15th century and these formed the basis for the early 16th century hall house above. The hall house was subsequently subdivided and the western end, which contains the old kitchen (R1) and Rooms 17 and 46 above, was rebuilt in the 18th century. The courtyard was enclosed by the eastern turreted range in the mid 16th century with later 17th century alterations and additions, including the ruined kitchen (R26). The western flank of the Castle is defined by a high wall rather than a final range of buildings.

1.5 The entrance pend is flanked by the towers and the Guardroom (Room 31) and Boot Room (R33) before opening out into the courtyard with a corner chamber abutting the old tower (R29) on the north side. The entrance to the hall house is on the south side and gives access to the stone flagged Entrance Hall (R20), while a further entrance, set in the mid 16th century wing, opens on to the spiral stair (R4) up to Room R46. A small flight of timber steps lead down from the Entrance Hall to Room R17, a double aspect room with

timber panelling below dado level and plaster raised and fielded panels above. A small WC opens off this room in the north-west corner.

1.6 On the southern side of the entrance hall a fine timber door case opens into the Dining-Hall (R21) which has been crudely lined with modern wainscotting, although the original recessed fireplace remains within some earlier panelling. An oak panelled door opens off this room to the main stair (R25) leading to the first floor. Room 22 beyond, formerly described as the 'solar', is now thought to have more likely been the laird's chamber. Apart from the north wall and small areas within the heavily restored fireplace and aumbry, all the original wall plaster has been removed exposing the rubble stonework with raked and tamped joints. This pattern of conservation is widespread throughout much of the castle and was considered by parties to the inquiry to be 'of its time'. This room previously contained the fine oak panelling recorded and illustrated by MacGibbon and Ross in 1892 (see page 93, Figure 116 in the Conservation Plan (CD14) which was removed and incorporated in the entrance hall of Rowallan House.. Other sections of panelling have also been removed and are now stored at the new house for their protection.

1.7 The stair (R25) from Room 21 rises to a first floor lobby (R40) which gives access to two bed Chambers (R35 and R42), both stripped of their plaster back to rubble stone. The former is interesting by the presence of a garderobe within the external wall and the latter for the remains of a timber bed recess with cupboards on either side. Stone flagged Room 41 has been formed with timber stud partitions finished in laths and mud or "cob" bricks which are thought to be from the 18th century. Returning to the stair (R25) this rises a half level to Room 42, a bed chamber within the roof space, which has been substantially reconstructed using plasterboard, although it retains a much earlier stone fireplace, and an access into the attic space (R45) shows that the roof has been substantially rebuilt. The intramural stair (R43) then rises from stair R25 to the Gallery (R49) with the two turrets, which has been stripped back to rubble stone and the main roof has been replaced.

1.8 Returning to the stair R4, this rises from the courtyard entrance to Room 46. This is a part panelled double aspect room with a coved ceiling and an adjacent closet. The upper walls of this room were probably covered with stretched and sized canvas/linen for decoration. References in the report of the previous inquiry (CD28) to a 'woman house' in Rooms 17 and 46 were discredited in evidence given to the present Inquiry. It is now believed that it is likely that these rooms would have used as working rooms with accommodation for female members of the household staff who would not warrant panelled rooms of such quality.

1.9 Externally, the north range is in ruins with the floor of the old tower house (R53) finished in lime concrete following the archaeological excavations. The former partially vaulted 'kitchen' (R26) completes the enclosure of the gravel and paved courtyard. The outer elevations of the Castle are in rubble stone with dressed stone features. Despite the evidence of photographs dating from the late 19th century, which suggests the contrary, it is now believed that these walls were once lime harled. At the site inspection small traces of the lime harling were found. Apart from the east elevation, which has been recently re-pointed in lime mortar, the joints in the remaining external walls have been raked and tamped and finished in cement mortar.

1.10 The submitted photographs (HS3) reveal that the property was in poor condition when it was first taken into state care under the terms of the Guardianship Agreement signed in 1950. Much of the work undertaken by MoW and HS on the property since 1952,

was carried out in a manner that while it may have been acceptable at the time, was more extensive than current best practice would suggest is appropriate. The details of these works are listed in the Summary of Conservation Works (HS16). In particular, concern was expressed at the inquiry about the removal of most of the internal plasterwork and the raking and tamping of the rubble walls, the widespread removal of damaged floors and roof structures and their replacement with modern equivalents and the use of concrete lintels and floor finishes. It is clear from the summary of works that urgent repairs were necessary to make the property safe and without which the future the castle would have be in doubt. However, these works have left a legacy of interventions that will now difficult to correct.

The proposals

1.11 The applicant, Mr Niall Campbell, is a descendant of the Campbells of Loudoun and of the Mures. One of Mr Campbells' companies purchased the estate in 1990. Since then planning permission has been granted for the development of the wider estate including the conversion of Rowallan House into a hotel complex with leisure facilities, an 18 hole championship golf course and some enabling housing development.

1.12 The current proposals seek scheduled monument consent (SMC) for the conservation and restoration of Rowallan Castle to ensure habitable use. The application covers the whole of the scheduled monument area but primarily the works proposed relate to the monument itself, including re-pointing and harling of external walls, repairs to the roofs and entrance steps, replacement windows and repairs to and turf capping of walls in the ruined tower (R53) and the old kitchen (R26). Internally, the proposals aim to record all archaeological and architectural evidence of the development of the castle before correcting what are considered to be the previous inappropriate interventions where practicable, replacing lime plaster to previously stripped walls and ceilings in habitable rooms and reinstating the removed original panelling where possible. These rooms, together with the largely intact Rooms 17 and 46, would be finished in paint and fabric wall linings to replicate their likely former state. In addition, it is proposed to improve the electrical wiring, lighting and heating in all rooms and to provide water and drainage services to the proposed kitchen and bathrooms, all with a view to making the castle fit for habitable use.

1.13 The application for SMC comprises the following:

Conservation Plan (CD14) complete with the following drawings:

- Existing situation: Drawings Numbers: SMC- E01, E02, E03, E04, E05, E06, E07, E08, E09, E10, E11, E12, E13, E14, E21 &, E22.
- Proposed Repairs: Drawings Numbers: SMC – R01, R02, R03, R04, R05, R06, R07, R08, R09, R10, R11, R13, R18, R20, R21, R22, R23, R24, R25 & R26
- Proposed Floor Plans: Drawings Numbers: SMC – PBF, PGF, PFF and PSF
- Room Proposals Drawings numbers: SMC-P01, P02, P03, P04, P05, P06, P07, P08, P09, P11 and P15
- Drainage Plan: Isometric and Sections: Drawings numbers SMC-P16, P17A and P18;
- Details: Drawings numbers: SMC-D02, D03, D06, D07, D08, D09 and;
- Coloured Room Layouts: Drawings numbers: SMC-RA01, RA03, RA04 and RA11

The Agreed Statement of the Parties on matters that are not in dispute

1.14 Towards the conclusion of the inquiry, the applicant and Historic Scotland submitted the following statement of the matters which were not in dispute.

Background

1. The application submitted by Mr Niall Campbell for Scheduled Monument Consent was dated 31 August 2006. It was received by Historic Scotland on 1 September 2006. The description and purposes of the proposed works in the application were stated to be for the conservation and restoration of Rowallan Castle to ensure habitable use. Historic Scotland issued a minded to refuse letter on 10 May 2007.

2. Rowallan Castle is a Scheduled Monument as defined in the Ancient Monuments and Archaeological Areas Act 1979 (the 1979 Act). The monument was included in the list published in 1955 under the legislation which preceded the 1979 Act. It was formally scheduled in 1994. The scheduled area is larger than the boundary of the Guardianship Area described in 3 below.

3. The castle is subject to a Deed of Guardianship, entered into by a previous owner and the statutory predecessors to Scottish Ministers in 1950. The monument was placed in guardianship following a request from the then owner first made in 1943. The 1979 Act regulates guardianship.

History of site and castle: Key architectural features

4. The castle has been linked with the Mure family, from the 14th -18th century. The Mures were a local family of importance in the area. It subsequently passed to the Campbells and was acquired by the Corbetts in the late 19th century.

5. The characteristics of Rowallan Castle are a tightly defined courtyard plan enclosed on 3 sides by ranges and on the fourth by a wall. The buildings now cover four levels: a basement and ground floor, and a first and second storey. This layout has evolved over an extended period, with a 14th Century tower house with an associated enclosure the probable starting point of the development. The buildings reflect at least seven identifiable periods of architectural change. Reference is made to Historic Scotland interim Statement of Cultural Significance (HS 14), where greater detail is set out about the history and development of the castle.

History of site and castle: archaeological significance and investigations

6. The archaeological potential of the site to provide evidence of the development of the use of the site through time was demonstrated by the investigation undertaken in advance of conservation work on the mound beneath the earliest tower. Along with information on the development of the tower, the excavations revealed the remains of a late Bronze Age burial and an Iron Age timber structure within a restricted area. Little invasive investigation has taken place elsewhere within or beneath the castle or its courts, although fresh archaeological information has emerged in the course of preparation for the Conservation plan. The results of investigation have been fully recorded.

Previous Scheduled Monument Consent Application

7. This is the second application received for alteration and change of use of the monument. A Scheduled Monument Consent application was received from Alexander George and Company (Investments) Limited on 27 November 2000 for 'completion and restoration and to reinstate building into habitable condition for the owner's use'. A planning application was submitted to East Ayrshire Council on 17 April 2001 for the change of use and refurbishment of the existing vacant castle to form overnight accommodation in conjunction with hotels. Both these applications were considered at a conjoined public inquiry in 2002. The report of that public inquiry recommended that the Schedule Monument Consent application be refused. The Scottish Ministers accepted that recommendation, and Consent was refused in July 2003.

The Scottish Government's Policy

8. The Scottish Government publishes National Planning Policy Guidelines (NPPG), some of which apply to the historic environment within the planning framework. They include NPPG 5: Archaeology and Planning (October 1998). Scottish Government policy also includes the SHEP series published in 2006 -2008.

International Charters

9. The Burra Charter and other Charters are not the policy of the Scottish Ministers, but rather are international charters, of which the UK government is a signatory.

Alterations since 1950

10. The condition of the basic fabric of Rowallan Castle is now structurally sound, and Historic Scotland has an ongoing programme of inspection, repair and maintenance. When Rowallan Castle was taken into State care in 1950, it was roofed, apart from the tower, and retained many of its interior finishes, but was in fairly poor condition, and required extensive works, particularly on the roof. Works to the Castle have been undertaken by Historic Scotland and its predecessors from the 1950s onwards. Core Document HS 16 is a list of works drawn up by Historic Scotland, and is agreed for its terms.

2. STATUTORY AND POLICY CONTEXT

LEGISLATION

2.1 The first part of this section summarises the main legislative provisions that are relevant to a consideration of an application for scheduled monument consent.

The Ancient Monuments and Archaeological Areas Act 1979

2.2 The Ancient Monuments and Archaeological Areas Act 1979 (CD1) consolidates and amends the law relating to ancient monuments. In its preamble it is stated that the Act makes provision for “*the investigation, preservation and recording of matters of archaeological or historic interest*”, and (in connection therewith) for the regulation of operations or activities affecting such matters.

2.3 Section 1 of the Act deals with the protection and scheduling of monuments. Section 1(1) obliges the Secretary of State (now Scottish Ministers) to compile and maintain for the purposes of the Act, a schedule of monuments (referred to in the remainder of the Act as the ‘Schedule’).

2.4 Section 1(2) indicates that the Scottish Ministers shall on first compiling the Schedule include therein:

- (a) any monument included in the list last published before the commencement of this Act under section 12 of the Ancient Monuments Consolidation and Amendment Act 1913; and
- (b) any monument in respect of which the Scottish Ministers have before the commencement of this Act served notice on any person in accordance with section 6(1) of the Ancient Monuments Act 1931 of his intention to include it in a list to be published under section 12.

2.5 Section 1(3), subject to the provisions of section 1(4), allows Ministers, in compiling the Schedule, or at any time thereafter, to include therein any monument which appears to them to be of national importance. Section 1(4) states that the power of Ministers to include any monument in the Schedule does not apply to any structure which is occupied as a dwellinghouse by any person other than a person employed as a caretaker thereof or his family.

2.6 Section 2 of the act deals with the control of works affecting scheduled monuments. Section 2(1), read with section 2(2), makes it an offence to execute, or to cause or permit to be executed any of the following works: (a) works resulting in the demolition, destruction, or damage to a scheduled monument; (b) any works for the purpose of removing or repairing a monument, or part of a monument, or of making any alterations or addition to a monument; and, (c) any flooding or tipping operations on land in, on or under which there is a scheduled monument, unless the works are authorised under the Act. Section 2(3) states that such works are authorised if: (a) Ministers have granted written consent for the execution of the works; this is referred to in the Act as ‘Scheduled Monument Consent’; and, (b) the works are executed in accordance with the terms of the consent and of any conditions attached to the consent.

2.7 Sections 12, 13 and 14 of the Act deal with the Guardianship of ancient monuments. Section 12(1) allows an owner of an ancient monument, with the consent of Ministers, to constitute them by deed the guardian of a monument. Section 12(9), binds in general, subsequent owners to such a deed. Under the terms of section 12(10) Ministers are prohibited from consenting to become guardians of any structure occupied as a dwelling house by any person other than a person employed as a caretaker thereof or his family.

2.8 Section 13(1) places a duty on Ministers to maintain any monument which is under their guardianship and section 13(2) gives Ministers full control and management of any monument which is under their guardianship. Section 13(3) gives Ministers power to do all such things as may be necessary for the maintenance of the monument and for the exercise by them of proper control and management with respect to the monument. Under the provisions of section 13(5) Ministers may at any reasonable time enter the site of a monument for the purpose of exercising any of their powers under section 13 and may authorise any other persons to exercise any of these powers on their behalf.

2.9 Section 14 deals with the termination of Guardianship. Section 14(1) allows Ministers, by agreement made with the persons who are for the time being immediately affected by the operation of the guardianship deed: (a) to exclude any part of the monument from guardianship; or (b) to renounce guardianship. Under the provision of this section of the Act, an occupier is entitled to terminate the guardianship of the monument if: (i) he has any interest in the monument which would qualify him to establish guardianship under section 12; and (ii) he is not bound by the guardianship deed.

2.10 Section 14(3) indicates that Ministers may not enter into an agreement to terminate guardianship unless they are satisfied that with respect to the monument in question that: (a) satisfactory arrangements have been made for ensuring its preservation after termination of the guardianship; or, (b) it is no longer practicable to preserve it.

2.11 Section 17(1) allows Ministers to enter into an agreement with the occupier of an ancient monument or of any land adjoining, or in the vicinity of, a monument. Section 17(4) lists matters for which such an agreement may provide. These include the maintenance and preservation of the monument and its amenities; the carrying out of any work specified in the agreement, public access; and the provision of facilities or other services for the use of the public.

2.12 Section 19 deals with public access to monuments under public control. Section 19(1) states that the public shall have access to any monument in guardianship, subject to the ability of Scottish Ministers, among other things, to control times of public access, and to exclude the public if considered necessary or expedient to do so in the interests of safety, or for the maintenance or preservation of the monument.

2.13 Section 24(5) prohibits Ministers from incurring expenses in connection with any monument which is occupied as a dwelling house by any person other than a person employed as a caretaker thereof or his family.

2.14 Section 61(7) defines the term 'monument' as meaning: (a) any building, structure or work, whether above or below the surface of the land, and any cave or excavation; (b) any site comprising the remains of any such building, structure or work or of any cave or excavation; and (c) any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other moveable structure or part thereof which neither constitutes nor forms part

of any work which is a monument within paragraph (a) above; and any machinery attached to a monument shall be regarded as part of the monument if it could not be detached without being dismantled.

2.15 Section 61(12) defines 'ancient monument' as meaning: (a) any scheduled monument; and (b) any other monument which in the opinion of Scottish Ministers is of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attaching to it.

The Planning (Listed Buildings and Conservation Areas) Scotland) Act 1997

2.16 Rowallan Castle is a Category A listed building and a Scheduled Ancient Monument. However, for the purposes of the scheduled monument consent application the provisions of the Planning (Listed Buildings and Conservation Areas) Scotland) Act 1997 (CD2) do not generally apply. Section 55 of the 1997 Act is of some relevance to this case.

2.17 Section 55 deals with exceptions to the provisions of the Act with respect to Ancient Monuments. Section 55(1) states that the provisions mentioned in subsection 55(2) shall not apply to any building for the time being included in the Schedule of monuments compiled and maintained under section 1 of the Ancient Monuments and Archaeological Areas Act 1979. Section 55(2) indicates that those provisions are those in sections 3, 4, 6 to 8, 42, 49 and 53 of the Planning (Listed Buildings and Conservation Areas) Act. These sections deal with the temporary listing of buildings; building preservation notices; control of works in respect of listed buildings; compulsory acquisition of listed buildings in need of repair; urgent works to preserve unoccupied listed buildings; and, acts causing or likely to result in damage to listed buildings. Sections 6-8 are the key ones in this case as they relate to the control of works in respect of listed buildings.

NATIONAL POLICY AND GUIDANCE

2.18 The national policy context for the historic and built environment is set out in the Scottish Historic Environment Policy (SHEP) series. These documents indicate Scottish Ministers' strategic and operational policies for the protection, conservation and enhancement of the historic environment and they provide the policy framework within which Historic Scotland is expected to operate. The documents in this series which are of relevance to the consideration of the present application are SHEP1: Scotland's Historic Environment; SHEP2: Scheduling: Protecting Scotland's Nationally Important Monuments; SHEP4: Scheduled Monument Consent; and, SHEP5: Properties in the Care of Scottish Ministers. The key sections of these documents are set out below.

Scottish Historic Environment Policy 1: Scotland's Historic Environment

2.19 SHEP1 (CD8) provides a statement of the overarching policy context for the historic environment. It sets out a framework for the more detailed strategic policies and operational policies that inform the day to day work of a range of organizations that have a role and interest in managing the historic environment. These include the Scottish Government, local authorities and the range of bodies that is accountable to Scottish Ministers, including Historic Scotland. It is noted that the SHEP series is intended to sit

alongside and complement the Scottish Planning Policy series and other relevant Ministerial policy documents.

2.20 It is indicated that SHEP1 not only sets out a vision for the future of the historic environment but it also draws together a number of existing policy statements into a single publication. In this context it is stated that SHEP1 formally supersedes the policy elements contained in the earlier documents entitled: (a) the '*Stirling Charter*'; and, (b) '*Passed to the Future*', although it is noted that this latter document will remain a valuable resource for the implementation of a sustainable approach to the historic environment.

2.21 The SHEP indicates that Scottish Ministers believe that the historic environment should be valued as an asset, rather than thought of as a barrier to development. It is indicated that the protection of the historic environment is not about preventing change. The document states that Ministers believe that change in a dynamic environment should be managed intelligently and with understanding, to achieve the best outcome for the historic environment and for the people of Scotland. Consequently, such decisions often have to recognise economic realities.

2.22 Building on the principles of the Stirling Charter (CD5), it is indicated that the policy of Scottish Ministers is that:

- (a) actions taken in respect of Scotland's historic environment should secure its conservation and management for the benefit and enjoyment of present and future generations;
- (b) there should be a presumption in favour of preservation of individual historic assets and also the pattern of the wider historic environment; no historic asset should be lost or radically changed without adequate consideration of its significance and of all the means available to manage and conserve it;
- (c) Scotland's historic environment should be managed in a sustainable way, recognising that it is a social, cultural, economic and environmental resource of great value;
- (d) all of the people of Scotland should be able to enjoy, appreciate, learn from and understand Scotland's historic environment, and be assisted in that through access, research, knowledge, information and education and proactive conservation investment, without compromise to cultural significance.

2.23 As a result, the conservation and protection of any part of Scotland's historic environment is expected to:

- (a) be based upon sound knowledge and understanding of the particular site, building, monument or landscape, and of its wider context;
- (b) be founded on full awareness and consideration of its cultural significance and all phases of its development;
- (c) be carried out in accordance with a conservation plan, which brings together all of the information and research necessary to guide the proposed action;
- (d) ensure that what is to be conserved is properly recorded before and, if necessary, during and after work;
- (e) make provision for recording where continued preservation is no longer possible or where loss is taking place through change or ongoing decay, and ensure that all records are retained in readily accessible archives;
- (f) incur only the minimum degree of intervention considered appropriate by the relevant authority for the type of site, building, monument or landscape;
- (g) use appropriate technical knowledge, materials, skills and methods of working;

- (h) have regard to retaining, or where appropriate enhancing, the setting of the site, monument, building or landscape;
- (i) ensure that, where change is proposed, it is appropriate, carefully considered, authoritatively based, properly planned and executed, and (if appropriate) reversible;
- (j) include effective arrangements for monitoring the condition and safety of the historic asset and for delivery of routine maintenance and good housekeeping;
- (k) take account of the rich biodiversity of many historic sites, buildings and landscapes.

SHEP2: Scheduling: Protecting Scotland's Nationally Important Monuments

2.24 In the introduction to SHEP2 (CD9) it is indicated that: *"...it is only since the implementation of the Ancient Monuments and Archaeological Areas Act 1979 that we have had formal criteria for the selection of sites and monuments of national importance. Scheduling a monument means that there are considerable restrictions as to what an owner or occupier can do to their site. It is vital that this is done with care and in a way that is open and accountable."* It is noted that in 2003–4 Historic Scotland conducted a major review of all aspects of the process of scheduling and in 2004 carried out a public consultation on its proposals for change. SHEP2 sets out Scottish Ministers' policy on scheduling, taking account of the results of Historic Scotland's review and the public consultation exercise. The document indicates that scheduling will in future follow a carefully planned strategic programme, according to clear criteria for selection. It will take account of the importance of all of Scotland's past, with carefully targeted and measured progress towards an achievable end, and with greater local involvement. The Minister for Tourism, Culture and Sport at the time commented that *"We have set in place a system for protecting Scotland's heritage that the people of Scotland can understand and trust."*

2.25 It is indicated that the United Kingdom government is party to the European Convention on the Protection of the Archaeological Heritage (the 'Valetta Convention', HS10), which places an obligation on States, under Article 2, to institute a legal system for the protection of the archaeological heritage, on land and under water. In this context reference is made to the situation within the UK where legislation has been in place to protect ancient monuments since 1882. It is pointed out that currently nationally important monuments in Scotland are protected under the provisions of the Ancient Monuments and Archaeological Areas Act 1979. The Act places a duty on the Scottish Ministers to compile, maintain and publish a Schedule (a list) of monuments. Once included in the Schedule, monuments have legal protection.

2.26 The SHEP notes that 'monuments' are defined in section 61(7) of the 1979 Act *inter alia* as: (a) any building, structure or work, whether above or below the surface of the land, and any cave or excavation; (b) any site comprising the remains of any such building, structure or work or of any cave or excavation. It is indicated that to be scheduled, a monument must meet the Act's definition. Reference is made to the fact that under the provisions of the Act a structure in use as a dwelling house cannot be scheduled as an ancient monument. Similarly, a building in ecclesiastical use cannot be scheduled.

2.27 It is emphasised that the process of scheduling under the terms of the 1979 Act is entirely separate from the process of listing under the terms of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. On this point, reference is made to Planning Advice Note 42: Archaeology which states that as a selective (nationally important) sample of the nation's archaeology the Schedule varies from the more

comprehensive list of buildings of architectural or historic interest compiled under the listed buildings legislation. It is indicated that the process of scheduling, 'de-scheduling' (removing a monument from the Schedule) and scheduled monument consent (the control of works affecting scheduled monuments) is undertaken on behalf of Scottish Ministers by Historic Scotland.

2.28 SHEP2 stresses that the sole legal criterion in the 1979 Act (section 1(3)) for inclusion in the Schedule is that a monument is of 'national importance'. It goes on to indicate that after consultation, Scottish Ministers have determined what constitutes national importance and how it should be determined. The detailed criteria and guidance that have been developed to cover the scheduling process are set out in the Annex to SHEP2. It is noted that under section 2 of the Act that once a monument has been scheduled, it is an offence to carry out, without the prior written consent of the Scottish Ministers (i.e. the grant of scheduled monument consent), any works which would have the effect of demolishing, destroying, damaging, removing, repairing, altering, adding to, flooding or covering up the monument.

2.29 SHEP2 sets out Scottish Ministers' policy on scheduling and the principles that will underpin the process. The principles to be applied are as follows:

- (a) the past of all parts of Scotland is worthy of study and should be considered for conservation;
- (b) no part of Scotland's past and no part of Scotland's land is inherently more or less likely to produce monuments of national importance than another;
- (c) scheduling will be based on an appreciation of the regional character of Scotland's past, as reflected in its ancient monuments, and on the basis of an up-to-date set of criteria and guidance;
- (d) scheduling will be applied to monuments across Scotland in a consistent way;
- (e) monuments that do not meet the criteria for national importance will be removed from the Schedule (de-scheduled);
- (f) owners and occupiers of land on which monuments lie, and the local authorities in which they are situated, will be consulted on proposals to add a monument to the Schedule, other than in exceptional circumstances;
- (g) scheduling will be an ongoing process that recognises that every generation will have its own view of what comprises its heritage;
- (h) decisions on scheduling and de-scheduling will be made on the basis of the best information available;
- (i) information on scheduled monuments and on the processes involved in scheduling will be made widely and easily available;
- (j) all decisions relating to scheduling will be explained in clear language;
- (k) scheduling is applied to secure the legal protection of monuments in the national interest. It is the intrinsic value of the monument to the nation's heritage that is the primary consideration in deciding whether or not a site shall be scheduled and in determining applications for scheduled monument consent.

2.30 The Annex to SHEP2 sets out the criteria and guidance which is to be applied to the determination of what is of 'national importance' under the terms of 1979 Act. It is explained that a definition and operational guidance on this matter was approved by the former Ancient Monuments Board for Scotland in 1983. The criteria offered in the SHEP provide an updated version of this guidance, which has taken account of the development of treaty, charter and practice in the UK and abroad and has been informed by the consultation exercise carried out by HS in 2004. The guidance in the SHEP also reflects

the principles of Scotland's *Stirling Charter* (2000), which was informed by, and builds on, the body of international conservation charters which were in existence at that time. One of the most influential of these was the *Burra Charter* (current edition 1999), which introduced the now widely accepted concept of 'cultural significance'. It is indicated that while taking into account national and international developments, the revised guidance in the SHEP has been prepared with the welfare of Scotland's archaeological and built heritage in mind. The primary aim of this document is to provide guidance in determining whether monuments are unequivocally of national importance.

2.31 It is explained that the selection of monuments and the scheduling process is undertaken by professional staff within Historic Scotland applying the policies, criteria and guidance set by Scottish Ministers.

2.32 The first step in considering whether a monument is of national importance is to identify and understand its '*cultural significance*'. It was emphasised that the concept of cultural significance should not be confused with the establishment of 'national importance'. For a monument or a class of monuments to be considered as being of national importance it must, first, have a particular cultural significance: artistic; archaeological; architectural; historic; traditional (which are factors listed in the 1979 Act); aesthetic; scientific; or social. Such significance is stated to be inherent in the monument itself, its fabric, setting, use, associations, meanings, records, and related monuments. The SHEP indicates that the cultural significance of any monument, whether of national importance or more local significance, can be characterised by reference to one or more of the following three groups of characteristics: (i) Intrinsic: those characteristics inherent in the monument; (ii) Contextual: those characteristics relating to the monument's place in the landscape or in the body of existing knowledge; and, (iii) Associative: characteristics relating to the associations of the monument, including with current or past aesthetic preferences.

2.33 With respect to the intrinsic characteristics, the key factors are: the condition in which the monument has survived; the archaeological, scientific, technological or other interest or research potential of the monument; the apparent developmental sequence of the monument. It is noted that monuments that show a sequence of development can provide insights of importance; and the original or subsequent functions of the monument and its parts.

2.34 In terms of contextual characteristics the main factors are: the present rarity or representativeness of all or any part of the monument, assessed against knowledge of the archaeology of Scotland and of the region in which the monument occurs; the relationship of the monument to other monuments of the same or related classes or period, or to features or monuments in the vicinity; the relationship of the monument and its parts with its wider landscape and setting. Turning to the associative characteristics, the factors are: the historical, cultural and social influences that have affected the form and fabric of the monument; the aesthetic attributes of the monument; its significance in the national consciousness or to people who use or have used the monument, or descendants of such people; and, the associations the monument has with historical, traditional or artistic characters or events.

2.35 It is recognised in the SHEP that the understanding of cultural significance may change as a result of the continuing history of the monument, or in the light of new information, or changing ideas and values.

2.36 It is emphasised that the primary purpose of scheduling under the 1979 Act is the preservation of, and control of works on, monuments, the survival of which is in the national interest. It is stated that the provisions of the 1979 Act are considered to be consistent with the principles of minimal intervention to ensure that the characteristics that make a monument of national importance are preserved as far as possible in the state in which it has come down to us and is passed on to future generations in as unchanged a state as is practicable, in accord with the principles of sustainable development. The SHEP indicates that in general, these principles will only be set aside in circumstances where wider considerations are deemed, on balance, to be of greater importance to the national interest, rather than to any sectoral or local interest.

2.37 The guidance indicates that the particular significance needed to define a monument as being of 'national' importance can be established in terms of one or more of the following: (a) its inherent capability or potential to make a significant addition to the understanding or appreciation of the past; (b) its retention of the structural, decorative or field characteristics of its kind to a marked degree; (c) its contribution, or the contribution of its class, to today's landscape and/or the historic landscape; (d) the quality and extent of any documentation or association that adds to the understanding of the monument or its context; (e) the diminution of the potential of a particular class or classes of monument to contribute to an understanding of the past, should the monument be lost or damaged; and, (f) its place in the national consciousness is a factor that may be considered in support of other factors.

Scottish Historic Environment Policy 4: Scheduled Monument Consent

2.38 SHEP4 (HS23) sets out Scottish Ministers' policy for the control of works affecting scheduled monuments of national importance that are legally protected under the Ancient Monuments and Archaeological Areas Act 1979. It is noted that every application for scheduled monument consent is considered on its merits and that in the 10 years between 1995 and 2005 out of the 2,156 applications submitted only 16 were refused. Furthermore, in the years 2005-2006 and 2006-2007 out of 514 applications received only one was refused and one was provisionally refused resulting in a public local inquiry.

2.39 It is indicated that Scheduled Monument Consent (SMC) is required for any works that would demolish, destroy, damage, remove, repair, alter or add to the monument or to carry out any flooding or tipping on the monument. It is a criminal offence to carry out any works without consent. In situations where monuments are both scheduled and listed, only Scheduled Monument Consent is required for any works and the relevant parts of the listed buildings legislation are disapplied.

2.40 Section 3 of the SHEP sets out Scottish Ministers' policy on scheduled monument consent. At paragraph 3.2 it is indicated that Scottish Ministers include a monument in the Schedule to "*secure its long term legal protection in the national interest, in situ and as far as possible in the state it has come down to us.*" It is indicated that scheduled monuments have an intrinsic value as monuments, not related to any concept of active use.

2.41 It is recognised in the SHEP that monuments are subject to decay and the threat of destruction, from natural and human causes. As a result, it is acknowledged that conservation work is normally needed to prolong the life of a monument. However, there is a risk that such works can be so invasive that they irreversibly modify the monument's character and affect the special interest or features that made the monument important in

the first place. Consequently, paragraph 3.4 states that “*works on scheduled monuments should normally be the minimum level of intervention that is consistent with conserving what is culturally significant in a monument.*” As each property will require treatment specific to its individual nature, characteristics, significance and needs, any proposed change to a monument must be fully and explicitly justified.

2.42 The SHEP explains that scheduled monument consent applications have to be considered in terms of the cultural significance of the monument and the impact that the proposals would have upon this cultural significance. It is noted in paragraph 3.6 that the greater the cultural significance of the monument, the stronger the case will be against intervention unnecessary for the long-term preservation of the monument. Similarly, the more important particular features of the monument are to its cultural significance, the greater will be the case against interventions which modify these features.

2.43 Paragraph 3.7 makes it clear that extensive intervention will only be allowed “*where it is clearly necessary to secure the longer-term preservation of the monument, or where it will clearly generate public benefits of national importance which outweigh the impact on the national cultural significance of the monument.*” It is stated that such ‘public benefits’ could relate for example to interventions which make public access to scheduled monuments easier, or assist public understanding, or will produce economic benefits once the works are completed. Where change is proposed, it is emphasised that it should be carefully considered, based on good authority, sensitively designed, properly planned and executed, and where appropriate in the context of an individual monument, reversible.

SHEP5: Properties in the Care of Scottish Ministers

2.44 SHEP5 (HS24) sets out Scottish Ministers’ policy on the conservation of and access to, the properties in their care that are looked after by Historic Scotland on their behalf. The document indicates that legislation has been in place for more than 125 years to protect ancient monuments. One part of that protection was the power for the state to acquire ancient monuments for their protection and maintenance, by gift, purchase or agreement. The legislation also provided powers for owners to retain nominal ownership of a monument, while passing the control and maintenance to the state by means of a Deed of Guardianship. It is noted that obligations and duties under the ancient monuments legislation have been extended over time.

2.45 In terms of the present situation, Scottish Ministers’ powers relating to the estate of Properties in Care are contained in the Ancient Monuments and Archaeological Areas Act 1979. It is noted that this Act places a duty on Scottish Ministers to maintain the monuments in their care and provides the powers to do ‘*all such things as may be necessary for the maintenance of the monument and for the exercise by them of proper control and management with respect to the monument*’. It is indicated that access to Properties in Care is regulated under section 19 of the 1979 Act and the same section empowers Scottish Ministers to control and regulate that access.

2.46 The SHEP indicates that Historic Scotland cares for some 345 ancient monuments on behalf of Scottish Ministers. While it is acknowledged that no collection of properties can cover all aspects of the historic environment, the national portfolio of Properties in Care in Scotland is considered to be representative of the sites and buildings that successive generations have seen as being worthy of the investment and special protection offered by state care.

2.47 The document states that the purpose of the state taking properties into its care is for the long term preservation, for the public benefit, of a collection of monuments which define significant aspects of Scotland's past. It is indicated that much of that benefit lies in the properties being accessible to the people of Scotland and visitors to the country, both now and in the future. In adopting this approach, Ministers are seeking to ensure that the properties in care are a showcase for Scotland and demonstrate exemplary practice in conservation while enhancing their understanding.

2.48 The document emphasises that properties in care have great cultural significance as they illustrate the history and development of Scotland and its people, and help to define its identity. They are stated to be a source of wonder, enjoyment and learning both for Scots and visitors, many of whom see Scotland's long history and rich culture as their principal reason for coming to the country. The properties and their associated collections of artefacts are therefore unique and irreplaceable, which makes their preservation vital to our understanding of each monument's past and to its part in Scotland's history.

2.49 The SHEP notes that properties in the care of Scottish Ministers are held by guardianship, by ownership or by leasehold. It is indicated that the majority are held under guardianship, which means that each is held under an individual Deed of Guardianship. This requires Historic Scotland to comply with a range of obligations, rights and constraints arising principally from the legislation or from the terms of the specific deed of guardianship. It is stated that all have been taken into care for their preservation in perpetuity.

2.50 The SHEP indicates that the principles that underpin Historic Scotland's work at the properties have developed over time. At the outset, it was the simple preservation of the monument that was all that was expected of the state. However, the provision of public access was added as a responsibility in 1900. Since then the public perception of access and the requirements of international conservation charters have continued to broaden expectations.

2.51 Section 3 of the document sets out Scottish Ministers' policy on properties in their care. With respect to the composition of the estate, it is indicated that Ministers will *"maintain an estate of properties in state care to preserve and make available a representative collection of the archaeological and architectural past, both for the enjoyment and understanding of the nation and visitors to Scotland and to ensure that it is preserved for future generations."* It is stated that the legislation envisages monuments and sites being taken into care in perpetuity. As a result, proposals to add to the estate, therefore, must be very carefully considered. In addition to assessing their merit in terms of their cultural significance, the implications for the balance of the types of property within the estate, and present risks to the monument, Historic Scotland will also consider what alternative options for care there might be and assesses the public benefit that would flow from the new investment. The document notes that the costs of caring for the existing estate have tended to rise in real terms, so that a realistic approach needs to be taken to targeting public funds where they will best achieve the primary aims of Scottish Ministers in relation to their Properties in Care. It is indicated that few properties proposed for care are likely to meet these criteria.

2.52 Paragraph 3.4 states that *"Because of the importance of the Properties in Care as a collection, and because of the level of state investment involved, it is currently expected that monuments will be held in perpetuity by the state. Only in exceptional circumstances is a*

monument likely to go back out of care.” In coming to a view on disposals, Scottish Ministers will also take account of the implications for the balance of the remainder of the estate and any possible loss of public access or understanding of the monument.

NPPG 5: Archaeology and Planning

2.53 NPPG 5 (CD3) sets out the Government's policy on how archaeological remains and scheduled monuments should be handled under the planning system. Paragraph 3 states that as part of its intention to work towards sustainable development, the Government seeks to encourage the preservation of sites and landscapes of historic and archaeological interest, so that they may be enjoyed today and passed on in good order to future generations. The means of meeting these aims include: looking after properties in Government care; promoting enjoyment and understanding of our heritage; encouraging private sector involvement and funding for maintaining and restoring heritage properties; identifying and recording our heritage; and, ensuring that the legislative system properly protects and preserves it.

2.54 Paragraph 4 of the NPPG states that archaeological remains are a finite and non-renewable resource, and should therefore be regarded as a part of the environment to be protected and managed. The primary policy objectives are that they should be preserved wherever feasible and that, where this proves not to be possible, procedures should be in place to ensure proper recording before destruction, and subsequent analysis and publication.

2.55 Paragraph 7 explains the responsibilities, now vested in Scottish Ministers, for maintaining a Schedule of nationally important monuments, for controlling works through Scheduled Monument Consent (SMC) procedures, for protecting and preserving archaeological remains of importance, and for promoting public understanding and enjoyment of historic monuments.

2.56 Paragraph 12 states that the government's aim is to accommodate development without eroding environmental assets, including archaeological heritage. The development planning system provides the policy framework for meeting the need for development along with the need for preserving archaeological resources, and for minimising the potential for conflict between these. Paragraph 14 states that planning authorities should ensure that archaeological features are as thoroughly assessed as any other material consideration. Paragraph 16 states that it is important that the integrity of the setting of archaeological sites be safeguarded, but that not all remains are of equal importance. *‘Authorities should therefore base their policies and development control activities on up-to-date knowledge of the various categories of archaeological remains in their area’*

2.57 Paragraph 17 sets out the policy approach to particular categories of archaeological sites. It states that, where development is proposed, planning authorities, using the categories outlined as a guide, should weigh the relative importance of the archaeological features in question and their potential use for amenity, tourism and education purposes against other features, including the benefits of the proposed development. With regard to SAMs, it states that they are: *“of national importance and it is particularly important that they are preserved in situ and within an appropriate setting”*. Consequently, developments which would have an adverse effect on SAMs or the integrity of their setting should not be permitted unless there are exceptional circumstances.

BS 7913:1998 Guide to the principles of the conservation of historic buildings

2.58 The BS provides general background information on the principles of the conservation of specifically historic buildings rather than scheduled monuments. The foreword states that the principles enunciated neither conform precisely to any previous manifesto or charter, nor are they intended to be definitive or prescriptive; it is inevitable that conservation theory will continue to evolve, and the guide will become historic and be subject to review in due course.

2.59 Paragraph 1.1 states that the immediate and most obvious objective of building conservation is to secure the preservation of the nation's stock of buildings, and in particular its historic buildings and fine architecture, in the long term interest of society.

The definitions in the document include the following:

- Conservation: Action to secure the survival or preservation of buildings, cultural artefacts
.... or any other thing of acknowledged value for the future.
- Conversion: Alteration, the object of which is a change of use of a building or artefact,
from one use to another.
- Intervention: Any action which has a physical effect on the fabric of a building or artefact
- preservation: State of survival of a building or artefact, whether by historical accident, or
through a combination of protection and active conservation.
- Protection: Provision of legal restraints or controls on the destruction or damaging of
buildings or artefacts, natural features, systems sites or other things of
acknowledged value, with a view to their survival or preservation for the
future.
- Rebuilding: Remaking, on the basis of a recorded or reconstructed design, a building or
or artefact which has been irretrievably damaged or destroyed.
- Reconstruction: Re-establishment of what occurred or what existed in the past, on the
basis of documentary or physical evidence.
- Repair: Work beyond the scope of regular maintenance to remedy defects,
significant delay or damage caused deliberately or by accident, neglect,
normal weathering or wear and tear, the object of which is to return the
building or artefact to good order, without alteration or restoration.
- Restoration: Alteration of a building which has decayed, been lost or damaged or is
thought to have been inappropriately altered in the past, the objective of
which is to make it conform again to its design or appearance at a previous
date.
- Reversibility: Concept of work to a building, part of a building or artefact being carried out
in such a way that it can be reversed at some future time, without any
significant damage having been done.

2.60 Paragraph 6.1 states that the conservation of buildings can be justified on cultural, economic and environmental grounds, usually in combination. Paragraph 6.2.1 identifies two general reasons for the preservation of a building on cultural grounds, historical and aesthetic. Paragraph 6.3.1 states that the conservation of a building can be of economic value either (a) directly, in that it has a function and thus represents a positive asset; or (b) indirectly, in that its character, quality, interest or beauty enhances the value of the immediate area in which it is set, or the wider area or country as a whole. It states that, apart from SAMs, whose preservation, whether as complete or ruinous structures, can be

justified on cultural grounds alone, the survival or preservation of a building ultimately depends on its continued use and its ability to earn its keep.

2.61 Paragraph 6.3.2 on 'Using the building stock' states that almost all buildings are capable of beneficial use, whether the use for which they were originally designed, an existing secondary use, or some new or alternative use. To survive and to be of economic value, they need to be used. Alteration should always be kept to a minimum and should, if possible, be reversible. With skill and understanding, alterations should not result in significant or unacceptable loss of cultural value.

2.62 Section 7 deals with 'Conservation in Practice'. Paragraph 7.1.2, 'Minimum intervention', states that a conservative approach of minimal intervention and disturbance to the fabric of an historic building, in which there is a presumption against restoration, is fundamental to good conservation. The destruction, alteration or renewal of parts of a building can be damaging, and should be carefully considered and properly justified. Paragraph 7.3.2.1 states "A presumption against restoration is a hallmark of the British approach to building conservation. Restoration can diminish: (a) the authenticity and thus the historic value of a building; and (b) the aesthetic value of a building".

2.63 Paragraph 7.4.1 acknowledges that to enable a building to continue in use and to earn its keep, it is sometimes necessary to alter it. However, there are some buildings and settings in which no alterations or new work should be acceptable; care should always be taken to ensure that any work is genuinely necessary, and that the end result could not be achieved in an easier or less damaging way. The criteria for alterations in paragraph 7.4.3 include: (i) adequate survey, investigation, recording and analysis in advance of design work to ensure that the risks of accidental damage or destruction are minimised; (ii) avoiding disturbance of any significant existing fabric; the level of intervention should be at the lowest appropriate level; (iii) some buildings should not be altered at all, except in the most exceptional circumstances; (iv) the removal of earlier work that detracts from the building's quality, or the restoration of the layout or missing parts of a building can sometimes be justified; (v) new work should always be of appropriate quality, and should contribute to the architectural integrity of the building; (vi) consideration should always be given to the desirability of carrying out alterations, so that they can be reversed quite easily, e.g. services where their life is likely to be short.

International Charters and Conventions

The Venice Charter 1964

2.64 In the preamble to the Venice Charter (HS20) it is stated that "*It is essential that the principles guiding the preservation and restoration of ancient buildings should be agreed and be laid down on an international basis with each country being responsible for applying the plan within the framework of its own culture and traditions*".

2.65 The Articles in the Venice Charter that are of relevance to the present application include:

Article 3: The intention in conserving and restoring monuments is to safeguard them no less as works of art than as historical evidence.

Article 4: It is essential to the conservation of monuments that they be maintained on a permanent basis.

Article 5: The conservation of monuments is always facilitated by making use of them for some socially useful purpose. Such use is therefore desirable, but must not change the layout or decoration of the building. It is within these limits only that modifications demanded by a change of function should be envisaged and may be permitted.

Article 7: A monument is inseparable from the history to which it bears witness and from the setting in which it occurs.

Article 9: The aim of restoration is to preserve and reveal the aesthetic and historic value of the monument and is based upon respect for original material and authentic documents. It must stop at where conjecture begins.

Article 11: The valid contributions of all periods to the buildings of a monument must be respected, since unity of style is not the aim of a restoration.

Article 12: Replacements of missing parts must integrate harmoniously, but be distinguishable from the original.

Article 13: Additions cannot be allowed except insofar as they do not detract from the interesting parts of the building, its traditional setting, the balance of its composition and its relationship with its surroundings.

Article 15: Ruins must be maintained, and measures necessary for the permanent conservation and protection of architectural features and of objects discovered must be taken. Furthermore, every means must be taken to facilitate the understanding of the monument and to reveal it without distorting its meaning. All reconstruction work should be ruled out '*a priori*'.

Article 20.1: Reconstruction is appropriate only where a place is incomplete through damage or alteration, and only where there is sufficient evidence to reproduce an earlier state of the fabric. In rare cases, reconstruction may also be appropriate as part of a use that retains the cultural significance of a place.

The Valetta Convention (1992)

2.66 The European Convention on the Protection of the Archaeological Heritage (Revised), otherwise known as the Valetta Convention (HS10) was signed by the UK Government signed in September 2000 and came into effect in the UK in March 2001. Articles of the convention of relevance to this case include the following:

Article 1: Indicates that the aim of the Convention is to protect the archaeological heritage as a source of the European collective memory and as an instrument for historical and scientific study.

Articles 2-4: These require the signatories to take measures for the identification and protection of the archaeological heritage, including for its conservation and preservation, preferably *in situ*.

Article 5(i): Which seeks to reconcile and combine the requirements of archaeology and development plans.

The Burra Charter (1999)

2.67 This document, which is the most recent version of the original Charter adopted in 1979, provides guidance for the conservation and management of places of cultural significance. In summary, it advocates a cautious approach to change, i.e. do as much as necessary to care for the place and to make it useable, but otherwise change it as little as possible so that its cultural significance is retained.

2.68 Article 1 sets out, *inter alia*, the following definitions:

- Cultural significance (which may change over time) means aesthetic, historic, scientific, social or spiritual value of a site for past, present or future generations.
- Conservation means the processes of looking after a place so as to retain its cultural significance.
- Preservation means maintaining the fabric of a place in its existing state and retarding deterioration.
- Restoration means returning the existing fabric of a place to a known earlier state by removing accretions or by reassembling existing components without the introduction of new material.
- Reconstruction means returning a place to a known earlier state and is distinguished from restoration by the introduction of a new material into the fabric.
- Adaptation means modifying a place to suit the existing use or a proposed use.
- Compatible use means a use which respects the cultural significance of a place. Such a use involves no, or minimal impact on its cultural significance.

2.69 Within Article 2, it is stated:

- Places of cultural significance should be conserved.
- The aim of conservation is to retain the cultural significance of a place.
- Conservation is an integral part of good management of places of cultural significance.
- Places of cultural significance should be safeguarded and not put at risk or left in a vulnerable state.

2.70 The following statements are also included within the Charter:

- Article 3: Conservation requires a cautious approach, changing as much as necessary, but as little as possible; and that those making the changes should not distort the evidence it provides.
- Article 4.1: Conservation should make use of all the knowledge, skills and disciplines which can contribute to the study and care of the place.
- Article 5: Conservation should identify and take into consideration all aspects of cultural and national significance without unwarranted emphasis on any one value at the expense of others.
- Article 6: The cultural significance of a place must first be understood before development of a policy for its conservation.
- Article 7: Where the use of a place is of cultural significance, it should be retained. The policy should identify a use or combination of uses that retain the cultural significance.
- Article 9.1: The physical location of a place is part of its cultural significance. A building work or other component of a place should remain in its historical location. Relocation is generally unacceptable unless this is the sole practical means of ensuring its survival.
- Article 10: Contents, fixtures and objects that contribute to the cultural significance of a place should be retained *in situ*. Their removal is unacceptable unless it is the sole means of ensuring their security and preservation.
- Article 14: Conservation may include the processes of retention or reintroduction of a use.
- Article 15: The amount of change should be guided by the cultural significance of a place and its appropriate interpretation; changes that reduce cultural significance should

be reversible; emphasising or interpreting one period or aspect at the expense of another can only be justified when what is left out, removed or diminished is of slight cultural significance and that which is emphasised or interpreted is of much greater cultural significance.

- Article 17: Preservation protects fabric without obscuring the evidence of its construction and use.
- Article 18: Restoration and reconstruction should reveal culturally significant aspects of the place.
- Article: 19 Restoration is appropriate only if there is sufficient evidence of an earlier state of the fabric.
- Article 20.1: Reconstruction is appropriate only where a place is incomplete through damage or alteration, and only where there is sufficient evidence to reproduce an earlier state of the fabric.
- Article 21: Adaptation must be limited to that which is essential to a use for the place determined in accordance with Articles 6 and 7. Any adaptation should have a minimal impact on its cultural significance.
- Article 25: The cultural significance of many places is not readily apparent, and should be explained by interpretation.
- Article 26.1: Work on a place must be preceded by studies to understand the place which should include analysis of physical, documentary and other evidence, drawing on appropriate knowledge, skills and disciplines.
- Article 27: The impact of proposed changes on the cultural significance of a place should be analysed with reference to the statement of significance and the policy for managing the place.

3. THE CASE FOR THE APPLICANT

Background and context of the application

3.1 Rowallan Castle is a Scheduled Ancient Monument (SAM) as defined in the 1979 Act. The monument was included in the list published in 1955 under the legislation which preceded the 1979 Act. It was not formally scheduled until 1994. The scheduled area is larger than the boundary of the Guardianship Area described in 3.5 below.

3.2 The castle is subject to a Deed of Guardianship, entered into in 1950 by Lord Rowallan, the owner, and the Ministry of Works (MoW), the statutory predecessor to Scottish Ministers. The monument was placed in guardianship following a request from the owner first made in 1943. The 1979 Act regulates guardianship.

History of site and the castle

3.3 Rowallan Castle was the historic seat of the Mure family and the first tower house was erected by Gilchrist Mure in the late 13th century in which the family lived probably until the late 15th or early 16th centuries. His son, John Mure commenced the southern and eastern ranges which were completed by his son, Mungo who died in 1547. The present building is an imposing 3/4 storey stone built courtyard house which reflects the multiple phases in its development from that time. The notable features include the twin towered entrance and stairs, the alterations and extensions to the western range by John Mure in the mid-late 16th century, the alterations by his grandson Sir William Mure in the mid 17th century, and the panelled interiors of the late 17th and 18th centuries.

3.4 In 1704, Lady Jean Boyle (Mure) married Sir James Campbell MP bringing Rowallan under the earldom of Campbell of Loudoun. One of her daughters inherited Rowallan and married Sir James Mure Campbell, who succeeded to the Rowallan titles in 1745 and to the Earldom of Loudoun in 1772. The family ceased to live in Rowallan Castle from about 1750, preferring the nearby Loudoun Castle. It is understood that family servants continued to occupy Rowallan Castle during the 19th century. Although schemes for alteration and improvements to the Castle were prepared in the mid and late 19th century, there is no dispute that the house has been unoccupied for over 100 years. The new Rowallan House was built by the architect Robert Lorimer between 1901-1906 for Mr Cameron Corbett who bought the estate in 1901 and became Baron Rowallan in 1911.

3.5 In the 1940s, the 2nd Lord Rowallan, Chief Scout from 1945, became concerned about the state of the Castle and commissioned plans for its restoration from the architect Ian G Lindsay, but he was unable to carry out the work himself due to his post-war commitments. He therefore negotiated a 'guardianship agreement' with the Ministry of Works, which was signed in 1950 (CD25). As a result, Rowallan Castle appeared on the 1955 list of Ancient Monuments in Scotland (HS18) as being a "*monument wholly or partly in the charge of the Minister under the provision of the Ancient Monuments Acts*". The Castle was not listed Category A until 1971, so its initial inclusion as a monument on the Ministry of Works list appears to the applicant to have been primarily the result of its being a property in care. The extent of the Guardianship Area and the scheduled area of the Ancient Monument (SAM) are shown on the plan on page 6 of the Conservation Plan (CD14 Figure 3). Photographs of the property taken between 1941 and 1968 which show

the condition of the property in advance of any work can be seen in Historic Scotland's documents (HS3).

3.6 From his report in 1943, the Ministry of Works (MoW) surveyor John Houston (HS16) found the property to be in a generally poor condition with damage to the roof which had allowed water penetration to structural timbers, floors and internal finishes. The courtyard and ruined north range were heavily vegetated and a large tree had undermined the north-east corner of the house, necessitating the erection of large stone buttresses, while the chimneys and much of the external masonry were in need of attention. He also found that the windows were in a poor condition and internal doors and panelling badly affected by damp with evidence of woodworm attack and rot. Lord Rowallan first requested that the house be taken into care in 1943 and this suggestion was supported by the Inspector of Ancient Monuments at that time. However, in a letter to the Deputy Secretary MoW dated 14 April 1944, Mr D L Macintyre of the MoW found that he was unable to accept such a commitment during the period of the war. Consequently the offer was left open for further reconsideration after the cessation of hostilities (MMP Table A Appendix 2).

3.7 It was indicated that the main characteristics of Rowallan Castle are a tightly defined courtyard plan enclosed on 3 sides by ranges and on the fourth by a wall. The buildings now cover four levels: a basement and ground floor, and first and second floors. The layout of the castle has evolved over an extended period, with the 14th century tower house with an associated enclosure, being the probable starting point of the development. It was recognised that the buildings on the site reflect at least seven identifiable periods of architectural change. Reference was made to Historic Scotland's Interim Statement of Cultural Significance (HS14), where more details about the history and development of the castle are set out.

Alterations since 1950

3.8 When Rowallan Castle was taken into state care in 1950, it was roofed, apart from the ruined tower house (R53) and old kitchen (R26), and retained many of its interior finishes, but it was in fairly poor condition and required extensive works, as can be seen in the submitted photographs (HS3). It was acknowledged that the condition of the basic fabric of the castle was now structurally sound and that HS had an ongoing programme of inspection, repair and maintenance as set out in their Monument Management Plan (HS1). It was also recognised that works to the castle have been undertaken by Historic Scotland and its predecessors from the mid 1950s onwards. On this point, reference was made to document HS16 which is a list of the works that had been undertaken. The contents of this list are also referred to in the Agreed Statement, signed by both parties on 16 April 2008, which is included in Chapter 1 of this report.

Previous Scheduled Monument Consent Application

3.9 It was noted that this was the second application submitted for alterations and the restoration of the monument. A scheduled monument consent application was made by Duffield Morgan Ltd on 27 November 2000 for the "completion and restoration and to reinstate building into habitable condition for the owner's use". A planning application was also submitted to East Ayrshire Council on 17 April 2001 for "the change of use and refurbishment of the existing vacant castle to form overnight accommodation in conjunction with the Hotel". Both these applications were considered at a conjoined public inquiry in 2002. The report of that public inquiry (CD28) recommended that scheduled monument

consent and planning permission be refused. The Scottish Ministers accepted the recommendation, and consent and permission were refused in July 2003.

The application for Scheduled Monument Consent

3.10 The application for Scheduled Monument Consent submitted by Mr Niall Campbell was for the conservation and restoration of the building to ensure habitable use. It was received by HS on 1 September 2006. Historic Scotland issued a minded to refuse letter on behalf of Scottish Ministers on 10 May 2007 (CD17).

3.11 It was explained that following the refusal of the previous scheduled monument consent application in 2002 (CD28), where the proposals were found to lack sufficient detail for the application to succeed, the applicant had appointed a prominent Scottish firm of conservation architects, Simpson and Brown, who have considerable experience in carrying out repairs and restorations to listed buildings and scheduled monuments.

3.12 They produced a comprehensive Conservation Plan (CP)(CD14), based on accurate surveys supplied by HS, which thoroughly explores the historical, archaeological, architectural, aesthetic and landscape significance of the monument and explores the stages of building on its site. To this end, every room is examined in detail to establish the development of the building over the centuries, the condition of the castle when it was taken into care in 1950, and the conservation works that have been carried out since. There was no dispute that the CP provided sufficient detail for the SMC application to be considered.

3.13 The CP analyses the conservation needs of the monument in the light of Statutory and Non-Statutory constraints and proposes a schedule of conservation and repairs that are considered to be necessary to correct earlier inappropriate interventions and/or to undertake selective restoration to the external and internal areas. Coupled with these recommendations, the CP explores the applicant's proposals and the methodology required to carry them out with a minimal impact on the character of the monument. Central to these proposals is the reinstatement of the principal habitable rooms to their former condition and use, to give visitors a better indication of the domestic lifestyle of the previous occupants.

3.14 Room surveys of the existing spaces are compared with the application proposals which indicate the conservation and repairs that are to be carried out with the new interventions necessary to provide the essential domestic facilities. These include the provision of a new kitchen and bathrooms with the wiring, lighting, plumbing and drainage services required. The CP together with the accompanying plans of the existing building and the proposals form the basis for the application and the evidence submitted at the inquiry.

3.15 Should SMC be granted, the applicant has indicated his willingness to open the castle to the public for at least 25 days per year when HS would be able to arrange guided tours. This is to ensure that there is no conflict between the habitable use of the building and visits by the public. The inquiry was told that, in the event that the building was to be managed by an organisation such as the Landmark Trust, further opportunities for public visits could be available on handover days between lettings. It was submitted that this was common practice in self-catering accommodation within heritage properties.

3.16 In addition, it is proposed that ground floor Room 29, which has access off the courtyard via the entrance pend (R30), would be used as a permanent interpretation room

where information boards and digital displays etc. would inform the visiting public of the history and important features of Rowallan Castle.

The evidence of the applicant

3.17 Mr Campbell told the inquiry of his 40 years development experience from being a trained stonemason and engineering technician to a director of his own firm carrying out a wide range of building and civil engineering works in Scotland and overseas. Several of the schemes referred to involved historic buildings one of which resulted in a Civic Trust Award. His company had also received a Saltire Award for Housing in Ayrshire.

3.18 He pointed out that, following the grant of planning permission, Rowallan House had now been fully refurbished as a hotel and that this is to be followed by the construction of the approved 50 bedroom extension. These developments are designed to serve the championship golf course which will shortly be ready for use. The development of the enabling housing development is also soon to commence following the approval of a reserved matters application. The Gardener's Complex has also been renovated and converted into the new golf clubhouse and the walled garden has been renovated to provide organic produce for the new hotel. Mr Campbell considered that this comprehensive development of the Rowallan Estate would have a positive effect on the economy of East Ayrshire through the provision of 175 jobs and the creation of a world class facility to attract visitors to the area.

3.19 Mr Campbell's was fully aware of the historic importance of the scheduled ancient monument and his plans for the castle seek to implement a full restoration that would return the building to its original domestic use for which purpose it had been used for over 600 years. This would involve retaining, conserving and repairing the important original fabric with interventions only to provide essential domestic services and, thereby, have a minimal impact on the heritage value of the site. The restoration proposals and recommendations are set out in Chapter 11 the Conservation Plan (CD14).

3.20 The current application differs from the previous scheme in that it is made by Mr Campbell in person rather than as part of his company's development of the estate. It was also for scheduled monument consent only with no applications for planning permissions involved. Mr Campbell told the inquiry that the restored building would be put to habitable use by the applicant's family or for letting as holiday accommodation. At the same time, those rooms that are not to be in habitable use would be utilised to provide visitor interpretation displays explaining the history of the Castle and its site. Arrangements for public access would have to be agreed with HS while the building remained in their care.

3.21 It was emphasised that there is nothing in the 1979 Act that refers to the grant of SMC being limited to a 'fit and proper' person. In any event, it was considered that Mr Campbell had shown through 18 years of commitment and investment in the Rowallan Estate that he had always held the interests of the buildings and its heritage at the forefront of his concerns. To this end he had been prepared to allow HS and the public reasonable access by agreement, but this had been influenced by a lack of proper parking, which was a matter that has yet to be resolved.

Assessment of Significance

3.22 It was noted that the principles set out in the Burra Charter of ICOMOS Australia (CD12) have led to a widespread acceptance of the Conservation Plan and a 'significance based' approach to ensure a proper understanding of the conservation of sites by means of thorough documentation and archaeological research. In this case, it was indicated that the CP explored the archaeological, architectural, aesthetic and landscape, social and spiritual and ecological significance of Rowallan Castle.

Archaeological significance

3.23 The archaeological potential of the site to provide evidence of the development of the use of the site through time has been demonstrated by the investigation undertaken by Kirkdale Archaeology in advance of conservation work on the mound beneath the earlier tower house (R53). Along with information on the development of the tower, the excavations revealed remains of a late Bronze Age burial and an Iron Age timber structure within a restricted area. Little invasive investigation had been undertaken elsewhere with the castle, although fresh archaeological information has emerged in the course of preparation of the Conservation Plan. The results of all these investigations have been fully recorded.

3.24 The evidence on this topic was presented to the inquiry by Mr Addyman who confirmed that he wrote the relevant sections of the CP. He was not involved in the earlier explorations of the Iron Age remains in the old tower house (R53). He was however involved in carrying out an analytical history of Rowallan Castle during 2004-2005, which forms the background research used to prepare the CP (CD14). This work involved a detailed and systematic study of the physical evidence together with all available historical material which included the records of HS and its predecessors and the repairs and interventions they carried out to the building.

3.25 The analysis of the physical fabric of the castle, the periods of construction and other indicators enabled the establishment of a relative sequence of building within the property. This is shown on the coloured drawings on pages 40-47 of the CP (CD14). These indicate that Rowallan Castle retains a wealth of architectural features such as moulded window and entrance surrounds and other decorative details which the study was able to relate to the 8 to 10 phases of work recorded. However, the extensive repairs carried out since the 1950s, in particular the removal of plaster and the raking and pointing of the stonework internally and externally, had done much to obscure analytical evidence normally expected to be available in a roofed house such as this.

3.26 Nevertheless, Rowallan Castle remains a site of exceptional archaeological value with evidence dating back to the Bronze and Iron Ages. This makes the castle an important archaeological resource for further understanding of the development and occupation of the site. The sub-surface archaeology could also provide important further information on the construction stages of the present structure, while recent resistivity surveys have revealed archaeological anomalies to the front, side and rear of the castle. The structural fabric of the building itself demonstrates the successive stages of development and the type of construction of the castle as it expanded from the ruined medieval tower house in the north-east corner.

Architectural Significance

3.27 The architectural importance of Rowallan Castle was examined at the inquiry primarily by Professor McKean who explored how it compared with a typical country seat in Renaissance Scotland. Such a house would usually be comprised of a tower standing in an inner court around which a series of buildings were added to provide the principal lodgings, guest accommodation, gallery and offices. In addition, there would be other buildings to sustain the household, such the dairy, brew house, bake house, stables and barns. Service chambers would have included a bottle house, woman house, wine cellar, coal house and storage cellars.

3.28 Most country seats would have been built in rubble stonework finished in harling, while interiors were normally plastered and decorated according to rank and resources. The internal finishes might be paintings, tapestries, panelling or a combination, from which inventories reveal that such houses were lavishly and comfortably furnished with a strong emphasis on colour.

3.29 Professor McKean pointed out that Rowallan's tower and inner court were relatively small, as are the chambers and gallery, which pointed to a country house of probably 3rd or 4th rank. Only a few chambers retain any integral original fittings and none have the integrity of a single period of creation. He considered that nothing in the interior could be regarded as inviolable and untouchable with no chamber having such architectural or cultural significance to merit its preservation 'as found'. The claim of the uniqueness of Rowallan's 'woman house', which the AMB were told in 1985 lay up the stairway (R4) at the western end of the house (R46), suggested that there might be a chamber of high status as indicated by its finishes and the buckle quoins on the stair walls. This was inaccurate as a woman house was usually furnished with beds and equipment for women servants to carry out tasks like sewing, knitting or laundry. At Rowallan Castle, this was more likely to have been located at Room 26. The high status of Room 46 suggested that it was more likely to have been a laird's chamber.

3.30 It was submitted that Rowallan was therefore neither an unusual survivor nor unique, but simply typical of a smaller Scottish Renaissance country seat. It was also considered that it was fair to assume that the legislation intended that the monument should be kept in good order in perpetuity and made accessible to the public in as authentic state as possible. However, while HS has argued that the proposal to reinstate plastering and external harling would obscure evidence of earlier finishes, the existing un-plastered condition of the interior rooms with the deep cut pointing and rubble walled exterior was not authentic, which gave the house a primitive and misleading perspective on Scottish social history.

3.31 In Professor McKean's view, it would be better to record the details of the stonework and then harl and plaster the building to show how such houses would once have appeared and inform visitors and to explain what lay behind these finishes. It was submitted that this was the approach that had been adopted at Fenton Tower and Castle of Park. The key issue was whether or not a fine house should be re-occupied whilst providing access for the public, or whether the castle should be retain as an interpretative museum. The implication of HS's concern was that reoccupation would be damaging as it would alter the environmental condition of the building. However, this has not been the case in a number of other historic houses which have been re-used after substantial periods of abandonment. Reference was made to the example of Thirlestane, which was reoccupied in the 1980s after 40 years of abandonment, following the castle the reintroduced heating by the

trustees. In that case, care had been taken to ensure that one of Scotland's finest 17th century chambers survived undamaged.

3.32 Rowallan Castle was therefore an excellent, if not exceptional, example of the chronological development of a Renaissance country house, which has elements such as the 17th century entrance towers that echo those at Falkland and Holyrood. Despite the substantial alterations and removal of the plastering and harling, the building retains much excellent quality fabric. The works carried out since the 1950s contrast unfavourably with what is considered to be best practice today and demonstrate the shift in attitudes to conservation. In addition, the castle has a strong association with the prominent Scottish architect Sir Robert Lorimer who designed Rowallan House on the estate.

Aesthetic and Landscape significance

3.33 Rowallan Castle is a landmark building in a picturesque setting on the edge of Carmel Water. It retains remnants of a 17th century landscape including the existing walled garden, riverside walk and the adjacent small gardener's cottage. The site also incorporates 16th century gardens and the L-shaped arrangement of yew trees and the steeply sloped bank at the rear of the house.

3.34 In the late 19th and early 20th centuries, Robert Lorimer had an influence on the landscape setting of the castle specifically with the construction of the summer house in the walled garden, the glasshouses and other associated buildings, which provide an important overlay on the complex and picturesque historic landscape. In 1987, the central more formally landscaped core of the estate was included in the Inventory of Historic Gardens and Designed Landscapes in Scotland (CD14 Figure 2 and CD26).

Social and Spiritual significance

3.35 Rowallan Castle has long been the site of the ancestral home of the Mures (Elizabeth Mure was the wife of King Robert II of Scotland) and the Campbells of Loudoun, a link maintained by the current owner who has reinstated the family's association with the site. In the 17th century, Sir William Mure was famous as a poet, writer and translator of religious texts while his son, also Sir William, had links with the Covenanters and allowed them to use the Gallery as the 'auld kirk' for meetings and worship. Visitors have come to the site over the last 100 years, particularly when the previous Lord Rowallan was Chief Scout and allowed use of his land by the Scouting Association.

Ecological significance

3.36 The ecological elements within Rowallan Castle include winter roosts for bats and owls, while the veteran yew trees and other vegetation on the northern side of the castle are believed to be from the 16th century. It is acknowledged that further ecological features may be revealed by further research.

Summary Statement of Significance

3.37 It was concluded that Rowallan Castle was nationally important as an excellent example of the cultural development associated with the Renaissance in Scotland during the 16th and 17th centuries and the development of country seats of this type at the time. It is a landmark building in a picturesque 17th century landscaped setting which incorporates

16th century planting, while there are several ecological features of importance in and around the site.

3.38 There is archaeological evidence dating from the Neolithic and Bronze Ages and other periods within the castle complex and surrounding area. Evidence of the stages of the development of Rowallan Castle from a simple medieval tower house to a Renaissance courtyard house is well documented and many original features, such as panelling and other woodwork have been preserved in the Museum for Scotland or at Rowallan House.

3.39 The castle has a long and complex history, with Elizabeth Mure being the wife of King Robert II, the first in the line of Stewart kings, an ancestry which was acknowledged by James VI. Furthermore, Sir William Mure, author, poet and translator of religious texts used the parts of the house for religious worship with the Covenanters.

The changing attitude of Historic Scotland and its predecessors to the use of guardianship agreements between 1950 and today

3.40 Professor Michael Lynch indicated that he had chaired the Ancient Monuments Board for Scotland (AMBS) between 1996 and 2003. It was explained that AMBS was an advisory non-departmental body, which provided the main channel for external views of the operation of Historic Scotland and its predecessors in the area of ancient monuments. AMBS had a statutory duty to advise Scottish Ministers on the exercise of their powers under the Ancient Monuments and Archaeological areas Act 1979. In particular the Board advised Ministers on proposals to schedule or de-schedule monuments and on the termination of guardianship agreements.

3.41 In 2000, the Board considered a short report on 'The Portfolio of Monuments in Care' (APP9). The report noted that in the past Historic Scotland had been seen as the only body that was in a position to take on the long-term care of important monuments. However, it was suggested that this was now no longer the case as there were more players in the field. Consequently, it was increasingly being acknowledged that Historic Scotland should be seen as a 'body of last resort' to be used only when all other attempts to ensure the long-term future of a monument or a site future had failed. While the report acknowledged that 'guardianship' was still a viable way forward, other mechanisms were increasingly being used, for example private ownership, leasing and the use of 'partnership' arrangements. It was indicated that AMBS had welcomed discussion on alternative mechanisms to guardianship. It was noted that some officials were prepared to admit that mistakes had been made in the past regarding acquisitions by guardianship. It was indicated that the issue of the continuing use of guardianship agreements had been under consideration during the 1980s and that the question of the disposal of those monuments which were believed to be peripheral to the main activities of the estate had also been under consideration.

3.42 One of the key issues was the confusion that occurred when a property was taken into guardianship agreements regarding the rights and responsibilities that should apply. It was considered that this was certainly the case with respect Rowallan were there had been considerable confusion over the years between successive owners and Historic Scotland and its predecessor bodies. As a result of the way in which the system had operated it was indicated that there was great difficulty in establishing the criteria which should apply to the type of monuments that should be taken into care or the circumstances in which this would occur. As a consequence, there have been periods in the past when the eligibility

requirements regarding properties that were candidates for being taken into care were less exacting. This has meant that there are properties under guardianship which would not qualify under the present regime.

3.43 It was indicated that ancient monuments were normally earthworks, pre-historic stone structures or medieval or later ruins and only exceptionally buildings which are not ruins but which were incapable of use. In this context, the taking into guardianship of Rowallan was considered to represent an exceptional case as it was considered that its condition in the early 1950s rendered it incapable of residential use. It was submitted that a sizeable number of buildings, including Rowallan Castle, were taken into guardianship between 1949 and 1953 and that this was a reflection of a widespread crisis in the condition of ancient monuments and historic properties at the time. However, because of resource implications doubts have been cast on the wisdom of adopting this approach in subsequent years.

3.44 There has also been confusion regarding the responsibility for tower houses and other historic houses within HS and over whether the listing or scheduling of such structures was the more appropriate vehicle for their protection. It was considered that the confusing and overlapping nature of the legislation and practice regarding these buildings still remained. It was acknowledged that changes had been made to the structure of HS with the amalgamation of the listed building and ancient monument inspectorates and that more recently a series of policy papers known as Scottish Historic Environment Policies (SHEPs) had been produced, but it was considered that in practice little had changed. The publication of the SHEPs was stated to be no more than a codification of HS's established practice. It was submitted that HS still displayed a marked reluctance to view the conservation of tower houses and other historic houses in a flexible and holistic manner. Despite assurances that each case was decided on its individual merits there was a marked reluctance to do so because of a fear that a precedent could be established.

The circumstances associated with transfer of Rowallan into Guardianship

3.45 It was indicated that according to the records held by AMBS, while the castle was recognised as being a fine mansion of the 16th-17th centuries it was not scheduled in 1949. The records indicated that an offer of Guardianship had been made by Lord Rowallan in 1943, but that this had not been accepted by the then Ministry of Works for financial reasons. Subsequently, it was recorded that the matter was referred to the National Trust, who favoured ownership, but were unable to accept the offer and considered that the property was more suitable for Ministry of Works' charge. The AMBS records also noted that Lord Rowallan had stated the property was in very good condition and should not be allowed to deteriorate further. Consequently, efforts were made to persuade the National Trust to take over the monument with external repairs being undertaken by the Ministry of Works at the Trust's expense. The option of taking the property into Guardianship was also under consideration at that time.

The physical condition of Rowallan at the time of transfer to guardianship

3.46 It was noted that the previous Reporters had indicated that the Castle was in poor condition at the time it was taken into Guardianship. However, this was considered to refer to the description of the building as it was in 1943. According to the information contained in AMBS records, referred to above, Lord Rowallan had stated that the property was in a 'very good' condition. It was suggested that Lord Rowallan may therefore have undertaken

remedial works between 1943 and 1950 and that he was therefore keen that the works continued. It was noted that the Ministry of Works did not commence their remedial works until 1952.

Status accorded to the Rowallan Castle by AMBS in the period 1949 to 1950

3.47 It was noted that at the previous inquiry the Reporters had indicated that AMBS had included Rowallan in a list of the first priority group of properties for Guardianship. It was considered that this was based on the contents of a letter from the Ministry of Works dated July 1949 which stated that the property was a 'unique specimen' of 17th century domestic architecture. It was indicated that this claim was not substantiated by material in official AMBS records. A number of lists of properties were drawn up by AMBS during this period, but Rowallan did not appear on any of them. Similarly, the change of description of the building from being considered a fine specimen to it being 'unique' was considered to simply the view of a senior official in the Ministry of Works to reflect the requirements of the legislation regarding the eligibility of properties for Guardianship. It was acknowledged that Rowallan was included in a list of 17 properties being considered for Guardianship in 1949. Rowallan was one of only 3 properties on this list which had not been scheduled at the time. When the list of 1st priority properties prepared By AMBS was finalised shortly thereafter Rowallan was omitted. This suggests that at the time AMBS was preparing the list Rowallan was considered to be a fine property but that it was not unique.

The treatment of Rowallan by the Ministry of Works

3.48 It was accepted that best practice with regard to works on ancient monuments has evolved over time. However the influential Gowers Report of 1949 set out four key principles for such remedial works. These were: (i) preserve as found; (ii) the development of an understanding and interpretation of the property; (iii) the undertaking of archaeological investigations; and, (iv) the need to provide public access. It was submitted that HS and its predecessors had fallen short in their attempts to satisfy these requirements. On the first point crude repairs had been carried out to some exterior and interior walls and unsympathetic replacement of wood panelling had occurred. With respect to the second point, it was considered that little had been done to advance our understanding of the property since 1985 and HS accepted that the evolution of the house as a laird's residence was still not clearly understood. It was submitted that the work undertaken on behalf of the applicant with respect to the architectural history of the building, had contributed more to an understanding of the property than all the other investigation carried out during its period of guardianship. Similarly, apart from some work carried out in 2002 on the area of the tower, few other archaeological investigations have been undertaken by HS. In comparison, the comprehensive survey of the house work by the applicant's archaeologist has produced a new understanding of the house.

3.49 The most pressing concern however was considered to relate to the lack of public access to the property during the guardianship period. It was indicated that this was an issue that had been highlighted by AMBS as requiring attention over many years. The lack of public access was both unusual and a serious issue with regard to a property such as Rowallan which was under guardianship. In 1970 there were 13 properties in guardianship providing no public access. By 1985 the number of properties in care without public access had dropped to 5. In 2008 only Rowallan and one other guardianship property were not open to the public. AMBS had sought and received assurances in 1985 from HS that efforts to secure public access to roofed monuments such as Rowallan would be achieved

in the near future. However these reassurances have come to nothing and the question arises why nothing has been done to resolve this issue in the intervening 23 years. It was acknowledged that steps have been taken in the last year or so to improve access to Rowallan with greater publicity being given to attracting those whom wished to go on a conducted tour of the property to contact HS. It was submitted that these efforts by HS were too little and too late. It was emphasised that access was a key issue in terms of properties in care which were being looked after in the public interest and at public expense. It was concluded that HS had failed in its duty of state care.

The importance of the castle and the historic significance of its past owners

3.50 It was considered that the statements that have been made in the past regarding the status and royal associations of the Mure of Rowallan family are somewhat ambiguous. It was indicated at the previous inquiry that the Mures were described as a renaissance family of the first rank because of their association over the centuries with 4 families of national importance. This view was challenged by Professor Lynch who considered that the Mures were more typically of a well established local laird's family of the fourth or fifth rank of importance and that their prominence was largely confined to the immediate locality. This situation was in turn reflected in the significance that should be attached to Rowallan Castle.

The future of Rowallan castle

3.51 It was indicated that it was considered that the Rowallan was caught in something of a legal limbo because of the confusion over legal rights and duties brought about by the use of a guardianship agreement to protect a roofed structure rather than a more traditional archaeological monument. It was submitted that the underlying question was whether the property should properly be considered as an ancient monument or as a mansion. It was considered that the criteria for making such a judgement are confused and lacking in clarity. It was submitted that in the circumstances of the present day it would be highly unlikely that Rowallan would be accepted into Guardianship or seen as being appropriate for inclusion in HS's estate of properties in care.

3.52 It was indicated that HS has been extremely reluctant to relinquish guardianship of properties such as Rowallan. Although a statutory process exists that allows for properties to be taken out of guardianship this has very seldom been used. In addition, it was noted that there were no statutory criteria for so doing apart from the need for the state and the landowner to reach an agreement that this was the appropriate course of action and for Ministers to be satisfied that the property would continue to be properly cared for in the future. It was noted that HS does not have a disposals policy with respect to properties held under guardianship agreements. Section 14 of the Act allows for termination of a guardianship agreement only if Scottish Ministers and the local authority in question are satisfied that adequate arrangement have been made to ensure the preservation of the property after the termination of the agreement; or, it is considered no longer practicable to preserve it. Although there have been examples of situations where termination was being considered under the second of these criteria, the witness had no knowledge of any examples where the first criterion for termination applied. It was emphasised that it was the first of these criterion that was applicable to the situation at Rowallan.

3.53 The absence of any specific criteria regarding the properties that should be taken into care was one of the issues identified by the Historic Environment Advisory Council for

Scotland (HEACS) in a report produced in 2006. The lack of any clearly identified objectives for properties in state care and the fact that there was no policy basis for reviewing their status or for disposal were identified as matters that HS required to address. It was noted in the report that the current assessment process was one that was essentially internal to HS and that it lacked openness and transparency with little opportunity for external parties to be consulted.

3.54 While HS seem to be determined to retain those properties that are presently under guardianship, doubts have been raised by various outside parties about the usefulness of this approach as a mechanism for protecting nationally important monuments and buildings. It was considered that it was now rare for HS to receive offers from owners to place outstanding monuments into care. The offers which are received usually relate to properties that are under threat or are in respect of important buildings that are deteriorating through neglect by their owners. However, in the case of Rowallan, the owner has taken a positive interest in the monument and is prepared to invest in works to restore it to habitable use to ensure its long term future. Arrangements could also be introduced to ensure improved public access to the property. All of this would be at no cost to the public purse.

3.55 It was therefore submitted that an alternative approach to guardianship should now be investigated with respect to Rowallan. An alternative strategy should be found that would reconcile the interests of the public, the owner and HS as guardians whilst also finding a solution that would be in the best interests of the long term conservation of this roofed monument. In this context, it was indicated that consideration should be given to the leasing of Rowallan to a body such as the Landmark Trust. It was noted that such an arrangement had been introduced relative to the property known as the Castle of Park at Glenluce. This was a property that had also remained unoccupied for more than a century and where there had not previously been any public access. Under any such arrangements it should be possible for HS to maintain a supervisory role over any works. The adoption of this approach would enable greater priority to be given to the conservation of other properties identified within the last 50 years, providing a measure of public access and to satisfying the owner's ambitions regarding the property.

The application proposals

3.56 The evidence of Mr James Simpson outlined his firm's brief from Mr Campbell to prepare a Conservation Plan and drawings of sufficient substance to ensure the grant of SMC. In view of his considerable experience of conservation and restoration of historic buildings and monuments, coupled with his long term membership of organisations such as the Ancient Monuments Board for Scotland, Royal Commission on Ancient Historical Monuments of Scotland, Historic Environment Advisory Council for Scotland and ICOMOS-UK, he was considered to be in the best position to provide the essential information that was found lacking in the previous SMC application.

3.57 He advised that a new archaeological appraisal be prepared together with a Conservation Plan prior to the submission of the application. He told the inquiry that the properly researched and thoroughly worked out proposal submitted is as good as any such application could be, so he was disappointed and shocked when it did not receive consent. He believed that his firm had demonstrated a better understanding of the site and its significance than HS had previously been shown. He also considered that that the impact of the proposed work would be minimal and that the proposals would provide more readily

understandable and enjoyable access to the public than had been available over the 58 years of guardianship. Furthermore, he felt the scheme would relieve the HS budget and allow scarce resources to be deployed more usefully at sites which are genuinely and actually at risk.

3.58 In his view, the main reason that HS are not prepared to grant SMC stems from their unwillingness to contemplate a termination of the Deed of Guardianship (DG) which was likely to follow any grant of consent. However, he pointed out that Rowallan Castle was taken into guardianship in 1950 and only became scheduled as a SAM for that reason rather than for its intrinsic value. At the inquiry, Professor McKean gave examples of many similar and more important houses that have not been scheduled.

3.59 While the house was originally taken into care at the specific request of Lord Rowallan, who was unable to carry out the necessary repairs, it should now be considered the type of property whose long term care the HEACS Report of July 2006 (CD21) had recommended would be more appropriately secured outwith state sector. These recommendations sought regular reviews of Properties in Care and the development of a disposals policy where circumstances change. They also reflected the remarks of Baroness Stedman during the passage of the 1979 Act through the House of Lords who envisaged that “where an owner might be regarded as an enthusiastic, responsible individual, who would want to look after his own monument, the State would step back and allow that to happen”. There has been no sign of HS being willing to accord with either of these recommendations, despite Mr Campbell’s willingness to fund the application works.

3.60 Mr Simpson drew particular attention to the HS preference to make a house more like a ruin which may be understandable at Melrose Abbey or Tantallon Castle, but it is inappropriate in a roofed domestic building like Rowallan Castle. The scraping away of all internal finishes to revealed rubble stone walls with raked and tamped joints leaves the visitor with the wrong impression of how the lairds lived in their time. Thinking has evolved which led to the re-harling of Culross Palace and the more controversial HS restoration of The Great Hall at Stirling Castle.

3.61 In contrast, HS and its predecessors unnecessarily removed considerable areas of historic fabric to expose what lay beneath, thereby destroying significant archaeological evidence making the building harder to interpret than would have been the case in 1950. In addition, far from being the minimum necessary, the level of intervention has been far greater and less reversible than anything currently proposed, while the new work that was inserted showed a lack of basic understanding and architectural knowledge.

3.62 HS’s view that the house in its stripped out state would be better presented to the public is surprising when few visitors are interested in viewing masonry at close quarters, particularly now that modern recording methods and digital technology would enable ‘fly-throughs’ to show what lay behind the replastered walls. Similarly occupation of the old house would not have the damaging effect HS predict, as has been shown at Rosslyn Castle, which is partly scheduled as a SAM, where the Landmark Trust successfully manage the restored habitable accommodation for holiday letting.

Detailed proposals

3.63 The evidence of the proposed reinstatement works and alterations, in the light of the recommendations set out in the CP (CD14), was given by Mr John Sanders who was

responsible for the submitted scheme. He reiterated the need to firstly have a thorough understanding of the building fabric and sound conservation principles and, secondly, for any work on historic buildings to be based on minimum intervention, as set out in BS7913: 1998 “The British Standard Guide to the Principles of Conservation of Historic Buildings” (BS7913) which, the inquiry was told, was written by Mr Simpson. These aims have to be balanced against the considerations of finding a sustainable long term use for a building.

3.64 Where the design or original appearance of elements have greater significance than the actual fabric that has come down to us, it can often be appropriate to carry out limited restoration, provided it is based on sound evidence and enhances the significance of public understanding of a building. While minimal intervention is usually the aim with ruined ancient monuments, it is not always appropriate for roofed buildings where a sustainable use to enable it to earn its keep should be considered, even though conservation issues become more complex. The proposals represent the minimum intervention required to the fabric to provide the building with a sustainable use while, at the same time, correcting some of the mistakes made during the guardianship. These actually lost the opportunity to preserve the building ‘in the state in which it had come down to us’, which was the main purpose of taking Rowallan Castle into care in the first place. Some of the works, such as the roof repairs, have clearly been beneficial and have preserved the building but some, like the works to Room R21, have left the building fundamentally different from the state it was in when taken into care.

3.65 While historians may be interested in the development of the house as seen in the rubble walls this is of less interest to the public, who would be better informed by restored plastered and panelled rooms that recreate the character of the house when it was occupied. It is for this reason that the CP (CD14) goes into such fine detail which, with drawings that explore every wall and surface, is capable of being sent out to tender. Interventions are clearly identified as are service runs and electrical cable routes to ensure that they are placed where they are well hidden without damage to the historic fabric. Internal plastering and external harling would clearly obscure the masonry but they would also protect it by allowing increased evaporation and a warmer and drier interior.

3.66 The potential uses of Rowallan Castle as a house or for self-catering accommodation have been well established at other properties where the Landmark Trust (e.g. Rosslyn Castle, which is part SAM), Vivat Trust (Liberton Tower) and National Trust for Scotland cottages, where the high levels of occupancy show how Rowallan Castle could be put to a similar sustainable use.

3.67 The Conservation Plan and the drawings (CD14) set out the extent of the works proposed. In the applicant's opinion, the interventions are the minimum necessary to ensure a compatible use for the building. It is noted that the test applied by the applicant is different to the one set by the policy of Scottish Ministers in relation to works on scheduled monument consent, which is the minimum level of intervention that is consistent with conserving what is culturally significant in a monument. The policies in Section 10 set out to retain the significance of the monument, identify areas of conservation and repair, design guidelines and alterations and interventions, together with the extent and methodology of the works required. Section 10.8 explores the interior room by room which, with the existing and proposed plans, clearly indicate the proposed works in every detail. While it is accepted that there will be unavoidable interventions, such a drilling holes through walls for soil pipes etc. these would only be done where they are essential and in locations where the impact is small. All the work would be appropriate to a building of this age using

sympathetic materials which would preserve the SAM better than the works previously carried out. In addition, the works would be reversible and would enable further archaeological exploration of the fabric in the future.

3.68 The evidence of Mrs Jane Kennedy, an experienced conservation architect, looked at the proposals on a room by room basis and she came to the conclusion that they were sensitive and well researched. She considered that the development of the house over the years would best be served by allowing such a domestic building to become inhabited and evolve, which was almost always an improvement over a property house that loses its inhabitants and becomes artificially preserved at a particular point in its history. She also drew comparisons with other monuments, such as The Great Hall at Stirling Castle where the spectacular results are generally appreciated despite the undertaking being a staggering intervention.

3.69 She saw no reason why habitable occupation should diminish the public access and enjoyment of the house because this was extremely limited at the moment and the building offered little enjoyment to the few who currently visit. The applicant, following conservation to habitable use, would allow increased public access to a house that would be very much more interesting and easy to understand.

4. THE CASE FOR HISTORIC SCOTLAND

The history and significance of Rowallan Castle

4.1 At the inquiry, this element of HS's case was covered by Professor Richard Fawcett. He traced the chronological sequence of development on the Rowallan Castle site from the archaeological evidence of occupation in the Bronze Age and traces of Iron Age timber structures to the old tower built by Gilchrist Mure in the 13th century. In the early 16th century Mungo Mure built the south range hall on four vaults. His son, John Mure was responsible for the east wing (dated 1562), the western extension or so called "woman house", the raised eastern range to form the gallery (R49) and the pair of towers flanking the entrance. In the 17th century, Sir William Mure was responsible for the new work on the north side of the courtyard, the back wall and "reformed the whole house exceedingly" (*sic*).

4.2 From evidence of mouldings, fireplaces and other remaining features, he explored the likely architectural development of the house from the tower on the knoll to the north, south and east ranges around the courtyard where, although there is some evidence of a planned fourth side, this was never built. Extending from these structures were a number of courtyards, enclosures and ancillary structures, few of which remain, but the site was clearly well chosen and provided a delightful backdrop for the occupants of the house. It seemed likely that, by the turn of the 15th and 16th centuries, the tendency for a hall and chambers to provide more space and comfort than was offered by the tower house, led to the erection of the east and south ranges. The tower meanwhile would have been retained as a prestigious symbol of the family's status and probably provided a secondary lodging. There was little doubt that there was no defensive purpose behind Rowallan Castle and that any such features were retained primarily to express the long ancestry of the family.

4.3 By the end of the 16th century, it was likely that the rooms would have been more intimately scaled and finely finished in pursuit of greater domestic privacy. In the mid 17th century Sir William Mure added the northern wing (R26) and the stair enclosure with its buckle quoin detail (R4). Similarly, it seemed that the doorway and panelling in the entrance hall (R20), the arcaded balustrading to the main stair (R25) and the sections of intricate panelling removed from room R22 to Rowallan House were from the same period as part of Sir William's reformed interiors. Much of the later interior work that remains can be dated to the early 18th century, mainly the pair of handsome rooms at the western end, which were possibly a drawing room (R17) and bed chamber and closet (R46/47).

Rowallan Castles' significance

4.4 Rowallan Castle is a fascinating example of a house of a middle ranking land-holding family who took pride from their historical links with the Royal Stewart dynasty. It was indicated that the present form of the house reflected its extended occupation by the same family over 5 centuries as it was adapted to meet the needs of successive generations. Notwithstanding its militaristic trappings, the house would have only been defensible against any predatory interest in its estates and possessions. Nevertheless, these features served as a reminder of the family's proud past.

4.5 The courtyard house was surrounded by a sequence of enclosures and gardens that provided the ancillary functions of a prosperous estate and provided a fine setting for the occupiers. Although we would have known more of the life within the house had more of

the interiors survived, there was sufficient evidence of interests in poetry and music in the early 17th household to offer a picture of the gentle arts being cultivated by the family.

4.6 However, the best guide to how the building was used is the house itself and the range of accommodation and the inter-relationship of its parts at a number of periods in its history. The evidence can be seen in a way not possible had the building been structurally complete and finished. There can however be no definitive interpretation of such evidence as archaeological techniques continue to develop and change. It is for this reason that it is so important to ensure that a representative sample of historic buildings are preserved with as little change as possible, so those who visit them can benefit from the largely unmodified evidence embodied within the fabric.

Assessment of Rowallan Castle's National Importance

4.7 Professor Fawcett examined the significance of the SAM against the criteria applied to candidates for scheduling as set out in the Annex to SHEP2 (CD9). He noted that the building was taken into care in 1950, was consequently placed on the published list of scheduled monuments in 1955 and formally scheduled in 1994.

Intrinsic characteristics

- a. The *condition* of the masonry fabric and decorative elements is generally excellent. Although there is work still to be done this is testimony to the works carried out since the property was taken into care. (High significance)
- b. The *archaeological interest* in the house is very high, both in underlying and structural evidence, indicating a long history of occupation and offering the potential for further exploration. (Very high significance)
- c. The evidence of the development sequence within the constituent parts of the building is particularly important in its present stripped state, and this should allow for continuing analysis. (Very high significance)
- d. The changing *function* of the building over successive phases of building as well as the extensive modifications to the internal planning and fittings reflects many centuries of unbroken high status occupation, which is best understood with the house in its present state. (Very high significance)

Contextual characteristics

- e. The *representativeness* is seen in the succession of primary and ancillary units of accommodation that is broadly what is to be expected in houses of land-holding families. However, its rarity lies in the chronological sequence of accommodation and its architectural framework which is not found anywhere but at Rowallan. In addition, the rare survival of a number of structural and decorative timber elements is reflected at few other buildings. (Very high significance)
- f. The *relationship to other monuments* can be seen in the essential elements of Rowallan Castle's design and planning that are both representative of houses of its type and class but at the same time unique in their particular combinations.

g. The *relationship with its wider landscape and setting* is particularly attractive and despite the focus changing to the new house in the early 20th century, it is still apparent that Rowallan Castle had been the nucleus of a wide complex of enclosures, gardens and pleasancesses the importance of which is recognised by their being part of the landscape included in the Inventory of Gardens and Designed Landscapes in Scotland. (High significance)

Associative characteristics

h. The *historical, cultural and social influences* stem largely from the standing and aspirations of the family that occupied the house without break over several centuries. The number of detailed family histories show the pride of this middle status land-owning family who took pains to provide themselves with a residence that would as accurately reflect that history as their resources would permit. (High significance)

i. The *aesthetic attributes* of Rowallan Castle stem from its relatively small scale, succeeding enlargements that achieve architectural homogeneity, with a clear expression of the family's ancestry to give a house of enormous charm set within a delightful context. (Very high significance)

j. The house's *significance in the national consciousness* is as an attractive example of a 16th and 17th century laird's residence at a phase when Scottish domestic architecture assumed an especially distinctive character. (Moderate significance)

k. Rowallan Castle's *associations with historical, traditional or artistic characters or events* relate primarily to the family's claim to Elizabeth Mure being wife of King Robert II in the late 14th century and to the architectural, poetic, horticultural and musical interests of Sir William Mure in the 17th century. (Moderate significance)

National importance

4.8 These considerations indicate that Rowallan Castle is of national importance and worthy of its status as a SAM. The archaeological potential of the site and the existing architecture of its standing fabric provide unique evidence of the residential requirements and aspirations of a land-holding family on a site of great antiquity. In its present state much of the architectural and structural evidence is more readily accessible than if it were complete, and the loss or obscuring of that evidence would detract from the available pool of information on buildings of this kind.

Conservation of architectural ancient monuments

4.9 While parallels for many of Rowallan Castle's features can be found, nowhere else are the same combination of elements and characteristics found within a single complex. Being largely complete and roofed its state enables the evidence of the structural subtleties that tend to become exposed and lost following abandonment. The evidence retained in the masonry and the particularly instructive examples of structural timber would be lost to sight were the building to be restored.

4.10 Although the best hope of preservation of the majority of historic buildings is sympathetic continued or renewed use, some should be actively preserved in a condition that allows for continued investigation which is seldom possible if they are complete because the evidence is generally concealed. A roofed building such as Rowallan in its present condition is the equivalent of an anatomy lesson which enables an understanding of the human body that is not possible with the living body.

4.11 Professor Fawcett explored the history of the conservation of monuments in Scotland which goes back to 1829 when the Master of Works was urging the execution of repairs for the preservation of Dunfermline Abbey. It was explained that the legislation on ancient monuments dating from 1900 and 1913 still informs conservation philosophy while the appointment of Charles Peers as Inspector for England and Scotland in 1910 gave new momentum to ways of preserving monuments. The Inspector's report for 1912 contained instructions that are still sound, namely: *"..to avoid, as far as possible anything which can be considered in the nature of restoration, to do nothing which could impair the archaeological interest of the Monuments and to confine (the interventions) rigorously to such works as may be necessary to ensure their stability, to accentuate their interest and to perpetuate their existence in the form in which they have come down to us."* There was nothing in the discussions which led up to the 1913 Act that suggested ancient monuments should be roofless but simply that a monument which, as a result of its historical or aesthetic importance, is desirable to preserve in the public interest.

4.12 Since then, English Heritage and HS have played a leading role in searching for the most appropriate methods of conservation on all types of monuments, depending on what was technically possible at the time the work was carried out. In some cases, it was necessary to carry out large scale operations to stabilise the monument but the aim now is to undertake only those works that are immediately necessary to minimise the intervention. However, there is seldom a single response to meeting a monument's needs and there is always a risk with any intervention. HS has held the view, across a range of monuments, that they should be preserved in a way that allows evidence they embody to be passed on to the future with as little change as possible.

4.13 These aims are now consistent with those expressed in the international charters, such as the Venice and Burra Charters where the principles of safeguarding authenticity, minimal intervention and respect for existing fabric, respect for all periods of the history of a monument and the reversibility of interventions are maintained. HS has offered guidance on the principles it would expect to see applied in its *The Conservation of Architectural Ancient Monuments in Scotland 2001* and its 2006 guidance note on Properties in Care (HS22).

The implications of being a Property in Care

4.14 Evidence on the work undertaken by the Properties in Care Group of Historic Scotland was given by Mr Peter Bromley, Director of Properties in Care. His evidence was designed to show that Properties in Care had the necessary skills and experience to fulfil its statutory and policy objectives at Rowallan Castle. The evidence was also intended to demonstrate that Historic Scotland had undertaken its role as Guardian of the property diligently and would continue to do so in the future. Consequently, it was submitted that the future of the building was secure and that its position as a property in care enabled it to play a full part in the cultural landscape of Scotland.

Role and Responsibility of Historic Scotland Properties in Care Group

4.15 It was indicated that Properties in Care Group has responsibility for the preservation and management of a portfolio of 345 properties across Scotland. Of these 262 were held in guardianship, as was the case with Rowallan. In brief, guardianship is a mechanism whereby care control and management of a property passes to the guardian (HS) without affecting its ownership. It was pointed out that this was a mechanism that had been established in ancient monument legislation since 1882. The properties in care under guardianship range from complex assemblages of buildings such as Edinburgh Castle and Stirling Castle, to single monuments or carved stones. In terms of their age, they range from prehistoric sites, such as Skara Brae on Orkney to industrial sites, such as Biggar Gas Works and Dallas Dhu distillery.

4.16 The responsibilities of the Properties in Care Group arise from the core legislation and policies relating to ancient monuments which have developed over the last 135 years. These duties include the preservation of the monument, the provision of access to the monument for the public and providing a range of facilities and services, including interpretation, information, educational provision and wider cultural management. In order to fulfil these roles and responsibilities the Properties in Care Group employs a wide range of professionally skilled and qualified staff including archaeologists, architects, stone-masons, educationalists, visitor services staff and others. It was noted that the portfolio of sites under Historic Scotland's control makes it the largest manager of paid visitor attractions in Scotland. In short, the Properties in Care Group (PIC) has a long history of managing a complex portfolio of sites and it has developed and retained the skills needed to undertake this increasingly complex task. It was submitted that PIC had a proven track record of excellence and a willingness to be flexible over how properties were opened and accessible for the benefit of the public.

Properties in Care Policy and Legal Background

4.17 It was stated that successive pieces of legislation associated with the management of properties in care had placed duties and rights on Ministers for the care and management of properties in care as a specific group of scheduled monuments, within the wider context of the ancient monuments legislation. It was explained that the management of properties in care had its genesis in some of the earliest legislation in Europe associated with the management of ancient monuments. The Ancient Monuments Act of 1882 set out the powers of the state to take in to care ancient monuments that it was considered were of such national and international significance that their long term preservation was in the overall interests of the country and the understanding of a nation's history. Later legislation introduced in 1900, 1913 and 1931, built upon this by broadening the definition of an ancient monument to include upstanding buildings (such as Rowallan Castle) and including the concept of public as well as 'official' access. In addition, the amendments to the 1913 Act introduced in 1931 stated at section 3(1)) that the powers conferred upon the guardian shall include powers to do '*all such things as may be necessary for the maintenance of the monument and for the exercise of proper control and management with respect thereto*'.

4.18 The current legislation governing the management of properties in the care by Scottish Ministers is provided by the Ancient Monuments and Archaeological Areas Act 1979. Within this legislation, the principles of guardianship have been refined and further developed from previous legislation. The mechanism of taking properties into care enables

control and management of a property to pass to the guardian whilst the ownership remains unaffected. It was indicated that this is the situation that has applied at Rowallan since 1950.

4.19 It was explained that the 1979 Act gives Historic Scotland, as the guardian, further powers and obligations, including the core aims of the preservation of the monument and the provision of public access. The legislation also provides further clarification of the situation regarding the role of Historic Scotland relative to the Guardianship function, i.e. the duty to maintain the property (Section 13(1)); the power to do all such things as may be necessary for the maintenance of the monument and for the exercise by HS of proper control and management (Section 13(3)); the ability to control of the times of public access in the interests of safety or the maintenance or preservation of the monument (Section 19(2)); and, the provision of facilities and information or other services for the public access (Section 20(1)).

4.20 In addition to the context provided by the legislation, the way in which properties in care are managed and controlled is set out in Scottish Historic Environment Policy Number 5 'Properties in Care' (SHEP5), which presents the operating principles for the management of properties in care and the scope of HS work. It was emphasised that the principles of guardianship and the management of properties in care are therefore given detail in the legislation and in policy documents approved by Scottish Ministers.

4.21 It was explained that the procedures for taking a property into the care of the state were equally founded in a well established policy context. On this point, reference was made to 'Properties in Care: Guidance Note 19' which identifies the criteria used in the assessment of whether a monument is best protected in state care. When a monument is offered to Scottish Ministers, Historic Scotland, on the behalf of Ministers, undertakes a series of assessments against a number of criteria which have changed little in recent times. These were down for a number of years in Properties in Care Guidance Note 19 and have now been re-emphasised in SHEP5. the first and foremost criterion is merit, which includes a full assessment of the cultural significance of the monument taking into account its historical, archaeological, architectural, aesthetic, social and spiritual significance. Thereafter, the place of the property within the balance of other properties in the portfolio is considered. Other factors in the assessment are the present condition of the monument; the perceived risks to the property; the alternatives to state care; and, the public benefit that would flow from the acquisition.

4.22 Consequently, it was submitted that it was clear that each property was assessed individually and as part of the wider portfolio and each decision to take a property into care was taken very carefully. Although Rowallan Castle was taken into care in 1950, HS considered that it could demonstrate that its predecessors paid due care in assessing the property and took account of very similar criteria to those applied today. It was also emphasised that since the legislation envisages that monuments and sites would be taken into care in perpetuity, decisions to add to the estate were taken only after the property had been very carefully considered against these criteria. It was noted that SHEP5 clearly confirmed that the presumption that properties coming into care would do so 'in perpetuity' would continue.

4.23 In the case of Rowallan Castle, the above policy context is given additional detail through the guardianship deed. This sets out the key principles of the monument passing into state care; the conservation principles that should apply; and, confirmation of the right

of public, as well as public-service, access to the site along a prescribed route. The issue of access is therefore no longer subject to the agreement of the owner.

4.24 Therefore, the work of the Properties in Care Group has developed from internationally binding principles and agreements through to national and ultimately site based agreements. It was stressed that all of the various pieces of legislation and policy statements are publicly available and have been widely referred to in the past by Historic Scotland. In addition, these previous documents have provided the basis for the more recent re-statement of HS key policies through the Scottish Historic Environment Policy series.

The taking of Rowallan Castle into care

4.25 It was indicated that following the signing of the Guardianship Agreement by Lord Rowallan and the Minister of Works (who acted as the predecessors of Scottish Ministers and Historic Scotland), Rowallan Castle came under state care in 1950. During the years from 1943 to 1950 a number of approaches had been made by Lord Rowallan to the Ministry of Works regarding taking the property into care. It was noted that in preliminary discussions on this matter Lord Rowallan had made it clear that he did not wish to see the property converted for use other than as an ancient monument. At an initial meeting in 1943, Lord Rowallan had made it clear that “*no attempt be made to recondition it (the Castle) as a dwelling with all modern conveniences*” (See Appendix 1 to the Conservation Strategy, HS1). Lord Rowallan had also written to Glasgow Herald in 1943 to state that he had always sought to provide free access to the property.

4.26 In the opinion HS, this demonstrated that the twin aims of preservation and access for the public had been in the forefront of discussions over guardianship and that the option of taking the property into state care was viewed by both Lord Rowallan and the Ministry of Works as the most appropriate route to take. It was noted that since the property came into guardianship, Rowallan Castle and the surrounding estate had changed ownership in whole or in part several times. In HS opinion, this situation underlined the value of the guardianship agreement in providing an appropriate level of security and continuity for the long term preservation of this significant property.

Recent history of the property

4.27 In the late 1980s, questions about the future of the estate were raised. Lord Rowallan and a consortium prepared plans for commercial developments. In 1989 the property was offered for sale and it was acquired by a development company known as Alexander George (Investments) Ltd. During this period it proved impossible for HS to pursue the negotiations for the extension of the Guardianship area to accommodate car parking or to provide living accommodation for a steward.

4.28 Between 1989 and 1997, a total of 21 planning applications were granted permission for the development of Rowallan Estate. However, none of these was ever fully implemented and none included the use of Rowallan Castle.

4.29 At the start of 1990, discussions were held between the new owners (Alexander George (Investments) Ltd) and HS regarding the possibility of some form of sympathetic use of the castle with mention being made of a museum and accommodation for a custodian, which would be funded by the owners. It was suggested that this option would

offer the possibility of providing regular public access to the property for which an admission charge would be made and with the revenue being passed to Historic Scotland. During the discussions the proposed use of Rowallan changed, with the owner eventually indicating that residential use either for an individual or as part of the hotel development was the preferred option. It was indicated at that time there was pressure on the heritage agencies to try to reduce state involvement in the management of scheduled monuments. As a consequence, in April 1993 HS had agreed in principle to explore the possibility of the owners using the castle for some form of accommodation. The agreement was however subject to the detailed proposals satisfying the requirements of Scottish Ministers that the development would not compromise the fabric of the monument and suitable arrangements being made for public access. As it turned out, no scheme was submitted in sufficient detail for the use of the castle to enable Historic Scotland to make an accurate assessment of the impact of the proposed use on the historic fabric, the public access arrangements or the future maintenance of the property. Consequently no agreement was reached on the way forward.

4.30 In April 1995 the Rowallan Estate was once again put up for sale. When this was brought to the attention of HS, the then Chief Executive of the agency wrote to the selling agents to indicated categorically that Historic Scotland did not wish to see the castle restored or for the property to be taken out of state care. In addition, HS made an offer to buy the castle, in order to secure its future in perpetuity. In 1996, the estate was transferred to another development company (Duffield Morgan Ltd). It was noted that at least one of the directors of the new company had also been a director of Alexander George (Investments) Ltd. Once again Historic Scotland wrote to the new owners reiterating its intention to retain the castle in state care and to work towards re-opening the property to the public.

4.31 In 1997, the owners of Rowallan Estate submitted a planning application to consolidate all of the earlier planning permissions for the estate. This was intended to allow a master plan to be prepared for the conversion of Rowallan House into a luxury hotel, the creation of a championship golf course within the designed landscape and the building of 49 houses. Historic Scotland lodged an objection to the application on the grounds of the detrimental impact of the proposal on the heritage assets of the estate. Although the application did not include plans which would directly affect Rowallan Castle, this was not made clear to HS until a Public Local Inquiry was held.

4.32 In 2000, a further planning application regarding the development of the estate, but once again excluding the castle, was the subject of a Public Local Inquiry. The Reporter's recommendation following the inquiry was that planning permission should be refused. However, this recommendation was not accepted by Ministers because it was felt that the past planning history of the site should carry a greater weight. Outline planning consent was therefore granted for the development subject to a number of conditions and reserved matters.

4.33 It was indicated that in March 2002 the Rowallan Estate was once again being marketed this time as two separate development opportunities. Lot 1 was for the 35 house site and Lot 2 was the hotel and golf course. Evidence suggests that the estate was not sold at that time. However, following the decision by Scottish Ministers to refuse planning permission and scheduled monument consent after yet another inquiry had been held, in 2003 ownership of the castle did change hands once more. The difference this time was that the castle had been sold independently from the remainder of the estate. As a result,

the castle was separated from its historical estate and its traditional means of support for the first time in almost a thousand years. In HS view, this latest move made it difficult to envisage how the management of the estate and the castle would operate and be co-ordinated should scheduled monument consent be granted in the present case. The current application provides no comfort that this issue has been considered. Indeed it was submitted that there was no information within the application to indicate that there had been any business planning process, or even to demonstrate any benefits of the proposals to the leisure development of the wider estate.

4.34 As a result of all these applications, the changes in ownership and more recently the on-going legal cases brought against Historic Scotland regarding access, it had proved to be impossible to open the property on a full time basis for the public. It had also proved increasingly difficult for HS to undertake its responsibility for conservation of the monument as well as providing access on a routine basis because of the various obstructions imposed by the owner. Considerable efforts had been made to negotiate parking and the removal of obstructions to public access, and HS had made contact on a number of occasions with Mr Campbell, as the owner of Rowallan Castle, to indicate that the agency wanted to secure reasonable access for the public and its officers. Despite these difficulties, Historic Scotland had continued to provide regular guided tours of the castle in order to fulfil its legal responsibility to provide access.

History of Works to Rowallan Castle

4.35 HS explained that almost immediately after Rowallan had been taken into state care a programme of works to secure its future was commenced. The works undertaken to the property have fallen into a number of phases and these were summarised as follows; (i) during the 1950`s, works associated with the urgent consolidation of masonry and the undertaking of emergency roof repairs; (ii) in the 1960`s, additional repairs to the roofs and the installation of basic services; (iii) from 1972-6, the undertaking of internal repairs and further consolidation works; (iv) between 1978-81, the removal of the buttress to the front walls and the stabilisation of the keep; (v) in the period 1982 to 1985, repairs of the front stair, re-slating of conical turrets, reinstatement of the distinctive decorative finials and the conservation and re-erection of timberwork in the dining room; (vi) in the 1990s, archaeological excavation in the keep to facilitate consolidation works. It was indicated that these repairs were carried out within the framework of national and international guidelines and standards on conservation that applied at the time. It was recognised by HS that some of this works undertaken would not now meet present day standards. However, it was emphasised that the works carried out to preserve the property and make it wind and water tight had required over £1m of investment and that in overall terms the project had been successful in conserving the monument. In addition, any interventions which have subsequently proved to be inappropriate by modern standards could in HS opinion be reversed.

4.36 In terms of public access, it was indicated that once the property had been taken into state care arrangements were made to enable the long tradition of public enjoyment of the estate and Rowallan Castle to continue. From 1953 onwards a caretaker and grass-cutter had been appointed to give admission to especially interested visitors and officials. It was noted that this was a means of managing access to sites that had been widely used across the properties in care estate. This arrangement continued up to 1997. Over this period, even when the site was closed due to the need for repair to the front stairs, the number of visitors remained significant. It was pointed out that in 1980 Lord Rowallan indicated to

Historic Scotland's predecessors that the number of people visiting Rowallan Castle was rapidly increasing. As indicated above, since the late 1980s the ownership and planning history of Rowallan had become more complex and this had made it difficult to negotiate improved access arrangements.

Current Position and Future Proposals for Rowallan Castle

4.37 HS indicated that since that time, the owners of the Estate and the castle have sought to challenge the agency's rights and responsibilities to manage the property and provide public access. It was indicated that as a result of protracted legal disputes and on-site challenges to people seeking to visit the property, HS had experienced difficulties in fully managing and controlling conservation work and public access to the site. Nonetheless, following the major capital phases of work, HS's regime of conservation works had continued with regular maintenance being undertaken by its own works squad. In addition, HS had made efforts to expand public access to the property through the setting up of pre-arranged tours to Rowallan and the staging of a small exhibition in the castle during 2007. It was indicated that further tours of the property were proposed for 2008 and beyond.

4.38 In HS view, the management of Rowallan Castle fitted into its framework of prioritisation and wider management objectives for the overall properties in care estate. It was explained that within this portfolio there were many sites where the conservation regime was one of care and maintenance, as the bulk of conservation and preservation work had been undertaken in earlier major programmes of works. In addition it was pointed out that HS operated a range of opening regimes and access management models within its wide range of properties. The use of guided tours and pre-arranged visits was considered to sit easily within this diverse pattern of operation.

4.39 In the future it was hoped to develop and enhance the opening hours regime at Rowallan and to increase links between the property and the local community. However, the attainment of these objectives will prove to be difficult if the challenges and obstruction by the owner continues. It was however HS intention to continue to pursue its objectives for the property. In the short term the improvements sought would include: more frequent tours; more regular opening of the property, with a steward in attendance; regularisation of the car parking arrangements; greater promotion of the site through HS's publicity and marketing literature; and, the creation of a curriculum based educational programme linked with the property through HS's education team.

4.40 In terms of links with the local community, it was considered that these were already well developed, with a number of the pre-arranged tours being popular amongst local community groups and local residents. It was indicated that in the longer-term future, there were a number of management models in use across the properties in care portfolio which could form the basis for further work at Rowallan. HS indicated that it was intended that these options would be explored with appropriate and willing partners to ensure that the property plays a full part not only in the future of the local community and the cultural landscape of Ayrshire and beyond, but also that any developments respect the immediate environment and setting of the castle.

4.41 In summary, it was indicated that Rowallan Castle had been in the care of the state for 58 years and because of the state's action it was no longer at risk. It came into care because of its merit as a monument of national importance, which illustrates the

development of castellated and domestic architecture over several hundred years. It was considered that the cultural significance of the monument remains undiminished. In addition, HS considered that the castle had a clear role as part of the agency's portfolio of properties in care. Measures were in hand to ensure better provision for access and community involvement, and thus to enhance the public value of the property. As guardian, it was HS's aim to present the property to the public in a way that was consistent with the remainder of our estate and with the wishes expressed by Lord Rowallan in 1950.

4.42 It was noted that although the current inquiry had been established specifically to deal with an application for scheduled monument consent, the applicant has openly admitted that his underlying aim is to provide a plank which could aid the removal of Rowallan Castle from the guardianship of Scottish Ministers (see the conclusions of the Conservation Plan). It was emphasised that the possibility of the rescinding of guardianship at Rowallan Castle was not under consideration at the present inquiry and that this was an issue that was the subject of a quite separate and different legal process to scheduled monument consent. The rescinding of guardianship was covered by section 14 of the 1979 Act and it requires Scottish Ministers to take account of an additional set of tests. It was indicated that the most recent ministerial policy statement on this matter was to be found in SHEP5.

4.43 Since the estate was acquired by Alexander George Ltd November 1989 and then transferred to Duffield Morgan Ltd, Historic Scotland had consistently indicated that as guardian, it did not see the re-use of Rowallan Castle for residential accommodation as being in the best interests of the monument or being compatible with Scottish Ministers duties to preserve the monument and to present it to the public. In light of these duties under the 1979 Act, HS had given careful consideration to all the proposals put forward for the re-use of the castle by the various companies and individuals involved and concluded each time that the risks to the property far outweigh any advantages.

Consideration of the detailed proposals in the scheduled monument application

4.44 The HS evidence on this matter was given by Ms Sarah Govan, a Senior Inspector of Ancient Monuments in the South West Team, who assessed the proposed works in the light of established policy and practice, their implications and any risks, and whether any exceptional circumstances might apply in this case. She confirmed that the CP and the submitted documentation provided sufficient information to enable a view to be reached on the proposals.

The application for Scheduled Monument Consent

4.45 The CP contains substantially more information on the nature and significance of the monument than was submitted in the previous SMC application (HS2). Ms Govan largely agreed with the assessment of significance contained in the CP, although in her room by room assessment she identified where specific elements were considered to be of greater significance than was stated in the plan.

4.46 Although she agreed with CP Policy 3 that "*the retention and conservation of the items of outstanding significance is important to the preservation of the building and site*", there were areas of debate on the location and past function of rooms within the complex that served to highlight the extent to which this monument was not fully understood. Works

which obscure or remove evidence of its construction, alteration and use must be considered very carefully. It was therefore unfortunate that the CP did not include all the elements recommended for inclusion in a Conservation Management Plan, particularly the lack of a clear statement of the need for the works. Furthermore, HS strongly disagreed with the view that the monument required the establishment of an appropriate use.

4.47 In addition, risks and vulnerabilities had not been considered as recommended by the Heritage Lottery Fund guidance on conservation management plans (HS19), or in English Heritage's advice on the preparation of such plans, i.e. "...if the aim of conservation is to hand on what is valued to future generations there is an implication that what is valued should not be damaged in the process. The need for any work that is likely to have a significant impact on the historic environment should be established at an early stage." The need for the works proposed in this case had not been established in the application and the selection of option 4 'Complete Restoration' in section 11 of the CP had not been fully justified against the other options offered.

The nature and implications of the proposed works

4.48 it was considered that the restoration works were very similar in principle to those previously proposed, which had been refused following the earlier inquiry. The CP policies make recommendations on a room by room basis but do not justify the works where they go beyond the proposed repairs. The specific nature of the proposed habitable use is not made explicit and could include use as a hotel annex, a single private letting or as a private residence. These uses would require further works outwith the remit of HS to meet building control, fire and access regulations each of which would require separate SMC. No summary of the proposed works is given, although it is noted that not all rooms would be restored and re-used.

4.49 While the CP assessment of significance formed the basis of her room by room analysis, Ms Govan identified where HS disagreed with the applicant's assessment. In general, the CP played down the significance of surviving historic fabric in situations where works were proposed but where the survival of evidence was more extensive than had been indicated and where the works would have a more significant impact. For example, earlier flooring concealed beneath the current surface in Room R17 was not acknowledged nor was the risk of disturbance from installing a new kitchen. Similarly, drainage works were proposed which would require the provision of a water supply and waste pipes to the bathrooms in Rooms R19 and R41. However, these items are not necessary for the long term preservation of the monument and HS considered that they would compromise the cultural significance of these rooms.

4.50 Considerable evidence does survive within the monument but it relates to several periods and substantial research remains to be done before a full understanding of the decorative and structural forms of the interiors can be reached. The re-instatement of external harling and lime wash does not accord with the advice in *The Conservation of Architectural Monuments in Scotland* (CD7) which states that "...we simply do not fully understand the various ways in which harling and lime wash might have been applied and finished at the full range of building types, or over the long period of time during which they were so widely employed."

4.51 In its current form, the monument would not meet acceptable standards of domestic use. Therefore, to achieve modern levels of comfort and comply with statutory regulations,

it was considered that significant adverse impact was unavoidable. While there was no doubt that the monument had been occupied as a principal residence from the 14th to the 18th centuries and also perhaps inhabited in some minor way into the 19th century after the family moved to Loudoun Castle, there was no evidence to confirm that this had occurred. It was noted that the Reporters in the previous inquiry had supported the view that the residential use had been abandoned.

4.52 In HS's opinion, the proposed works cannot therefore be considered to be the minimum necessary level of intervention required to secure the longer term preservation of the monument.

Consideration of any associated risks

4.53 Paragraph 3.3 of SHEP4 (HS23), which deals with SMC, warns that conservation work that was needed to prolong the life of a monument can be so invasive that it irreversibly modifies the monument's character and special interest. The CP has not explored any vulnerabilities and risks as recommended by the Heritage Lottery Fund guidance on Conservation Plans (HS19). HS considered that there would be a risk of significant impact on the cultural significance of the monument because the applicant has failed to identify the specific periods in the development of the castle which are to inform the completion of each room. Consequently, there is a danger in the proposed restoration of blurring the distinction between what is authentic and thus of documentary value and what is modern. In HS's view, the provision of the services required to meet modern standards of living and other statutory regulations (such as satisfactory heating, lighting, water supply, drainage and ventilation, together with finishes and furnishings) cannot be delivered with a minimum level of impact on the original fabric of the castle.

4.54 Furthermore, it must be expected that there will be routine wear and tear from the regular occupation of the castle, particularly in areas identified as being of considerable or outstanding importance. This would increase the risk of accidental damage to features of the greatest sensitivity and significance such as the 17th century door case in Room R21 and the timber bed recess in R42. In addition, it would be extremely difficult to make the outstanding oak panelled door in Room R21 to the stair R25, which is the only exit route from the upper levels, comply with fire regulations. It is therefore essential that the risks to the original fabric of the property are weighed against the need for the proposed works. On this matter, it is HS's view that the proposed works are unnecessary and the risk to the fabric outweighs their requirement.

4.55 Paragraph 3.4 of SHEP4 (HS23) states that "*Works to scheduled monuments should normally be the minimum level of intervention that is consistent with conserving what is culturally significant in a monument.*" HS took the view that the works proposed in this case go beyond the minimum necessary intervention required to secure the long term future of the monument.

Any Exceptional Circumstances

4.56 It was accepted by HS that exceptional circumstances can exist where the principle of minimum intervention may not be deemed the most appropriate approach for a particular monument. However, the applicant has not put forward any substantive case that exceptional circumstances exist at Rowallan. HS has considered whether such circumstances might exist, but found that despite the full recording and archaeological

supervision proposed, there was no suggestion that the purpose of the proposals is to inform future management and interpretation of the monument. Likewise, although public access was offered in the application, this would only amount to a weekend per month and with no indication of which rooms would be accessible. This suggests that public understanding and enjoyment of the monument would be incidental to the proposed use. In addition, the plastered walls would conceal and possibly damage important evidence that was currently visible and available for interpretation and research purposes.

4.57 In terms of securing the long term future of the castle, HS have completed regular condition surveys, the last being in 2005 from which it is clear that the monument is in sound condition and substantial works are not required to ensure its continued preservation. Although the application takes what has been described as a minimal approach, HS considered that the works to bring the property into habitable use were unnecessary and would have a considerable impact on its cultural significance. As a Property in Care, paragraph 4.4 of SHEP 5 (HS24) states that such buildings are expected to be held in perpetuity by the state and only in exceptional circumstances was it likely to go out of care. The long term future of Rowallan Castle was therefore secure and there was no evidence to suggest that its preservation would be more likely to be achieved through the proposed scheme.

4.58 In summary, HS concluded that: the proposed works could not be considered to be the minimum necessary to secure the long term preservation of the monument; there were number of risks which would threaten its significance; and, there were no exceptional circumstances sufficient to justify departure from the principle of minimal necessary intervention. As such, that the proposals were considered to be contrary to Government policy.

Room by Room Assessment

4.59 Historic Scotland carried out an assessment of the cultural significance of each room and the likely impact and risks associated with the implementation of the proposed works and the change of use. The main conclusions of this assessment were included in the evidence of Ms Govan and are set out in summary form below.

Room 1 – Old Basement Kitchen

Considerable significance

This room retains original beams, joists and 18th century floor boards above and a 19th century cast iron fireplace and “swee”. The wall joints are to be raked out and replastered with a timber lining over the electricity box. No use is defined but there is a risk of damage in removing cement pointing of obscuring evidence of earlier finishes. The lack of heating may lead to ceiling insulation to protect living rooms above.

Room 2 - Well.

Considerable significance

Although some original plaster survives no works are proposed.

Room 3 – Closet

Moderate significance

The room has been partially stripped back, there is iron yett in wall to stair (R4) and hinge pins of former door. No use indicated but wall pointing to be raked out and repointed in lime mortar which could result in damage.

Room 4 - Stair to Room 46

Considerable significance

Lower stone treads built into the walls, iron yett to Room R3. Although no works is proposed, CP Policy 56 (CD14) suggests that the space be replastered and other works to comply with health and safety regulations may be required.

HS also pointed out that that while CP Policy 46 suggests that the basement vaults (R1, R6, R7, R8, R9 & R10) are unlikely to be put to any particular use, they might be used for storage given the limited storage spaces in the remainder of the castle, in which case further works of insulation or heating may be required.

Room 5 - Stair to Room 20.

Considerable significance

Lower stone steps, surviving old plaster on west wall, 2 surviving painted boards and a mix of attractive and instructive materials. Proposals are limited to cabling, lighting and handrail works but the stair will have to be improved to comply with other regulations with consequential risks to original plaster.

Room 6 – Pend

Outstanding significance

Exposed stonework with vaulted and flat slab ceilings, original plaster/harl finishes, surviving doors and some original ironmongery and a lime/earth floor with cobbles. No works or use proposed but there could be risks from any alteration in the use.

Rooms 7, 8 & 9 – Vaults

Considerable significance

These are stone vaulted rooms with evidence of original plaster finishes, gun loops in south wall, some door hinge pins, mixed floors of stone slabs and rammed earth. No work is proposed but the same risks identified in Room 6 are likely.

Room 10 – Intramural Stair to Room 22

Considerable significance

Straight stone stair with stone slabbed ceiling and a flush lime finish. No works proposed but at risk from any new use.

Room 16 - Stair between Rooms 17 & 20

Moderate significance

A 6 step change of level with a mix of 18th & 19th century joinery, some quality paint finishes, a small vertically boarded door and original plaster ingoes to Room 20. Repairs are proposed to the ceiling and plastering modern walls while preserving old plaster. Active use will be essential as this is the only access to Room 17 and could be at risk to meet acceptable levels of finish.

Room 17 - Parlour.

Outstanding significance

Ceiling finish, moulded cornice and part timber/part plaster wall panelling retained. Door cases with moulded architraves, dado and original floor boards beneath later boards. Existing stove and arm with evidence of earlier paint finishes. This room is proposed to become the kitchen and all finishes, cornice and panelling will be repaired and repainted. Services to island unit with vent extract via the chimney. The main HS concern lies with the

conflict in the CP which suggests that further sampling of original 18th century paint finishes would be required for a fuller account, but the proposed use as a kitchen would appear to present a high risk of damage from the new use. The floor boards laid over original 18th century boards would have services passing through and thereby at risk of damage, while the quality of the surviving fabric would be vulnerable to changes in temperature and moisture content in the room. Finally, the introduction of modern kitchen equipment would have a significant impact on the historic character of this outstanding room and compromise the ability of any visitor to appreciate its significance.

Room 18 – Toilet off Room 17

Neutral significance

Gun loop in north wall. Proposed use as a utility room off with new sink, drainer and dishwasher installed and connected to existing drainage stack. Historic fabric beneath modern finishes is not known and existing servicing for a WC likely to be insufficient to serve the utility room, so additional impact from new water, electricity and heating installation, with a risk of further alterations in the future.

Room 19 - Closet

Moderate significance

Stripped back walls with evidence of original plaster, lime wash and former ceiling level. West wall has archaeological evidence of tooling and timber corbels with a simple fireplace, stone hearth and moulded sides. North wall has evidence of former door opening and later window. East wall door appears original while an 18th century timber cabinet on the south wall has panelled doors, fixings for shelves and a fragment of old newspaper attached. Proposal to convert into a cloakroom/WC with reinstated lime plaster and joinery, new window, newspaper cutting and old wallpaper pasted back. New lighting, fan and electric towel rail, new boarded ceiling. These works would involve direct impact for water and waste connections on the significant masonry, while modern finishes would obscure and possibly damage surviving evidence of the castle's development in this room. There is a risk of further alterations and changes in environmental conditions.

Room 20 – Entrance Hall

Considerable significance

Original re-laid flagstones and reinstated original 17th door case on the east wall. Works include replacing plasterboard with lime plaster, repainting walls and ceiling, re-laying flagstones and formation of window seat with heater beneath. Although the main entrance to occupied rooms, the impact would be neutral, with a risk of wear and tear on the original doors.

Room 20/21 Doorcase

Outstanding significance

This fine door was reinstated following conservation but is now proposed to be re-sited centrally in the wall. While this may have been its original position, 1941 photographs show that it was returned to the position from which it was taken during the war, so the proposed move is unnecessary. There is a risk of further intervention to comply with other statutory requirements.

Room 21 – Dining Hall

Considerable significance

There are 2 areas of 16th and 18th century panelling around the fireplace on the North wall and the panelled door to the stair (R25). Some reddish ochre paint survives on the 18th

century panelling and on the door to Room 22. Original floor boards with some modern replacements.

The proposed use as a Dining Room will involve the replacement of modern linings and plasterboard with lime plaster, reinstated cornice, resetting north wall panelling and surfaces repainted apart from early joinery and finishes. New heaters and wiring. Although 2 walls have modern finishes the timber fittings in this room are of outstanding importance so temperature and moisture levels are currently controlled. The room will also provide the only route to the sitting room, bedrooms and the gallery and there is a risk of damage to original fabric through variations in temperature to achieve acceptable levels of comfort.

Room 22 – Chamber (or Solar)

Outstanding significance

A multi-period room with evidence of several alterations. Original beam with paint residues on corbels with remains of decorative bracket, lath & plaster marks on underside of beams, and one brander remains. Decorated plaster to north wall, thought to pre-date panelling, with similar plaster & paint remains in the aumbrey and on moulded stone. Surviving plaster in garderobe and within fireplace, and evidence of fixing for panelling removed to Rowallan House. 18th century door to stair (R10) and mostly original floorboards.

The proposed use is as a sitting room and walls are to be replastered with old plaster retained with a new ceiling to cover modern joists, replacement of original panelling new doors to cupboards and garderobe.

HS felt that these works would not restore the room to a specific period in its history but would blur the distinction between what is authentic and what is a modern replacement. Installing modern lighting and fittings will not enhance the historic significance of the room. New plastering and ceiling will obscure and possibly damage original evidence while Listed Building Consent would be required for the removal of the panelling from Rowallan House. There would be a considerable risk from wear and tear to this panelling which is described in the CP as of considerable to outstanding significance. Furthermore there is a risk of further alterations to achieve an acceptable level of comfort because it is unlikely that one heater will be sufficient.

Rooms 25 & 43 – Stairs

Outstanding significance

Mid/late 16th century oak panelled door, fine timber screen at head of adjoining stair with carved upper section; under-stair cupboard with fine panelled joinery; remnants of existing plaster and mid 16th century balustrade at top of stair R25. This stair will form the main access to the bedrooms and gallery. Walls are to be replastered with surviving fragments lime-washed to match.

Replastering will obscure and may damage evidence of earlier wall treatments. Services for lighting and heating likely to be required although not indicated. As the main access route, other works are likely to be needed to comply with fire safety regulations, particularly as the door at the foot of Stair R25 is the primary exit route. Considerable risk of wear and tear from increased use of these stairs, particularly if the Gallery (R49) is used as an event room which has been suggested. Risk of additional work to achieve acceptable level of comfort.

Rooms 26 & 28 – Ruined kitchen and entrance

Considerable significance

Works are to be limited to repairing pointing to masonry and making the ruin secure which are general maintenance and have no significant impact, although there is a risk of damage from raking out existing pointing.

Room 29 – Chamber (Guardhouse)

Moderate significance

Some plasterwork with protected edges remains with evidence of shutterboard window. The proposed use as an interpretation room will involve replastering leaving existing plaster, new lime plaster ceiling, interpretation panels and lighting. While original evidence will be masked the works will have a limited impact.

Room 30 – Entrance pend

Outstanding significance

Vaulted arched opening to east and west; stone bench on South wall; some original stone flags on floor. This is the main entrance to the monument and the walls are to be raked out and repointed which will have no direct impact.

Room 31 – North Guardroom

Considerable significance

Some original timber in the ceiling and remains of plaster and other decorative finishes. West door has some older boards and ironmongery. The proposed use is as a Boot Room and simply requires repointing, fixings for joinery and latches and possibly additional electrical work, all of which will have no direct impact.

Room 32 – North Entrance Tower

Considerable significance

Some original finishes with original timber lintel over window. This room forms part of the Boot Room and no alterations are proposed.

Room 33 – South Guardroom

Considerable significance

Lime finishes retained on North wall and to rear of aumbrey. Ceiling open with early joists and beams. Some plaster and flooring survives.

This room is to be an external store and will require lighting and electrical works. The suggestion that the door opening into Room 22 be reopened should be avoided as this contains important historic fabric. Otherwise risk of damage from electrical services and eventual use.

Room 34 – South Entrance Tower

Considerable significance

East wall retains lime finish and stone flags above are set over an early beam. This room will form part of Room 33 and only lighting is suggested, although there is a risk of further damage depending on its eventual use.

Room 35 – North Bed Chamber

Outstanding significance

Aumbrey and open fireplace on north wall; aumbrey door conserved but not replaced; relieving arch over lintel; traces of surviving plaster and finishes; remains of garderobe in

south-east corner and evidence of structural alterations in north-west corner. This room is to be a bedroom. Cement mortar to be raked out, walls replastered and ceiling plastered on chestnut lathes. New door, replacement windows and electrical works.

HS concerned that the new plaster will obscure and possibly damage structural evidence of the historic relationship between the east range and the old tower. This will have a significant impact on the stripped back character of the room and blur the distinction between what is authentic and of primary documentary value and what is modern. These works are not necessary to secure the future of the monument, and there is a risk of further alterations to achieve an acceptable level of comfort.

Room 36 – Garderobe

Considerable significance

There are some plaster remains on the south wall. It is to be used as a wardrobe and a hanging rail inserted, but there is no indication if it is to be closed off. There could be a risk of further alterations but the works will have a small direct impact.

Room 37 – North Turret

Considerable significance

Older assembly marked timbers supporting modern ceiling boards; substantial plaster remains on the walls protected by coarse cement mortar along the edges.

No use is proposed other than as part of Room 40 so it is likely to be lime plastered and finished except for original plaster. Additional electrical works to provide lighting and heating may risk further damage to the fabric.

Room 39 – South Turret

Considerable significance

Some plaster to the right of the window and part of stone flagged floor remain. No use other than as part of Room 40. The proposed works include lime plaster and lime wash to walls, with original plaster retained, and repairs to the window. There will be interventions to install an electricity point and repairs to the window will be masked by new plaster.

Rooms 38 & 40 – Corridor & Lobby to East range

Moderate and considerable significance

South wall is plaster on laths; two stone door reveals, one blocked; substantial area of white plaster; graffiti on plaster; some original ceiling timbers and door to Room 41 is original. The room will provide primary access to rooms R35, R41 and R42.

The proposal includes re-plastering walls in lime plaster, new joinery panels on west wall and re-routing cables to avoid new door; reinstatement of door and internal window on south wall and original door to Room 41 to be re-fitted and decorated; new steps up into Room 42 and electrical works for heating and lighting.

There is significant structural evidence in Room 40 which will be obscured and possibly damaged. The pine panelled door to Room 41 has been conserved and its refitting and decoration will have an unnecessary impact on the original fabric. There is confusion in the CP over the ceiling finishes proposed but a selective ceiling treatment is unlikely to be acceptable.

Room 41 – Chamber

Outstanding significance

East and south walls in timber stud and lath with cob infill and surviving plaster in places; original door and moulded architrave; west wall has open fireplace with relieving arch above and 19th century grate; evidence of original partition construction in west part of south wall and floor is paved with stone.

The proposed use is a bathroom and masonry walls to be repaired and lime plastered; new lime plaster on laths over cob partition with a toughened glass sheet to display and protect cob partition. New ducts to conceal supply & waste pipes and services to bathroom fittings; vent extract fan in chimney; removal of Victorian fittings and wiring for heating and lighting.

HS considered that there will be considerable impact in this “*..fascinating and unusual survival.*”(CD14 page 229). Direct impact from waste pipes passing through the wall. The temperature and humidity of this room are monitored and use as a Bathroom is inappropriate. The glass protection to the cob wall will cause environmental changes likely to result in lasting damage. The door is original and new latch is unnecessary.

There is a risk of wear and tear on the fragile fabric of this room and of further alterations particularly to the floor finish.

Room 42 – Bed Chamber

Considerable and outstanding significance

Timber bed recess with cupboards to each side survives in situ, set under a masonry relieving arch which supports the stairway to the Gallery (R43), with a timber former for the plaster vault beneath; evidence of paint and plaster finishes within recess; plaster and lath on timber studs survive on north wall with original door. Evidence of structural alterations.

This is to be a bedroom and is to be fully restored with new lime plaster to walls and ceiling, except where original plaster survives which shall remain unpainted. Existing joinery to be retained and conserved and beaded skirting restored. Hanging rails fitted to cupboards and wiring for heating and lighting.

The new works are unnecessary and will obscure and possibly damage structural evidence which has the potential to inform our understanding of the development of the castle. No particular period for the restoration is proposed and this will blur the distinction between the authentic and modern work. There is an additional risk of damage to the fragile fabric through wear and tear.

Room 44 – Bed Chamber

Moderate significance

Fireplace with corbelled lintel. This room is to be a bedroom and will be modified to form a corridor through to Room 45. Gypsum plaster to chimney breast to be removed and replaced with lime plaster. No direct impact.

Room 45 –Attic space

Moderate significance

Wall heads and west gable wall are exposed. Proposed use as a bathroom and tank room which involves erecting new partition walls, forming tank room installing tanks, water supply and waste from bathroom fittings.

The proposals do not reflect the evidence which survives for original divisions in this area. As the bathroom and tank room lie above rooms R19, R20 & R21 which contain significant original fabric there is a risk from water damage from any failure of fixtures or fittings or inappropriate use.

Room 46 – Bed Chamber

Outstanding significance

A panelled room with lower timber panels and upper blanks for wall hangings, canvas or paper with some fixing and fixing points evident; evidence of paint finishes and stone fireplace integrated into the panelling.

This is to be a bedroom and restored to former state using reinstated stretched fabric and original paint finishes replicated; heating and lighting and repairs to fireplace and windows.

The works will have a direct impact on the surviving evidence of historic wall treatments and will obscure and possibly damage that evidence. Use as a bedroom would have significant impact on the historic character of the room, the original use for which is unknown. There will be the risk of damage through the wear and tear of regular use.

Room 47 – Closet off Room 46

Moderate significance

To be used as a bathroom with new fittings, water supply and wastes installed, together with electrical services. The new services are likely to have direct impact on the concealed fabric and there is a risk of moisture and temperature variation which could have an impact on the panelling in Room 46.

Room 49, 50 & 51 – Gallery and North & South Turrets

Considerable significance

Panelled masonry survives below the south window with some surviving plaster; evidence of plaster on chimney breast; original door with *fleur de lys* hinges. A bat roost has been identified in this room. No specific use has been indicated although possible use for events implied. No works proposed although replastering has been suggested. There are risks associated with use for events and from further alterations to achieve a sufficient level of comfort.

Room 52 – End of Basement Pend

Considerable significance

Rubble walls and evidence of old lime harling; stone slabs of floor above; 19th century character external door. No use or works proposed but there is a risk of further alterations if basement is brought into use.

Room 53 - Ruined Tower

Outstanding significance

Oldest structure on the site providing evidence of tower house including intramural stair, remains of barrel vault and a substantial central fireplace. No use is proposed but masonry to be repointed and exposed walls topped with turf. There would be no significant physical impact on this space.

The policies and procedures relating to Scheduled Monuments

4.60 Mr Cooper, Chief Inspector, Historic Scotland gave evidence relating to the legislative and policy context relating to scheduled monuments; the general procedures used by Historic Scotland (HS) to assess applications for scheduled monument consent; and the reasons why HS why are opposed to the present application.

4.61 It was explained that HS was an Executive Agency of the Scottish Government. As such, Scottish Ministers are responsible for the policy and financial framework within which HS has to operate. It was indicated that the agency operated within the terms of a framework agreement and undertook a broad range of responsibilities with regard to Scotland's historic environment on behalf of Scottish Ministers. In HS's most recent Corporate Plan (HS 12 its purpose or mission was described as being to safeguard Scotland's historic environment and to promote its understanding and enjoyment).

4.62 In terms of the internal organisational structure of HS, it was indicated that the Inspectorate was one of five groups and that it had responsibility, amongst other things, for: the broad range of statutory designation work, including the designation of archaeological sites and monuments of national importance as scheduled ancient monuments, as well as the designation of buildings of architectural and historic merit as listed buildings; the determination of applications for scheduled monument consent to undertake work affecting scheduled monuments; and, the provision of more general advice on the conservation and maintenance of the historic environment.

Legislative Background regarding Scheduled Ancient Monuments

4.63 It was indicated that under Section 1 of the Ancient Monuments and Archaeological Areas Act 1979 (the 1979 Act) Scottish Ministers are required to compile and maintain a schedule of monuments of national importance (CD 1). It was noted that under section 1(4) of the Act a structure that is occupied as a dwelling house (other than by a caretaker) may not be scheduled. For the purposes of the present application, the relevant parts of section 61(7) of the Act states that a 'monument' means (a) any building, structure or work, whether above or below the surface of the land, and any cave or excavation; or (b) any site comprising the remains of any such building, structure or work or of any cave or excavation.

4.64 Rowallan Castle was one of 8,006 scheduled monuments in Scotland and it was indicated that the property was originally identified as being of national importance in 1955 (HS 18) and then formally scheduled in 1994 (CD 15, Appendix A). HS considered that it had been clearly demonstrated that the monument met the criteria relative to the property being of 'national importance' under the terms of the 1979 Act which had been recently included in Scottish Historic Environment Policy 2, 'Scheduling: Protecting Scotland's Nationally Important Monuments (CD 9).

4.65 It was indicated that once a monument has been 'scheduled' it becomes an offence to carry out, without the prior written consent of Scottish Ministers (i.e. scheduled monument consent), any works that would have the effect of demolishing, destroying, damaging, removing, repairing, altering or adding to the monument or to carry out any flooding or tipping on the monument. Within the 1979 Act there is no guidance on the process that should be followed for determining applications for scheduled monument consent. A Statutory Instrument issued in 1981 entitled 'The Ancient Monuments and

Archaeological Areas (Applications for Scheduled Monument Consent) (Scotland) Regulations' sets out further guidance on the application process (HS 25).

Other Legislation

4.66 Although not of direct relevance to the determination of the application for scheduled monument consent reference was made to the relationship of the 1979 Act with the provisions of other legislation relating to listed buildings and ancient monuments. In terms of the Town and Country Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 section 1 states that Scottish Ministers shall compile and maintain a list of buildings of special architectural or historic interest (CD 2). Once a building has been listed, consent must be sought from the local authority for works which demolish, or alter or extend the building in any manner, or which would affect its character as a building of special architectural or historical interest. It was noted that Rowallan Castle was a category A listed building which was listed in 1971 (see CD 15, Appendix B).

4.67 Under section 55 of this Act, where a building is both scheduled and listed, a number of provisions including those of control of works (sections 6-8) do not apply. Therefore, in this case although the Castle is a Category A listed building, as it is also a scheduled monument under the provisions of the 1979 Act the works proposed by the applicant require scheduled monument consent which is dealt with by Scottish Ministers rather than the planning authority.

4.68 Although not the subject of this inquiry, it is noted that under the provisions of the Town and Country Planning (Scotland) Act 1997, it may also be necessary to seek planning permission from the local authority for works which would affect a scheduled monument. It was emphasised that scheduled monument consent and planning permission involve quite separate statutory requirements and are governed by different legislation which serve different purposes. Consequently, what may be material to one decision will not necessarily be material to the other and a consent granted under one regime is without prejudice to the other.

4.69 It was pointed out that the site of the scheduled monument lies within the policies of the Rowallan Estate. The policy grounds of the estate are recognised as a nationally important designed landscape and they have been included in the Inventory of Gardens and Designed Landscapes. The Inventory was published in 1987 jointly by the predecessors of HS in partnership with Scottish Natural Heritage (CD 26). Inclusion of a site in the inventory means that it receives a degree of protection through the planning system.

4.70 As indicated above, the 1979 Act provides no detailed guidance on how applications for scheduled monument consent will be considered. The development of policy on this issue is the responsibility of Historic Scotland who on this matter act on behalf of Scottish Ministers. It was explained that the present policy framework regarding scheduled monument consent has evolved in the context of international and domestic considerations on how best to protect and manage ancient monuments.

International Charters

4.71 Reference was made to the provisions of a number of the most significant international charters. Firstly, mention was made of the Venice Charter (1966) (HS 20) which sets out many of the fundamental principles which are applicable to the conservation of the built heritage. The preamble to the charter states that 'It is essential that the principles guiding the preservation and restoration of ancient buildings should be agreed and be laid down on an international basis, with each country being responsible for applying the plan within the framework of its own culture and traditions.' The specific articles in the Charter of key relevance to this case are set out in Chapter 2 of this report under the heading International Charters and Conventions.

4.72 The next international charter referred to was the Burra Charter (1979) (CD 12). The provisions of this charter draws amongst others on the Venice Charter and it has had broad relevance for international conservation policy. The charter provides further guidance on the preservation and management of ancient monuments. It also gives greater clarity to the definitions associated with this management. The 1999 version of the Charter was developed from the 1979 document and contains a number of relevant Articles which are also set out in detail in Chapter 2 of this report:

4.73 Lastly, reference was made to the Valetta Convention (The European Convention on the Protection of the Archaeological Heritage (CD 10) which was signed by the UK Government in 2000 and came into effect in the UK in March 2001. Article 1 states that the aim of the Convention is to protect the archaeological heritage as a source of the European collective memory and as an instrument for historical and scientific study. Articles 2-4 require the signatories to take measures for the identification and protection of the archaeological heritage, including measures for its conservation and preservation, preferably in situ.

National Policy

4.74 It was indicated that the Scottish Government publishes national planning policy statements some of which apply to the historic environment. Reference was named to National Planning Policy Guideline 5: Archaeology and Planning (CD 3), which states at paragraph 17 that 'Scheduled ancient monuments are of national importance and it is particularly important that they are preserved in situ and within an appropriate setting.' It was noted that this was the first formal policy statement of Scottish Ministers on the matter which indicated a preference for preservation in situ of scheduled monuments.

4.75 It was noted that more recently Historic Scotland had issued a series of Scottish Historic Environment Policy statements (SHEPs). These set out Scottish Ministers' strategic policies for the historic environment and consolidate existing policies. SHEP1: 'Scotland's Historic Environment' sets out the broad principles for the conservation and management of Scotland's ancient monuments. It was noted that these had previously been set out in 2000 in Historic Scotland's Stirling Charter (CD 5), and again in 2001 in 'Passed to the Future' (CD 6), which contained the policy for the sustainable management of Scotland's historic environment. The key principles in these documents are now incorporated in SHEP1 (CD 8).

4.76 SHEP2: 'Scheduling: Protecting Scotland's nationally important monuments', issued in 2006, deals with the identification and designation of Scotland's nationally important

monuments (CD 9). This document sets out Ministers' policy for scheduling and defines the criteria for and guidance on the determination of what constitutes 'national importance' under the terms of the 1979 Act. It was indicated that HS had drawn on this document in its assessment of the present application.

4.77 In March 2008 Historic Scotland published SHEP4: 'Scheduled Monument Consent' (HS 23). This sets out Scottish Ministers' policy for the control of works affecting scheduled monuments. It was indicated that in section 3.2 of the document it is stated that 'Scottish Ministers include a monument in the Schedule to secure the long term legal protection of the monument in the national interest, in situ and as far as possible in the state it has come down to us'. In addition, at section 3.4 it is stated that: 'Works on scheduled monuments should therefore normally be the minimum level of intervention that is consistent with conserving what is culturally significant in a monument.'

4.78 Section 3.6 of the document indicates that: 'Scheduled Monument Consent applications must be considered in terms of the cultural significance of the monument and the impact that the proposals would have upon this cultural significance. The greater the cultural significance of the monument, the stronger the case will be against intervention unnecessary for the long-term preservation of the monument. Similarly, the more important particular features of the monument are to its cultural significance, the greater will be the case against interventions which modify these features.'

4.79 At section 3.7 it is noted that: 'Extensive intervention will only be allowed where it is clearly necessary to secure the longer-term preservation of the monument, or where it will clearly generate public benefits of national importance which outweigh the impact upon the national cultural significance of the monument. Such public benefits could come from, for example, interventions which make public access to scheduled monuments easier, or assist public understanding, or will produce economic benefits once the works are completed.'

4.80 Section 3.8 states that where change is proposed, it should be carefully considered, based on good authority, sensitively designed, properly planned and executed, and where appropriate in the context of an individual monument, reversible. Lastly, section 4.2 notes that it is the responsibility of the applicant to ensure that applications for Scheduled Monument Consent include all the necessary information to allow the proposals and their impact to be assessed fully.

4.81 SHEP5: 'Properties in the Care of Scottish Ministers' (HS 24), which was published in March 2008, sets out the policy for the conservation of, and access to, properties that are in the care of Scottish Ministers and looked after by HS on their behalf. Section 3.4 of the document states that because of the importance of the Properties in Care as a collection, and because of the level of state investment involved, it is currently expected that a monument will be held in perpetuity by the state. Only in exceptional circumstances is a monument likely to go back out of care. In coming to a view on disposals, Scottish Ministers will also take account of the implications for the balance of the remainder of the estate and any possible loss of public access or understanding of the monument. Each case will require the approval of Scottish Ministers, who will consult as appropriate.

4.82 Reference was also made to the document entitled 'Conservation of Architectural Ancient Monuments in Scotland: Guidance on Principles' published in 2001 (CD 7). This document provides guidance on the principles which should be applied to works on ruined structures. It was noted that the document was a successor to earlier guidance, such as

that contained in Appendix 3 of the Ancient Monuments Board for Scotland's Annual Report for 1994, which set out the principles for the preservation of monuments in state care. Section 2.1 of the 2001 report states that 'One of the chief aims of the ancient monument legislation is to ensure that the most important surviving evidence for our built heritage is preserved as far as is possible in the state in which it has come down to us, and is passed on to future generations without further change or loss of evidence.' In addition, section 16.2 of the report states that: 'In general, restoration rather than conservation would not be considered acceptable for scheduled monuments that are regarded as the most outstanding examples of their kind, or as being particularly representative of their type. There are many monuments that are so outstandingly important for the evidence they embody that nothing should be done which might compromise the integrity of that evidence...'

4.83 Another document referred to by HS was the British Standard 7913:1998. Guide to the principles of the conservation of historic buildings' (CD 4). This guide is intended to provide general background information on the principles of the conservation of historic buildings, when considering conservation policy, strategy and procedures. At section 1.1 of the British Standard it is noted that: 'The immediate and obvious objective of building conservation is to secure the preservation of the nation's stock of buildings and, in particular its historic buildings and fine architecture, in the long term interest of society'. In addition, section 7.1.2 states that 'A conservative approach of minimal intervention and disturbance to the fabric of an historic building in which there is a presumption against restoration is fundamental to good conservation....The principle of minimum intervention in conservation is well established.' Section 7.4.3c also states that: 'some buildings or parts of buildings are of such quality, importance or completeness that they should not be altered at all except in the most exceptional circumstances.'

Handling of scheduled monument consent applications which affect Properties in Care

4.84 It was indicated that in the case of properties in care, the application for scheduled monument consent may be made by either a third party or HS's own Properties in Care Group. It was emphasised that since 2006, new processes have been established within HS to separate the consideration and administration of applications for scheduled monument consent consents from the day to day management of properties. The changes made were designed to ensure that 'internal' applications (which are termed Properties in Care Consents) are handled in a manner that is consistent with the processing of external applications (HS 9). It was noted that HS's the Properties in Care Group were given the opportunity to comment on any third party proposals relating to properties in care that may impact on their duties under the 1979 Act.

Previous Scheduled Monument Cases

4.85 It was indicated that there have only been a small number of public local inquiries held in Scotland relating to scheduled ancient monuments and in particular proposals for the conservation and restoration of structural monuments. One of these related to a previous application for works affecting Rowallan Castle, which was considered at a conjoined planning and scheduled monument consent inquiry in 2002 (CD 27 and 28). In addition, there was a well publicised case which related to Castle Tioram on the west coast of Scotland where restoration proposals were under consideration (HS 26). In paragraph 23.11 of the Reporter's findings at castle Tioram it was stated: "Reference was made in evidence to the Rowallan Castle and Estate public local inquiry, where the Reporter stated

that: *'Given the national importance of scheduled monuments, it would appear reasonable that any development permitted would require to be justified in the national interest'*. I see no reason in the evidence before me to depart from that conclusion. I find that consideration of the application for SMC should primarily have regard to the preservation of the SAM and that purpose should only be set aside in circumstances where wider considerations are deemed, on balance, to be of greater import to the national interest."

Principles applied by Historic Scotland Inspectorate to Scheduled Monument Cases

4.86 It was explained that in considering applications for Scheduled Monument Consent (SMC), the HS's Inspectorate draws on the international policy context, the relevant legislation and policy, and best practice referred to above. The overarching principle applied by the Inspectorate is that (i) scheduled monuments should be preserved in the state in which they have come down to us; and, (ii) that any works undertaken at the monument should be the minimum necessary consistent with the preservation of that monument. Therefore, in each case it is necessary to establish that the works (a) are those that are necessary; (b) are the minimum required in relation to the identified issue; and, (c) would use appropriate techniques and materials in line with current accepted conservation practice.

4.87 It was acknowledged that exceptional circumstances may exist where the principle of minimum intervention may not be deemed to be the most appropriate approach for a particular monument. Examples of exceptional circumstances might include:

(i) Management of the monument. It was recognised that in certain circumstances intervention, such as investigative works, may be deemed acceptable to provide crucial information for the long-term management of a monument. This might include, for example, archaeological evaluation to clarify the nature of the monument, the disposition of archaeological remains, or to evaluate the effects of damage to a monument. For example this could involve excavation to assess the impact of burrowing animals on the buildings and the defences of a prehistoric settlement in order to develop a strategy for the future management of the site.

(ii) Public understanding and enjoyment of the monument. There could be circumstances where the public understanding and enjoyment of a monument would be significantly enhanced by an intervention that does not relate to its condition. For example, at Stirling Castle, where there are proposals for the representation of the interiors of the Royal Palace Block, and these have been justified on the basis that the public benefits of the work significantly outweighed the case for leaving the monument in the form it had before the works were commenced.

(iii) Securing the monument's long-term future. In the case of architectural monuments, in certain circumstances, a return to active use may be deemed the most viable way of ensuring their continued existence. In a recent case at Fenton Tower in East Lothian (a scheduled monument, but not in guardianship) it was accepted that re-roofing and adaptation for renewed residential usage could be achieved in a manner consistent with its long-term preservation. In this case the alternative was considered to be the likely loss of the monument.

4.88 HS, in considering the potential impact of proposals on ancient monuments also took account of the risks associated with bringing the proposals forward. For example, this

might include assessing the long-term incremental effect of a change of use in addition to any initial impact of the works associated with bringing about a change of use.

The Scheduled Monument Consent Application at Rowallan

4.89 HS indicated that the application for scheduled monument consent for the conservation and restoration of Rowallan Castle to ensure habitable use was received on 1 September 2006 (CD 13 & 14). The HS Inspectorate considered the application and reached a view that it was unable to support it. Given the high profile nature of the proposals, the application and its conclusion were considered at the HS's Board meeting on 26 April 2007. The Board supported the conclusions of HS Inspectorate that scheduled monument consent should not be granted (CD 16). A letter was issued on 10 May 2007 to the applicant indicating that Scottish Ministers were minded to refuse the application (CD 17).

4.90 By way of further background on the case, it was noted that on 16 November 2006 the applicant had also submitted a petition to the Scottish Parliament's Public Petitions Committee. This petition was discussed by the Committee on 23 October 2007. On 14 November, HS submitted a short statement to the Committee (CD 15, appendix D & E). The matter was discussed again on 19 February 2008 when the dates for present public inquiry were noted. On 21 February 2008 the Petitions Committee wrote to HS asking for a written response to the specific issues raised in the petition and the relevant action HS was taking to address these concerns. The Committee also requested that this written response should include '...the implications of the public local inquiry and the relevant action your organisation is taking to address these.' The deadline for response to the Committee was given as 25 July 2008 (CD 27).

The Case for Refusal

4.91 It was indicated that under the provisions of the 1979 Act nationally important monuments can be protected as scheduled ancient monuments. HS considered that Rowallan Castle met the criteria of national significance as laid out in SHEP 2, and was therefore properly designated as a scheduled ancient monument. Provisions also exist under the 1979 Act for such nationally important monuments to be taken into the guardianship of Scottish Ministers. It was believed that the significance of Rowallan Castle was such that it was deserving of being one of the nation's guardianship sites. HS considered that in its considerations of the application it had correctly applied the legislation and interpreted the policies relating to scheduled monuments. It was submitted that the monument's significance was further enhanced by being one of a small number of scheduled monuments in the care of Scottish Ministers.

4.92 In the opinion of HS, the proposals for Rowallan cannot be considered to be the minimum necessary consistent with the preservation of the monument. Furthermore, it was believed that the works proposed would be likely to have a significant and adverse effect on the monument. In these circumstances, for the proposals to be acceptable the applicants have to demonstrate that exceptional circumstances existed which would allow the setting aside of the normal presumption of minimum intervention in the monument. It was submitted that there was no evidence to support the view that at present the monument was 'at risk' of neglect or loss. It was indicated that at the time that the monument was taken into guardianship it was in a parlous state. Subsequently, HS's predecessors have undertaken a significant amount of work to repair and maintain the monument. In HS view,

the applicants have failed to demonstrate that their proposals are in the national interest and offer a level of public value in comparison to that gained by being a property in the guardianship of HS. Therefore the case has not been made that the normal presumption of minimum intervention should be set aside.

4.93 In summary, it was submitted that Rowallan Castle was a scheduled monument and its particular importance was recognised by the fact that it was in guardianship. The monument was of national importance and illustrated an approach to 'lairdly' domestic architecture that was not known to survive with quite this combination of elements elsewhere in Scotland. It was considered to be an exceptionally rare survivor, when all of its salient features were taken into account. The proposed works cannot be considered to be the minimum necessary to secure the long-term preservation of the monument and they would have a significant and detrimental impact on the monument. There were no exceptional circumstances to justify departure from the principle of minimum necessary intervention.

5. THE CASE FOR THIRD PARTIES

The evidence of Mr John McFadzean, Chairman of Fenwick Community Council

5.1 Mr McFadzean told the inquiry that he had canvassed local opinion, looked at similar buildings and situations to consider the best way by which the local community and general public can benefit from Rowallan Castle while protecting it and guaranteeing its future as a local amenity and historic monument.

5.2 When originally built it was a fine building and the pride of those who built it, but it had no history. It was the people who, by living in and using the castle, altering and extending it, created the history of the building we know today. When they left and it fell into disuse the history fell silent and the castle fell apart. So, if people are not put back no more historical events will occur and its future will be denied. With tasteful refurbishment to recreate its former glory and most importantly its use, who knows what exciting events future schoolchildren will learn about. Otherwise all they will hear will be of fruitless battles about the building's future.

5.3 Mr Campbell has assured the Community Council that, with correct guidance, he will refurbish the castle at his own expense to provide an amenity for local people as well as employment opportunities for young people. It would encourage visitors to the area to use the facility, possibly as a wedding venue, for historic theme nights or for guests to stay and sample history at first hand. While the efforts being made to regenerate Kilmarnock and its surroundings are fighting for every penny, this privately funded well organised scheme should be allowed to go ahead.

5.4 Mr Campbell has undertaken to allow public tours of the castle at least 25 times a year for people to look around and appreciate the fascinating history and surroundings. Tourists from around the world already visit similar sites such as Culzean Castle as a testament to this policy. The common theme is that these buildings must be used, maintained and where necessary restored or even modernised to make them more accessible.

5.5 While this is unlikely in monuments like Stonehenge or an ancient burial site whose mysterious past is interesting to study and understand but whose intrigue would be spoiled by changing them in any way, this does not work at places like Rowallan Castle which could yet spawn many years of unwritten history.

5.6 Mr McFadzean believed that the inquiry should resolve the somewhat acrimonious situation in the democratic interests of the ordinary people of Scotland. This project has support from all levels of government from the Community Council, Local Council, MSP and MP, as well as government ministers and the ordinary people they represent, and it should be allowed to go ahead.

The evidence of Lord Rowallan

5.7 Lord Rowallan put on record that Rowallan is his family home and he has lived in or near it for 61 years. His grandfather made the castle over to the then Ministry of Works in 1950 and a lot of public money has been spent on, firstly, making it wind and watertight and secondly, to enable it to be opened to the public as it has to be one of Scotland's oldest

residences with a full history and interesting features. He did this because, as Chief Scout and then Governor of Tasmania he spent little time at Rowallan during the 1950s and 1960s.

5.8 The present Lord Rowallan sold the castle to Mr Campbell in 1989 when he promised to open it to the public. However, in the intervening years, apart from upgrading Rowallan House and building a golf course, Mr Campbell has not completed any project on the estate. This would suggest that he is not capable of maintaining the Castle to the same standard as HS has done or that he is capable of doing so in the future. He claimed that Mr Campbell has prevented anyone entering the grounds and has tried to stop HS from maintaining the castle or bringing visitors to the site by refusing vehicular access and failing to provide car parking on the estate he controls.

5.9 Although mistakes were made in the past, Lord Rowallan asked that HS be allowed to finish what it has started and open the castle to the public on at least 150 days a year to provide a huge tourist value in the middle of the estate. With so much public money spent over the years it would be shame if the scheduling and possibly guardianship were to be removed from this historic masterpiece.

5.10 From Mr Campbell's record of development on the Lorimer designed landscape of the estate, Lord Rowallan was not convinced of his ability to complete the proposal. The important thing is that the castle is opened to the public for as long and as soon as possible as he wished in 1989, when a burden was placed on the land until 1997 forbidding a private dwelling on the land. This was changed with the enabling development granted to Mr Campbell which facilitated the opening up of the estate. However, this has allowed Mr Campbell to seek occupation of the castle contrary to the original concept of the sale, and this would limit the opportunities for the public to gain access.

5.11 With HS in charge the castle can be opened quickly while they continue with the necessary repairs, restoration and reinstatements using modern techniques and methodology to make it a testimony to olden times as the local community wish, and not as a home which has not been since 1750. The volume of people staying at the proposed hotel or the new houses, playing golf or enjoying activities at Lord Rowallan's own leisure centre nearby would ensure huge numbers of visitors to justify the preferred opening for 150 days per year.

5.12 Lord Rowallan asked for the wishes of his grandfather to be upheld and the status quo retained with the castle kept in the hands of HS, in the hope that Mr Campbell will cooperate by providing car parking and access, rather than asking them to work with him on a project they do not want to approve.

6. WRITTEN SUBMISSIONS

The evidence of Mr Michael Hichon, President of Kyle and Carrick Civic Society

6.1 The Society's aims are to stimulate public interest in, and care for the beauty, history and character of Kyle and Carrick; to encourage the preservation, development and improvement of features of general public amenity or historical interest; to encourage high standards of architecture, and increased public participation in town planning in Kyle and Carrick and; to promote interest in conservation policies for the benefit of the community in these areas.

6.2 The Society organises a Doors Open Day in September each year, when up to 70 buildings in Ayrshire are open free to visitors, even where they are normally not open to the public or where there is an entry charge. Every year since 2005, HS has organised guided tours of Rowallan Castle and each one has been fully subscribed. There is clear public interest in the house despite HS showing it as a virtual museum rather than a living residence. The present public response is one of polite but detached interest rather than a more enthusiastic response that a house that lives and breathes would bring.

6.3 The atmosphere in the house is enhanced when period music is played on old fashioned instruments. This encourages us to imagine how much better for visitors it would be if it were made habitable and furnished with the opportunity to stay there, such as occurs at Landmark or Vivat Trust properties. Their houses are better heated and aired bringing long term benefits which are enhanced by being in use.

6.4 In this locality, the Scottish Historic Trust rescued Auchinleck House which is now run by Landmark Trust and can be visited by appointment. This true monument to conservation practice can be appreciated as a living house and a place of great architectural distinction. The Society sees parallel opportunities for Rowallan Castle.

6.5 The Society commends that Rowallan Castle be given a new lease of life in habitable condition, however if may be managed, where it is open for visitors in a meaningful way which appears to be the intention of the owner. The Society commends this application to Scottish Minister and requests that it be granted.

7. CONDITIONS

Conditions agreed by the parties

7.1 At the conclusion of the inquiry a list of draft conditions, which had been agreed by both the applicant and Historic Scotland, was submitted. These conditions would apply in the event that Scottish Ministers were minded to grant Scheduled Monument Consent (SMC). The agreed conditions covered matters such as:

- (i) the need for the submission of a detailed Programme of Works by the applicant, for the approval of Historic Scotland, prior to the commencement of any works on the scheduled monument;
- (ii) a list of the matters that must be included in the Programme of Works;
- (iii) written specifications for the materials to be used in the works on the site
- (iv) a requirement for a programme of the archaeological work to be undertaken on the site;
- (v) an indication of how the archaeological deposits on site are to be protected;
- (vi) a timetable detailing each phase of the proposed works;
- (vii) the need for any changes to the Programme to be notified to Historic Scotland
- (viii) the right of access to the works for officials or representatives of Historic Scotland to ensure compliance with the approved Programme of Works

The suggested conditions to cover these matters are set out in Appendix 1.

7.2 In addition, the Reporters recommend that a number of other matters raised at the inquiry should be covered by conditions. These additional matters are as follows:

- (i) the need for Historic Scotland to be involved in the consideration of any additional works that may be required to satisfy building or fire regulations, but which were not included in the SMC;
- (ii) ensuring that the monument is open to the public on at least the minimum number of days each year agreed by the applicant; and,
- (iii) whether access and car parking for visitors would be available.

7.3 The issue of ensuring a reasonable level of public access to the property was discussed at the inquiry and the suggested minimum number of days is in line with the proposal put forward by the applicant. In support of this objective, there is a need to ensure that arrangements are made for the provision a reasonable number of car parking spaces for the visiting public. Given the nature of the property, this should be done outwith the boundary walls of the monument. In addition, provision should also be made for parties visiting the monument by coach. In this case, the provision should be closer to the public road and beyond the gatehouse to the estate. A requirement that Historic Scotland should be consulted regarding any detailed works affecting the monument in connection with the installation of heating and ventilation water supplies and drainage provision, fire protection and access for the disabled is also essential.

8. FINDINGS OF FACT

8.1 We find the following facts, the test in each case being that, on the balance of probability, the outcome will be as stated.

Background

8.2 The description of the application site and its surroundings, the background to the application for Scheduled Monument Consent and a statement of those factual matters that are agreed between the applicant and Historic Scotland are set out in Chapter 1 and are adopted for their terms.

8.3 The statutory provisions of the Ancient Monuments and Archaeological Areas Act 1979 that are relevant to a consideration of the application are set out in paragraphs 2.2 to 2.15. A summary of Scottish Ministers' policy with respect to the historic environment and the control of works affecting scheduled monuments is contained in paragraphs 2.18 to 2.57. These are also adopted for their terms.

8.4 A summary of the relevant provisions and policy guidance contained in various international charters and conventions is set out at paragraphs 2.64 to 2.70.

8.5 Rowallan Castle is a Scheduled Ancient Monument (SAM) and the scheduled area includes an area of land surrounding the building. The castle is also a Category A listed building. In the 1940s, Lord Rowallan commissioned plans from architect Ian G Lindsay to restore the castle to habitable use. However, Lord Rowallan was unable to carry out the work and in 1943 he approached the then Ministry of Works (MoW) about the possibility of taking the property into state care. A condition survey was carried out at the time which found that the property was in a very poor condition (HS1, Table A, Appendix 1 and HS16). The MoW indicated that it was unable to accept Lord Rowallan's offer and take the property into care during the period of the war (HS1, Table A, Appendix 2, letter 14 April 1944). After hostilities ceased the matter was once again raised and in 1950 Rowallan Castle was finally taken into care by the MoW. In 1955 the castle was included in a document prepared by the MoW entitled 'Ancient Monuments in Scotland, the A list' (HS18). The list was stated to include those monuments the preservation of which was regarded to be in national importance. In the list Rowallan Castle is denoted as being *a monument* wholly or partly in the charge of the Minister under the provisions of the Ancient Monuments Acts.

8.6 The castle and part of the scheduled land is subject to a Deed of Guardianship (DG) entered into by the then Lord Rowallan and the Minister of Works in 1950 (CD25). The extent of the land covered by the DG is shown edged in blue with the area subject to scheduling edged in red on the plan in the Conservation Plan (CD14, Figure 3). As a consequence of the DG, Historic Scotland (HS) on behalf of Scottish Ministers are responsible for the preservation and maintenance of the buildings and grounds covered by the deed. This gives HS rights of access to the building and the land within the guardianship for their representatives and visiting members of the public at all reasonable times. Public access to the monument has been controlled by HS because of unresolved difficulties with the applicant. The applicant has indicated that if SMC was granted, public access to the property would be granted for at least 25 days a year and a permanent interpretation facility in Room 29 would be provided for the visiting public. The applicant, Mr Campbell, has also indicated that he would be prepared to take over responsibility for the

future maintenance and preservation of the monument from HS. However, under its terms, the DG cannot be terminated unilaterally.

8.7 The history of Rowallan Castle, its occupants and its development over the centuries is described in Section 3 of the Conservation Plan (CD14) and in Historic Scotland's interim Statement of Cultural Significance (HS 14), which included greater detail about the history and development of the castle. These matters are broadly agreed between the parties and are summarised in Chapter 3 at paragraphs 3.3 to 3.7 of this report.

The application for scheduled monument consent

8.8 The application by Mr Niall Campbell for Scheduled Monument Consent (SMC) is dated 31 August 2006. It was received by Historic Scotland on 1 September 2006. The present application differs from the previous SMC application in at least one respect as the earlier application was made on behalf of one of Mr Campbell's companies. On the current application form for SMC the description of the proposed works and their purpose was stated to be the "*Conservation and restoration of the building to ensure habitable use*". The submitted Conservation Plan and drawings (CD14) form part of the application. A general indication of the nature of the proposals is set out in paragraph 1.12 and a more detailed description of the proposed works is contained in paragraphs 3.56 to 69. Historic Scotland's assessment of the proposals on a room by room basis is set out at paragraph 4.59.

8.9 On 10 May 2007, Historic Scotland advised the applicant that the provisional view of Scottish Ministers was that on the basis of the information then available and the advice given to the Ministers, Scheduled Monument Consent for the conservation and restoration of the monument to ensure habitable use should be refused. The letter indicated that the reasons for coming to this view were: (i) Rowallan Castle was of national significance and illustrated an approach to lairdly domestic architecture that was not known to survive with quite the same combination of elements elsewhere in Scotland. It was also indicated that the property had very few closely comparable peers when all of its salient characteristics were taken into account.

(ii) The works proposed could not be considered to be the minimum necessary to secure the long-term preservation of the monument and there were a number of associated risks which would threaten its significance. Furthermore, it was indicated that there were no exceptional circumstances which would justify the intervention entailed by the works proposed in the application. The proposals would therefore be contrary to Scottish Government policy.

8.10 In a letter dated 17 May 2007, the applicant indicated that he wished to exercise his right under Schedule 1 of the 1979 Act to have the opportunity of appearing before, and being heard by, a person or persons appointed by Scottish Ministers before a decision was taken on whether or not Scheduled Monument Consent should be granted for the works proposed in the application.

8.11 In the present case, there has been no parallel planning application for change of use to a dwellinghouse or an application for listed building consent for the works. Consequently, the inquiry was concerned solely with the SMC application. In the event that SMC was to be granted by Scottish Ministers for the works proposed, planning permission for the change of use of the building and/or listed building consent for the alteration works may also be required.

The applicant

8.12 Mr Niall Campbell is a direct descendant of the Campbell's of Loudoun who, through Sir James Mure Campbell, succeeded to the titles of the estate at Rowallan in 1745. From about 1750, the castle ceased to be occupied by the family who instead preferred to reside at the nearby Loudoun Castle. It is understood however that the castle continued to be occupied by family staff into the 19th century. The main parties agreed that the castle has not been occupied for more than 100 years.

8.13 Mr Campbell trained as a stonemason and has over 40 years experience in all aspects of building and civil engineering works, land and property development as a director of his own companies. He has carried out many projects on listed buildings some with HS grant assistance and others that have received awards. His company Alexander George Ltd purchased the Rowallan Estate in November 1989 and the ownership was subsequently transferred to Duffield Morgan Ltd, a company in which Mr Campbell also has an interest.

Legislative and policy context

The Ancient Monuments and Archaeological Act 1979.

8.14 Within the UK legislation has been in place to protect ancient monuments since 1882. Currently monuments in Scotland are protected under the provisions of the Ancient Monuments and Archaeological Act 1979. The provisions of the 1979 Act are consistent with the terms of Article 2 of the 'Valetta Convention', which requires each country to institute a statutory system for the protection of its archaeological heritage.

8.15 In the preamble to the Ancient Monuments and Archaeological Act 1979 it is stated that the Act makes provision for the investigation, preservation and recording of matters of archaeological and historic interest, and (in connection therewith) for the regulation of operations of activities affecting such matters. There is however no detailed guidance within the Act or in any associated government Circular dealing with the Act on how applications for the carrying out of works or operations affecting scheduled monuments (Scheduled Monument Consents) are to be considered.

8.16 In these circumstances, we find that the regulation and control of operations and works affecting a scheduled ancient monument under the Act are directed at the purposes referred to above for which the Act provides. On this point, we also note that SHEP2: Scheduling: Protecting Scotland's Nationally Important Monuments indicates that the primary purpose of scheduling is the 'preservation' of, and control of works on, monuments, the survival of which is in the national interest. In this context, we consider 'preservation' to mean maintaining the fabric of a property in its existing state and retarding deterioration and changing only where necessary to prevent damage or decay but otherwise leaving *in situ* in the existing state.

8.17 We also find that that the provisions of the Act are consistent with the principles of minimal intervention set out in Scottish Ministers' policies for the historic environment and various international charters and conventions. The Burra Charter, for example, in explaining the concept of minimal intervention makes reference to the desirability of changing as much as is necessary but as little as possible.

8.18 On the basis of the evidence to the inquiry we find that the policy of minimal intervention is intended to ensure that the cultural significance of a monument is retained and the characteristics that made it nationally important are preserved as far as possible in the state in which it has come down to us.

8.19 Section 1 of the Act, which deals with the protection and scheduling of monuments, states at section 1(1) that Scottish Ministers are required to compile and maintain a schedule of monuments, referred to in the Act as the 'Schedule'. Section 61(7) of the Act define a 'Monument' as being *inter alia* any building, structure or work, whether above or below the surface of the land, and any cave or excavation; or any site comprising the remains of any such building, structure or work. Section 61(7) defines an 'ancient monument as (a) any scheduled monument; and (b) any monument which in the opinion of Scottish Ministers is of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attaching to it. In terms of the Act, we find that roofed structures, such as Rowallan Castle, are covered by the definition of an 'ancient monument.

8.20 In order that a monument can be included on the Schedule it must satisfy the requirements of the Act. Section 1(3), subject to the provisions of section 1(4), allows Ministers, in compiling the Schedule to include any monument which appears to them to be of 'national importance'. National importance is not defined in the Act. However, on the basis that the Act applies throughout the UK, we find that the term in so far as it relates to the process of scheduling should be considered to refer to monuments of importance in a UK context.

8.21 Section 1(4) of the Act states that the power of Ministers to include any monument in the Schedule does not apply to any structure which is occupied as a dwellinghouse by any person other than a person employed as a caretaker thereof or his family. We find that the stated intention to restore the property to ensure habitable use for either the use of the applicant (or one of his relations) or its use as a leased property by for example the Landmark Trust would in effect constitute the use of the monument as a dwellinghouse. Section 1(5) of the Act indicates that monuments which do not meet the criteria for 'national importance' will be removed from the Schedule (i.e. de-scheduled). In these circumstances, if the monument is restored and used as a dwellinghouse, we find that Ministers may decided to take steps to modify the entry in the Scheduled and have the ancient monument or parts of it removed.

8.22 Once a monument is scheduled, section 2 of the Act states that it is an offence to carry out, without the prior written consent of the Scottish Ministers (i.e. the grant of scheduled monument consent) any works which would have the effect of demolishing, destroying, damaging, removing, repairing, altering, adding to, flooding or covering up the monument.

8.23 There was disagreement between the applicant and Historic Scotland over the date on which the Rowallan Castle became a scheduled monument. HS indicated that it was first included in a list of nationally important monuments in 1955 and that this was tantamount to the property being 'scheduled'. On behalf of the applicant, it was stated that the castle did not become formally scheduled until 1994. We find that until the 1979 Act, there was no reference in the legislation to the term 'scheduled monument'. Prior to the 1979 Act, the legislation only made provision for the preparation and publication of a 'list' of monuments the preservation of which were of national importance. Rowallan Castle had

been included in such a list prepared in 1955 under the provisions of the Ancient Monuments Consolidated and Amendment Act 1913. In any event, we find that there is no dispute that Rowallan Castle is now included in the Schedule of ancient monuments of national importance and consequently the provisions of the 1979 Act therefore apply in this case.

8.24 Under the provisions of the Town and Country Planning (Listed Building and Conservation Areas)(Scotland) Act 1997, Rowallan Castle is also included in the statutory list of buildings of special architectural or historic interest as a Category A listed building. Under the terms of Section 55(1) of the 1997 Act certain provisions of the Act do not apply to a building which is included in the Schedule of ancient monuments compiled under the provisions of the Ancient Monuments and Archaeological Areas Act 1979. The parts of the 1997 Act that do not apply in such a situation include the sections relating to the control of works on a listed building (sections 6-8). In these circumstances, we find that it is not necessary for listed building consent to be granted for the works proposed by the applicant, but Scheduled Monument Consent is required.

Guardianship

8.25 Rowallan Castle along with some of the land which is within the scheduled area is also the subject of Deed of Guardianship. The extent of the land covered by the deed and the boundary of the scheduled area are shown on a drawing included in the Conservation Plan (CD14, figure 3). The Deed of Guardianship was entered into by a previous owner, Lord Rowallan, and the then Ministry of Works. The Deed was signed in 1950. Under the terms of the deed, Scottish Ministers have the responsibility for the preservation and maintenance of the scheduled monument. The deed also provides for a free right of access to the monument and the land within the guardianship area by representatives of Scottish Ministers, tradesmen and the public visiting the castle. Under the terms of the Deed, the owner also has a right of free access to the monument at all reasonable times.

8.26 Sections 12, 13 and 14 of the 1979 Act deal with the guardianship of ancient monuments. Section 12(1) allows an owner of an ancient monument, with the consent of Ministers, to constitute them by deed the guardian of the monument. Section 12(9), binds subsequent owners to such a deed. Under the terms of section 12(10) Ministers are prohibited from consenting to become guardians of any structure occupied as a dwelling house by any person other than a person employed as a caretaker thereof or his family.

8.27 Section 13(1) places a duty on Ministers to maintain any monument which is under their guardianship and section 13(2) gives Ministers full control and management of any monument which is under their guardianship. Section 13(3) gives Ministers power to do all such things as may be necessary for the maintenance of the monument and for the exercise by them of proper control and management with respect to the monument. Under the provisions of section 13(5) Ministers may at any reasonable time enter the site of a monument for the purpose of exercising any of their powers under section 13 and may authorise any other persons to exercise any of these powers on their behalf.

8.28 Section 14 deals with the termination of guardianship. Section 14(1) indicates that where Ministers have become guardians of any monument under the terms of the Act, they may by agreement made with the persons who are for the time being immediately affected by the operation of the guardianship deed: (a) exclude any part of the monument from guardianship; or (b) renounce guardianship. Section 14(3) states that Ministers may not

enter into an agreement to terminate guardianship unless they are satisfied that with respect to the monument in question that: (a) satisfactory arrangements have been made for ensuring its preservation after termination of the guardianship; or, (b) it is no longer practicable to preserve it.

8.29 In these circumstances, we find that Rowallan Castle is the subject of a Deed of Guardianship, under which Scottish Ministers have the responsibility for the preservation and maintenance of the scheduled monument. Furthermore, we find that the owner of a monument in guardianship is not entitled to terminate such a Deed unilaterally. Consequently, in this case, unless Scottish Ministers agree to exclude part, or all, of the monument from guardianship the responsibilities regarding the preservation and maintenance of the monument and the rights regarding rights of access to the property set out above will continue. We find that as the castle is both a scheduled ancient monument and the subject of a guardianship agreement it is afforded a high degree of statutory protection.

8.30 The issue of the future of the Guardianship of the monument and whether or not it will continue and under what terms, which were matters touched on at the inquiry, are the subject of a separate legal process and do not fall within the remit of the present inquiry which is concerned with an application for scheduled monument consent.

Scottish Government Policy on the Historic Environment

8.31 Scottish Ministers' policies for the protection, conservation and enhancement of the historic environment are contained in the Scottish Historic Environment Policy (SHEP) series. These documents, all of which have been published recently, provide the strategic and operational policy framework for the historic environment and set the parameters within which Historic Scotland is expected to undertake its functions and responsibilities. SHEP1: Scotland's Historic Environment (CD8) states that SHEPs have the same authority as the Scottish Planning Policy series and other Ministerial policy documents. Consequently, as up to date statements of government policy on matters relevant to a consideration of a scheduled monument application we find that significant weight should be attached to the policy guidance contained in the various SHEP documents which are relevant to this application.

SHEP1: Scotland's Historic Environment

8.32 SHEP1 (CD8) sets out the government's broad vision for the future of the historic environment and provides a context for the day-to-day operations of agencies such as Historic Scotland, local authorities and other bodies with an involvement in the issue. The SHEP also draws together a number of existing policy statements on the historic environment into a single document. It is indicated that SHEP1 formally supersedes the policy elements of *'The Stirling Charter'* and Historic Scotland's earlier policy document entitled *'Passed to the Future'*.

8.33 The document indicates that Scottish Ministers believe that the historic environment should be valued as an asset, rather than thought of as a barrier to development. It is emphasised that the protection of the historic environment is not about preventing change. The document states that Ministers believe that change in a dynamic environment should be managed intelligently and with understanding, to achieve the best outcome for the

historic environment and for the people of Scotland. Consequently, such decisions often have to recognise economic realities.

8.34 It is stated *inter alia* that the aims of Scottish Ministers' policy are that: actions taken in respect of Scotland's historic environment should secure its conservation and management for the benefit and enjoyment of present and future generations; there should be a presumption in favour of the preservation of individual historic assets; no historic asset should be lost or radically changed without adequate consideration of its significance and of the means available to manage and conserve it; Scotland's historic environment should be managed in a sustainable way, recognising that it is a social, cultural, economic and environmental resource of great value.

8.35 Consequently, the conservation and protection of Scotland's historic environment is expected to: be based upon sound knowledge and understanding of the particular building or monument; be founded on a full awareness and consideration of its cultural significance and all phases of its development; be carried out in accordance with a conservation plan; incur only the minimum degree of intervention considered appropriate for the type of building or monument; and, ensure that, where change is proposed, it is appropriate, properly planned and executed and where appropriate reversible.

SHEP2: Scheduling: Protecting Scotland's Nationally Important Monuments

8.36 This SHEP (CD9) deals with Scottish Ministers' policy on the scheduling of monuments. In the introduction it is noted that: "...it is only since the implementation of the *Ancient Monuments and Archaeological Areas Act 1979* that we have had formal criteria for the selection of sites and monuments of national importance." In addition it is stated that "*Scheduling a monument means that there are considerable restrictions as to what an owner or occupier can do to their site.*"

8.37 Reference is made to the fact that under the terms of the Act a structure in use as a dwelling house cannot be scheduled as an ancient monument. It is also indicated that the process of scheduling, 'de-scheduling' and the administration of scheduled monument consent applications is undertaken on behalf of Scottish Ministers by Historic Scotland.

8.38 The SHEP stresses that the sole legal criterion in the 1979 Act for inclusion in the Schedule is that a monument is of 'national importance'. The criteria and guidance which are to be used in the determination of what is considered to be of 'national importance' are set out in an Annex to the SHEP. It is indicated that the criteria in the SHEP are an updated version of those provided by the former Ancient Monuments Board for Scotland (AMBS) and that they have been adapted to reflect the principles of the *Stirling Charter* and the current best practice as derived from international conservation charters, such as the *Burra Charter*. It is noted that it was the *Burra Charter* which introduced the concept of 'cultural significance'. The SHEP states that it is the intrinsic value of the monument to the nation's heritage that is the primary consideration in deciding whether or not a site should be scheduled and in determining applications for scheduled monument consent.

8.39 The Annex to the SHEP indicates that the first step in considering whether a monument is of national importance is to identify and understand its 'cultural significance'. It is emphasised that this concept should not be confused with the establishment of 'national importance'. For a monument to be considered as being of national importance it must first have a particular cultural significance. This significance can relate to artistic;

archaeological; architectural; historic; traditional; aesthetic; scientific; or social considerations. It is noted that the cultural significance of a monument can be characterised by reference to one or more of the three groups of characteristics. The groups are: (i) Intrinsic: characteristics inherent in the monument; (ii) Contextual: characteristics relating to the monument's place in the landscape or in the body of existing knowledge; and, (iii) Associative: characteristics relating to the associations of the monument, including with current or past aesthetic preferences.

8.40 With respect to the intrinsic characteristics, the key factors are: the condition in which the monument has survived; the archaeological, scientific, technological or other interest or research potential of the monument; the apparent developmental sequence of the monument; and, the original or subsequent functions of the monument and its parts.

8.41 In terms of contextual characteristics the main factors are: the present rarity or representativeness of the monument in Scottish or regional terms; the relationship of the monument to other monuments of the same or related classes or periods. Turning to the associative characteristics, the main factors are: the historical, cultural and social influences that have affected the form and fabric of the monument; the aesthetic attributes of the monument; its significance in the national consciousness or to people who use or have used the monument, or descendants of such people; and, the associations the monument has with historical, traditional or artistic characters or events.

8.42 The annex also indicates that the primary purpose of scheduling is the preservation of, and control of works on, monuments, the survival of which is in the national interest. It is also stated that the provisions of the 1979 Act are considered to be consistent with the principles of minimal intervention to ensure that the characteristics that make a monument of national importance are preserved as far as possible in the state in which it has come down to us and is passed on to future generations in as unchanged a state as is practicable. It is stated that these principles will only be set aside in circumstances where wider considerations are deemed, on balance, to be of greater importance to the national interest, rather than to any sectoral or local interest.

8.43 The guidance indicates that the particular significance needed to define a monument as being of 'national' importance can be established in terms of one or more of the following: (a) its inherent capability or potential to make a significant addition to the understanding or appreciation of the past; (b) its retention of the structural, decorative or field characteristics of its kind to a marked degree; (c) its contribution, or the contribution of its class, to today's landscape and/or the historic landscape; (d) the quality and extent of any documentation or association that adds to the understanding of the monument or its context; (e) the diminution of the potential of a particular class or classes of monument to contribute to an understanding of the past, should the monument be lost or damaged; and, (f) its place in the national consciousness.

Scottish Historic Environment Policy 4: Scheduled Monument Consent

8.44 SHEP4 (HS23) sets out Scottish Ministers' policy for the control of works affecting scheduled monuments. It is indicated that Scheduled Monument Consent (SMC) is required for any works that would demolish, destroy, damage, remove, repair, alter or add to the monument or to carry out any flooding or tipping on the monument. In situations where monuments are both scheduled and listed, it is stated that only SMC is required for any works and the relevant parts of the listed buildings legislation do not apply.

8.45 Scottish Ministers' policy on scheduled monument consent is set out in Section 3 of the SHEP. Paragraph 3.2 indicates that Scottish Ministers include a monument in the Schedule to "*secure its long term legal protection in the national interest, in situ and as far as possible in the state it has come down to us.*" In addition, it is emphasised that scheduled monuments have an intrinsic value as monuments, not related to any concept of an active use.

8.46 The SHEP acknowledges that monuments are subject to decay and the threat of destruction, from natural and human causes. As a result, it is recognised that conservation work will normally be required to prolong the life of a monument. However, it is noted that there is a risk that such works can be so invasive that they can irreversibly modify the monument's character and affect the special interest or features that made it important in the first place. Consequently, it is stated in paragraph 3.4 that "*works on scheduled monuments should normally be the minimum level of intervention that is consistent with conserving what is culturally significant in a monument.*"

8.47 The SHEP explains that in these circumstances applications for scheduled monument consent have to be considered in terms of the effect the proposals would have on the cultural significance of the monument. It is noted that the greater the cultural significance of a monument, the stronger the case will be against intervention that is unnecessary for the long-term preservation of the monument. At paragraph 3.7 it is stated that extensive intervention will only be allowed "*where it is clearly necessary to secure the longer-term preservation of the monument, or where it will clearly generate public benefits of national importance which outweigh the impact on the national cultural significance of the monument.*" It is indicated that such 'public benefits' could relate for example to interventions which make public access to the monuments easier, or assist public understanding, or will produce economic benefits once the works are completed. Where change is proposed, it is emphasised that it should be carefully considered, sensitively designed, properly executed, and where appropriate in the context of an individual monument, reversible.

NPPG 5: Archaeology and Planning

8.48 Although NPPG5 (CD3) is directed primarily at the planning system it remains a statement of the Government's approach to the treatment of archaeological remains and scheduled monuments. Paragraph 3 states that as part of its intention to work towards sustainable development, the Government seeks to encourage the preservation of sites of historic and archaeological interest, so that they may be enjoyed today and passed on in good order to future generations. Paragraph 4 of the NPPG states that archaeological remains are a finite and non-renewable resource, which should be regarded as a part of the environment to be protected and managed. It identifies the primary policy objectives as preservation wherever feasible and that where this proves impossible, there should be proper recording and analysis.

8.49 The NPPG also indicates that it is the government's aim is to accommodate development without eroding environmental assets, including archaeological heritage. With regard to SAMs, the NPPG states that they are: "*of national importance and it is particularly important that they are preserved in situ and within an appropriate setting*". Consequently, proposals that would have an adverse effect on SAMs, or on the integrity of their settings, should not be permitted unless there are exceptional circumstances.

Basis for the consideration of an application for scheduled monument consent

8.50 Drawing the above matters together, we find the 1979 Act read with the policies of Scottish Ministers, as contained in the various SHEPs and the NPPG, indicate that the primary purpose of scheduling under the 1979 Act is the preservation and control of works on monuments, the survival of which is considered to be in the national interest. Furthermore, we find that a monument is included in the Schedule to secure its long term legal protection in the national interest, in situ and as far as possible in the state it has come down to us. We consider that the provisions of the 1979 Act and the policy guidance in the SHEPs are consistent with the principles of minimal intervention as set out various international charters and conventions, i.e. change as much as is necessary but as little as possible.

8.51 We also find that the policy of minimal intervention is intended to ensure that the cultural significance of a monument is retained and the characteristics that made it nationally important are preserved. Consequently, applications for scheduled monument consent require to be considered in terms of the effect the proposals would have on the cultural significance of the monument.

8.52 While conservation work is necessary to prolong the life of a monument, there is a risk that such works can be so invasive that they can irreversibly alter the monument's character and affect the special interest or features that made it important in the first place. In these circumstances, we find that extensive intervention should only be allowed where it is necessary to secure the longer-term preservation of the monument or in situations where it would clearly generate public benefits of national importance which outweigh the impact on the national cultural significance of the monument.

8.53 Ministerial policy also recognises that scheduled monuments have an intrinsic value as monuments in their own right, which is not related to any concept of an active use. BS7913: 1998 also recognises this situation by indicating that the preservation of scheduled ancient monuments, whether as complete or ruinous structures, can be justified on cultural grounds alone. In this context, we find that the concept of a property 'earning its keep' cannot be an overriding consideration in the determination of an application for scheduled monument consent.

Consideration of the current application

Planning history

8.54 Following a series of applications, a consolidated planning permission was granted in 2001 for the conversion of the Category A listed Rowallan House into a hotel with extensions and leisure facilities, a championship golf course, golf clubhouse and enabling development of 49 houses within the estate. Of these, the Category B listed Gardener's Cottage and greenhouses have been converted into a golf clubhouse with pro-shop and car park, the restoration of Rowallan House is largely complete and the golf course is due to open in the near future.

8.55 A previous application for SMC for the completion of the renovation of Rowallan Castle and its reinstatement into a habitable condition for the use of the owner, together with an application for planning permission to change the use of the castle and the

refurbishment of the building to form overnight accommodation for use in conjunction with the hotel, were respectively refused and dismissed on appeal in 2002 (AMH/90254/1/1 and P/PP/75/96/SF/35) (CD28).

Condition of the property at the time it was taken into Guardianship

8.56 On the basis of the evidence presented to the inquiry, the photographic records of the castle and other documents submitted by the parties we find that at the time the property was taken into guardianship it was in a poor condition requiring extensive works to ensure its continued existence. Photographs of the building taken between 1941 and 1968 (HS3) indicate the condition of the castle both before it was taken into care and at various stages prior to commencement of the repair works by the Ministry of Works and Historic Scotland. Similar photographs appear in Table A, Appendix 1 to the HS Monument Management Plan (HS1). The photographs reflect the concerns expressed by Lord Rowallan regarding the condition of the building when he made the initial request that the property be taken into care in 1943. An indication of the state of the property can also be gained from the Condition Survey undertaken by the MoW in 1943 (HS1, Table A, Appendix 1) and the correspondence between Lord Rowallan and the MoW leading up to the Deed of Guardianship in 1950 (see HS1, Table A, Appendix 2).

8.57 These documents indicate that although Rowallan Castle had retained most of its roof and many of its principle features, it was in a poor condition and in need of immediate attention. Following the signing of the Deed of Guardianship in 1950, a programme of remedial repair works was undertaken by the Ministry of Works and its successors. The various items of work undertaken can be seen in the chronological summary of the conservation works carried out to the castle between 1952 and 2001 (HS16). The works included the provision of a new roof; new windows; raking out and cement pointing of external stone walls; removal of some internal plasterwork and raking out and cement pointing of rubble stone walls; replacement of some beams, joists and floors; new partitions; provision of basic electrical, water and drainage services; removal of stone buttresses, new entrance steps, new fireplace in Room 22 and some re-plastering and decoration. We note that the cement re-pointing on the east elevation and entrance towers has also recently been replaced with lime mortar pointing.

8.58 While the applicant acknowledges that many of these works, especially those to the roofs, secured the preservation of the building, it is noted that a significant number of the interventions that were undertaken would not be regarded as being in accord with best practice today. At the inquiry, the parties agreed that some of the work that had been undertaken was not necessarily of a standard or to a specification that would be acceptable or consistent with current conservation practice. Furthermore, HS has acknowledged that certain aspects of the work on the monument would not necessarily now have been undertaken. However, as HS has indicated, the majority of the works undertaken were in line with accepted practices regarding the conservation of buildings which were applicable at the time. It was also emphasised that if this work had not been undertaken at that time it is likely that the castle would have fallen into an even worse state of repair and that the structure may not have survived until the present day.

8.59 HS considers that that the building in its present condition enables a better understanding of the structural changes which have occurred to the property over its long history. The applicant and his advisors disagree with this view and consider that judicious restoration offers the best way of re-creating the character of the castle at the peak of its

occupation in the 17th and 18th centuries. The applicant's proposed scheme for the property is not however intended to restore the building exactly to any precise period of its history.

8.60 Drawing these matters together, we find that given the poor condition of the monument when it was taken into guardianship the structure required a significant level of intervention and repair work to ensure its continued existence. While much of this work was immediately essential to make the building structurally sound and watertight, other work exceeded what would now be regarded as appropriate even although it may have been considered to be 'of its time'. We consider that the work that was undertaken by the Ministry of Works and its successors has not always been of the highest quality and may not have been carried out in a way that reflected the original construction methods and materials. We refer particularly to the widespread removal of historic plasterwork and paint finishes, and the consequent loss of architectural and archaeological material that would have better informed the investigation of the castle's history. As a result the authenticity of the monument has been adversely affected to a degree. We also find that certain of these works did not accord with the principle of minimal intervention which current best conservation practice requires.

8.61 We also note that HS acknowledges that there can be circumstances that would permit the sensitive reinstatement of lost features of a monument to enable a better understanding by the visiting public. This can be seen in the approach HS has adopted to the restoration of The Great Hall at Stirling Castle which has been returned to its former state, following years of inappropriate use as an army barracks.

The context of the proposals

8.62 The application differs from the previous inquiry proposals (CD28) in that it was submitted by Mr Campbell as the owner of the castle and not by one of his companies. If SMC is granted, the intention is that the renovated property would be used by a member of his family or, as was mooted at the inquiry, for self-catering accommodation managed by the Landmark Trust or a similar organisation.

8.63 The application was made on the basis that the cost of the proposed works would be borne by the applicant, as owner of the monument, and that no grant aid would be sought from HS.

8.64 The Deed of Guardianship (CD25) provides for a free right of access to Historic Scotland's representatives, workmen and others and to members of the public visiting the castle. Unfortunately, this has proved to be a contentious matter since 1990, primarily due to difficulties over vehicular access and the need for car parking provision. Visits to the castle by the public have therefore been infrequent. However, Historic Scotland has recently organised a series of tours to enable interested groups and individuals to visit the castle by arrangement with Mr Campbell. It is understood that these visits have been well attended. The ongoing issues relating to public access to the monument are matters that require to be resolved between the parties. These are matters that fall outwith the remit of the present inquiry.

8.65 The applicant's witnesses were fully aware of the principle of minimum intervention to historic buildings and monuments. However, they considered that a roofed structure of the quality found at Rowallan Castle deserved more than being left to a future as a 'museum'. They considered that it was therefore important to establish a sustainable use

for the building that would enable it to 'earn its keep'. Coupled with this it was their belief that the reinstatement of the principal rooms in the castle would provide a more interesting and better informed presentation of the history of the house for the visiting public.

8.66 For its part, while acknowledging that some of the previous interventions would not be considered good practice by today's standards, Historic Scotland rejected the view that all of the interventions should necessarily be reversed. In HS's opinion, the stripped out state of the building provided a wealth of archaeological and architectural evidence relating to the growth and development of the castle over the centuries. This evidence would largely be obscured if the works proposed by the applicant were undertaken and would not be available for viewing or investigation to future generations.

8.67 Although the photographic evidence from 1880 (CD14, page 105) and later indicates that the castle has been without harling for nearly 140 years, there is some evidence of lime harling in the space under the entrance stair (R12) and to a lesser extent within the courtyard. Professor McKean's evidence indicated that in his view lime harling would have been the usual treatment for rubble stone country seats of this type and there are many examples of it being restored, e.g. Fenton Tower and Castle of Park. It was also agreed that HS had restored the harling when it carried out work on the Great Hall at Stirling Castle. We therefore find that there is historic evidence to support the applicant's proposal to harl the exterior walls once the lime re-pointing has been carried out. Such a finish would provide a traditional and reversible protection that would enable the stonework and the fabric of the structure to breathe. This proposed form of treatment would also be consistent with the traditional finishes of other castles and country houses which are similar to Rowallan.

Assessment of significance

8.68 Although the witnesses on both sides held differing views in detail, there was broad agreement that Rowallan Castle was of sufficient cultural significance to be of national importance, thereby justifying its scheduled and listed status. We find that the following elements make a major contribution to that assessment:

Archaeological significance

8.69 With respect to the archaeological interest of the monument, the evidence of Bronze and Iron Age occupation of the tower area and the sub-surface archaeology around the building has yet to be properly explored. In addition, a 'castle' in various forms has been in existence at Rowallan since the 14th century and successive stages in the development on the site can be seen within the structural fabric of the property. Taken together, we find that these factors mean that the monument is of outstanding archaeological significance.

Architectural significance

8.70 While there was some debate at the inquiry regarding the relative 'rarity' of this type of property, there was general acknowledgement that Rowallan Castle was a fine example of a middle ranking Renaissance country seat of a relatively important land-owning family. Although the castle is not a particularly large building, the history of its development from the 13th century ruined tower house through the development of the southern and eastern ranges of the building in the 16th, 17th and 18th centuries is well preserved in the fabric of the property. This is primarily as a result of the remedial works that have been undertaken to

the monument since it was taken into care in 1950. In addition, its courtyard form is typical of castles and houses of its time and the property contains a range of interesting architectural features. These features provide evidence to suggest that the castle was finished to a high standard which was commensurate with the living standards of the time. Drawing these considerations together, we find that the property is of considerable architectural significance.

Aesthetic and Landscape significance

8.71 The castle lies in a picturesque setting on the edge of Carmel Water and it is located within the central landscaped core of the Rowallan Estate which is included within the Inventory of Historic Gardens and Designed Landscapes. This area contains 16th and 17th century gardens, a walled garden designed by Robert Lorimer with a 19th century summer house, glass houses and other outbuildings. Taking these matters together we find that the property has considerable aesthetic and landscape significance.

Social and Spiritual Significance

8.72 The long family history of occupation of the house by the Mures from the 13th to the 17th century is well documented and undisputed. Amongst the Mure family were Elizabeth Mure, the wife of King Robert II, the 18th century Campbells of Loudon and more recently the Corbetts, later the Lords Rowallan. In the mid 17th century the property was the home of Sir William Mure who was famous as a poet, writer and translator of religious texts. His son, also Sir William, had links with the Covenanters and he allowed them to use the gallery as the 'auld kirk' for worshiping and their meetings. More recently, the 2nd Lord Rowallan was Chief Scout and allowed the Scout Movement use of the estate. We find that the social and spiritual significance of the property is of moderate importance.

Ecological Significance

8.73 The castle is known to have winter roosts for bats and owls, while the veteran yew trees on the North side of the castle are thought to be from the 16th century. It is therefore of moderate ecological significance.

Conclusions on significance

8.74 In overall terms we find Rowallan Castle has a long and distinguished history as the country seat of a prominent family of the 3rd or 4th rank with royal connections. This historical background, coupled with its well documented archaeological and architectural history, together result in a property which is of considerable national and local significance. We therefore find that the castle continues to have considerable cultural significance.

Consideration of the works proposed in the application for Scheduled Monument Consent

General

8.75 The conservation and repair works set out in Appendix III of the Conservation Plan (CD14), seek to address what the applicant considers are the most urgent works required to prevent any further deterioration of the fabric and, where appropriate, correct some of the earlier inappropriate interventions. These proposed works form part of the overall

proposals for the restoration of the Castle rather than works to be carried out by the applicant regardless of the outcome of this inquiry.

External Walls

8.76 According to the earliest available photographs of Rowallan Castle, which are included in the CP (see page 4, Figure 131 of CD14), the building and not been harled since at least the late 19th century. However, it is acknowledged at the inquiry that this type of finish to the external walls was typical of country houses of this type, e.g. Fenton Tower and Castle of Park. We also accept that the raked and tamped joints in the exposed stonework are inappropriate, particularly where they have been pointed in cement mortar. HS has already replaced the cement pointing and repointed in lime mortar on the east elevation of the castle. Although the use of lime harling with lime wash would exceed the works necessary to restore the monument to its condition at the time it was taken into care, we consider that the use of this reversible finish would better preserve all the walls by protecting them against the elements and minimising the effects of damp by allowing them to breathe. It would however not reflect the finish of the building when it was taken into guardianship in 1950. It would also obscure evidence of the various phases in the construction and development of the castle.

External Joinery

8.77 The proposals in the CP to repair external doors and windows and replace like for like where necessary, although many are not original, would be consistent with an approach based on of minimal intervention. Similarly, the suggestion that where possible original windows which were in existence prior to 1950 should be identified and used as models for any replacements would also be in line with such an approach. It is noted that the fine carved door to the so called “woman house” (R26), which was removed and is now retained in the collection of the Museum for Scotland, is no longer available for reinstatement at the castle. As the opening from which it was taken is within the ruined northern block, we consider that there would be little purpose in replacing it with a replica.

Internal Joinery

8.78 Similarly, while much of the original panelling remains in store at Rowallan House and could be re-used as part of the proposals, we find that the removal of the fine carved screen in the entrance hall of Rowallan House to re-create the original panelled enclosure in Room 22, as surveyed by MacGibbon and Ross in 1882 (CP, page 93 Figure 116 (CD14), could prove problematic. It is likely that listed building consent would be needed to remove it and there would be a risk of damage to the panelling in the process. Bearing in mind the proposed location of this panelling in a room where it would be exposed to more wear and tear, we take the view that these panels would be best left where they are in Rowallan House. The option remains of using the other panels stored at Rowallan House to recreate a similar screen.

Front entrance stair

8.79 The stone treads of the steps on the front entrance to the property are not true replacements for the originals. However, the removal of the saw marks on the steps would probably be sufficient to overcome any need for their replacement as they will weather down in time.

Foul and surface water drainage in courtyard

8.80 The surface water drain in the courtyard currently runs west to east, dropping under the entrance stair before continuing to discharge into Carmel Water. We find that this arrangement should remain rather than be incorporated into a combined drain as proposed. As this surface water drain was installed recently, it should be possible to lay a foul water drain alongside it falling east to west. This would involve minimal intervention in this previously excavated area. We find that the use of a combined system would be inappropriate because of the risk that rainwater would dilute the contents of the septic tank and reduce its effectiveness which could lead to environmental health risks.

Roofs

8.81 While the slate roofs of the property have been restored and are in good condition, there are a few missing slates and suspect flashings which will need attention to ensure that the property remains wind and watertight.

Internal walls and ceilings

8.82 The proposals seek to restore the lime plaster finish in all the habitable rooms, except where original plaster remains and to research and replicate original paint finishes from the evidence submitted. Many of the ceiling/floor joists have been replaced and if the rooms were to be restored, a lath and lime plaster finish would be appropriate in most locations. However, much of this work would involve a greater degree of intervention than would be the minimum necessary for the preservation of the monument.

Internal finishes

8.83 The proposals in the Conservation Plan aim to replicate original paint, fabric, hangings and panelling wherever possible in order to recreate the habitable rooms as close as possible to their previous state. We find that this approach, coupled with the interpretation of its historical development in Room 29, may provide visitors with a more accurate impression of the castle when it was in use as a dwellinghouse. However, such an approach would obscure evidence of interest to archaeologists and others regarding the various stages in the development of the castle over the centuries and would exceed the minimum necessary for the preservation of the monument.

Design objectives, alterations and interventions

8.84 In our view, the aims and objectives of the policies set out in the Conservation Plan show that the applicant's advisors have a thorough knowledge of the monument, and that their research has resulted in a good understanding of the building along with the traditional construction techniques necessary to ensure historically accurate repairs and alterations.

Proposed treatment of individual rooms

Basement

Rooms 1, 2 and 3 - Old Basement Kitchen, Well and Closet.

8.85 The only work proposed in these rooms is to the walls, although it would also be necessary to drill holes in the 18th century kitchen ceiling to allow power cables up into the proposed kitchen island unit in the room above. There may also be the need to insulate the ceiling, but this could be achieved with minimal intervention and would be reversible with little damage. Care would need to be exercised in the closet where the proposed foul water drain in the courtyard would drop from above into the existing soil and vent pipe.

Rooms 4 and 5 - Stairs

8.86 This is the main stair to the laird's chamber (R46) and it is of considerable significance. However, the stair has already been largely rebuilt, apart from the lower stone treads. This stair is the most generous in the house and is the one that is most likely to be capable of meeting health and safety requirements. The other stair to Room 20, requires only minimal improvement to make it safe, but is much narrower and unlikely to be cable of satisfying health and safety requirements.

Rooms 6, 7, 8, 9 and 52 - Basement entrance, vaults and pend

8.87 No new works are proposed in these areas. However as HS has indicated they might be used for storage in the future. In these circumstances, some remedial replastering may be necessary. Such work would be unlikely to detract from the historic significance of these rooms.

Ground Floor

Room 16 – Stair between Rooms 17 and 20

8.88 We find that the works proposed in this confined space would be the minimum necessary to restore the original finishes and obscure inappropriate modern interventions.

Rooms 17 and 18 – Parlour and Toilet

8.89 Room 17 is considered to be to be the most complete room in the house. Rather than having to rely on old photographs, Room 17 could be accurately restored with interventions limited to small repairs to damaged areas of panelling, cornice etc. The 18th century floor visible below has been overlaid by later boards but even these are of some age. We share HS concerns over the proposed use as a modern kitchen. However, provided the island unit remains free-standing with only cable connections from below, and power sockets, extraction fan and lighting are low key and in keeping, there should be minimal impact on the actual fabric of the room. Even so, we find that the installation of 21st century facilities would be likely to detract from the character of this largely unspoiled room and would constitute more than the minimal level of intervention required to preserve the monument.

8.90 Room 18, apart from a blanked off gun loop in the north wall, is of little apparent significance and the proposed use as a utility area would be no less authentic than its present use as a toilet.

Room 19 – Closet

8.91 The use of this small room as a toilet would involve works that would obscure the archaeological evidence of former openings, corbels, tooling, plaster etc. It would be possible to record these features prior to the work commencing. It is also important that the original door and the 18th century cabinet in this room are retained. The proposals as contained in the conservation plan would retain these features. More details of the installation of the soil and vent pipe from above, as described at the inquiry, require to be submitted for approval.

Room 20 – Entrance Hall

8.92 The main proposal in this room involves the relocation of the door case in the centre of the wall in Room 21. It is also proposed to relay the paving stones where necessary. While we acknowledge that the door frame has been incorrectly re-assembled and the lugging to the architraves requires to be reset, we have found no substantive evidence that the door was ever in a central position on the wall. When the photographs of the room were taken in 1941 (see HS3) the door was in its present position. This also appears to have been its location when MacGibbon and Ross surveyed the house in 1892 (CD14, page 92). In terms of the other work proposed in this room, the replacement of plasterboard on the partition with lime plaster on laths would represent a more authentic finish and would more closely reflect what was there prior to 1950. As with all the rooms which the application proposes should be restored, the installation of electric room heaters will require very careful consideration to ensure that the essential character of the rooms is not compromised.

Room 21

8.93 This room contains important elements in the history of the castle, namely the fireplace, panelling, door case, panelled door to the stair (R25), paint residues on panelling and stone lintel. Unfortunately much of the restoration work carried out to date in this room has been poorly executed and inappropriate modern panelling on 2 walls has been installed. The removal of this panelling and the resetting of the lugging to the architrave round the fine door case on both sides (R20 and R21) would be beneficial to the restoration of the character of this room. However, we find that there is no historical justification for relocating this important door case in the centre of the wall.

Room 22

8.94 Room 22 is the only chamber on the ground floor where currently all the walls comprise exposed rubble stone. There is evidence that this room has been altered on a number of occasions over the centuries. It is unlikely that the carved panelling (see Figure 116 on page 93 of CD14), which now forms part of the entrance hall to the Category A listed Rowallan House, could be returned to this room without the grant of listed building consent. Relocation of the panelling to this room would also expose it to a greater risk of damage through wear and tear. The remaining sections of panelling which are stored at Rowallan House could be returned without any such consent. However, proposals to

replicate the panelling, if it proves impossible to replace the original panels, would compromise the authenticity of the restoration of the chamber. The installation of modern lighting and fixtures would also not serve to enhance the historic significance of this room. It is also noted that proposals for the restoration of this important room relate to only one of the many periods in the history of the castle.

Room 25 - Stair

8.95 This staircase together with stair to the gallery (Room 43) provides the primary vertical circulation in the house from the living rooms to the bedrooms above. There would clearly be problems making this access route comply with present day standards of safety, fire prevention and means of escape. It is possible that a relaxation to the Building Standards regarding this stair could be applied for. We consider that this stair is an essential and important element in the history of the castle. Consequently it should remain as far as possible in its present state with only the minimum of repair works being undertaken. The restrictions which the form of the staircase places on access need to be recognised. As this stair case forms an essential part of the character of the monument, the limitations on access will have to be taken into account no matter what future use is made of the property.

Room 29 – Chamber

8.96 The applicant proposes that this room should be used as the visitor interpretation room. Public access to this room, at prearranged times, would be taken from the courtyard. Earlier interventions have resulted in the walls being stripped, new floor joists for the room above being inserted, a new concrete floor being laid and the provision of a new door. The proposed works are limited to wall plastering while preserving areas of the existing plaster. Although the plastering would obscure some original evidence, the proposed works are unlikely to have any significant impact on the monument.

Room 30 – Entrance pend

8.97 The proposed works would be limited to re-pointing the wall masonry with lime mortar which would have a minimal impact on the building.

Rooms 31 & 32 – North Guardroom and Tower and Rooms 33 & 34 - South Guardroom and Tower

8.98 The proposals for these rooms involve re-pointing, the cleaning and repair of existing joinery and electrical work to install lighting. All of which would be likely to have little material impact on the property.

1st Floor

Rooms 35 and 36 –North Bed Chamber and Garderobe

8.99 This is one of the more important rooms in the castle and it contains some significant archaeological features. The room is to be used as a bedroom. The proposed works include the raking out of the cement mortar and re-pointing, the replastering of the walls and the plastering of the ceiling on lathes, the installation of new windows and a door and

electrical work. Concern has been expressed that some of these works may obscure evidence of the linkage between the East range and the old tower. The archaeological evidence in the room could be documented prior to any works commencing, but this may blur the distinction between what is authentic and of value to researchers and what is modern. The works proposed are not essential to the preservation of the monument.

8.100 The works proposed to Room 36, which is an adjoining garderobe, would have little impact on the monument. Further details of the proposed treatment of the wardrobe may require further consideration.

Rooms 37, 38, 39 and 40 – Turrets, Lobby and Corridor

8.101 Together these rooms are the lobby, corridor and turrets that would provide access from the main stair, (R25) to the bedrooms on the first floor. The existing areas of original plasterwork would be retained, but otherwise the walls would be replastered. New windows would be fitted and some electrical work is proposed. HS have indicated that it is unnecessary to do further work on the old pine door to Room 41, which has already been conserved. Significant structural evidence in Room 40 would be covered if the replastering goes ahead.

Room 41- Chamber

8.102 The new bathroom proposed for this room would involve a higher level of restoration, primarily to protect an important surviving section of stud and cob partition. Proposals to install a glazed panel in the bathroom to enable the interior of the cob partition to be viewed are considered inappropriate as the same effect could be achieved by installing a smaller framed window in the corridor (R38) with less risk to the fabric.

8.103 In addition, the installation of the new bathroom would require the provision of supply pipe-work and wastes along the north wall of the room at a low level and a 100mm hole being created through the external wall for the waste connection to a new external soil and vent pipe. While it may be possible to carryout these works with a minimum of intervention, we are not persuaded that it is appropriate for this important chamber to be used as a bathroom. If required, bathroom facilities could more appropriately be provided in Room 45, although this would involve the use of an awkward access via the stair at Room 25 and would not be without its own problems. Any future occupiers or users of the property would therefore have to accept that there are limitations imposed by the use of a historic building and they should not expect to have access to 21st century standards of accommodation.

Room 42

8.104 It is proposed that this room would be used as a bedroom. The room contains an existing timber bed recess with cupboards on either side. We find that this is an important feature which is worthy of preservation. However, the value of simply restoring the bed recess in isolation would be substantially reduced if the plasterwork on the adjacent walls and ceiling was not also reinstated. It is proposed that this room should be fully restored with new lime plaster to the walls and the ceiling, except where the original plaster survives. Electrical supplies for heating and lighting would also have to be installed. HS consider that these works could obscure structural evidence which could inform our understanding of how the castle has developed over the years.

Rooms 44 and 45 – Bed Chamber and Attic Space

8.105 According to the summary of conservation works (HS16, page 3), the partition that separates Rooms 44 and 45 was not erected until 1972, presumably by the MoW as part of the repair works carried out in the roof space. Notwithstanding the interesting stone fireplace with corbelled lintel, Room 44 is essentially a modern bedroom finished in plasterboard and skim coat plaster on which the proposals in the SMC application would have little impact.

8.106 The roof space beyond (Room 45) comprises raked out exposed stone walls and an essentially modern roof structure. The SMC application proposes that Room 45 be used as a bathroom and tank room. This would involve the erection of new partitions, forming an area for the water tanks, the provision of water supplies and providing a waste connection. HS has expressed concerns that this room lies directly above Rooms 19, 20 and 21 which contain significant original fabric which could be exposed to damage from water in the event of any failure of fittings in the bathroom and tank room. There is also an outstanding issue concerning our reservations expressed at the inquiry over the manner in which the wastes would connect to the soil and vent pipes and the proposed new drainage arrangements in the courtyard.

Rooms 46 and 47 – Bed Chamber and Closet

8.107 Room 46, like Room 17 below, is one of the most complete original rooms in the building and is in a reasonable condition. The proposal is that this room should be used as a bedroom. It is indicated that the works proposed for this room would involve the redecoration, without stripping, of the timber panels using matching paints from retrieved samples with the use of stretched fabric panels above the dado level. HS has concerns that even this minimal level of intervention would obscure surviving evidence of historic wall treatments. Its use as a bedroom was also questioned, as HS considered that this could have an adverse effect on the character of a room whose original use was unknown.

8.108 It is proposed that the adjoining closet (Room 47) should be used as a bathroom. As this room would be directly above the proposed utility room, water supplies and wastes could be installed with little disruption to the existing building fabric.

2nd Floor

Rooms 43, 49, 50 and 51- Stair, Gallery and Turrets

8.109 There are no specific proposals for the gallery and the north and south turrets, although possible replastering of the walls has been suggested. Precautions would however have to be taken not to disturb the bats evidence of which has been found in the turrets. Suggestions have been made that the gallery could be suitable for use for functions. However, we have concerns over this proposed use as (i) access to this space would have to be taken through the proposed habitable areas of the castle; and, (ii), it would be difficult to make this area and the stairs leading to it compliant with health and safety and fire escape regulations.

Overall assessment of the proposals

8.110 Drawing together all the above matters regarding the works proposed in the scheduled monument application, we find that the proposals would represent a significant level of intervention in the monument which would change the use of the property and lead to significant alterations to the internal and external appearance of the castle. The proposals to replace the cement based pointing with lime based mortar and to harl the exterior walls would provide an additional level of protection for the property and allow the structure to 'breathe' thus lowering moisture levels. However, while this work may reflect the original treatment of the exterior of the castle it would also significantly alter the appearance of the monument as it has existed for more than a hundred years. It would also obscure much of the evidence that is presently visible regarding the various stages in the construction and development of the monument.

8.111 As indicated previously, Rowallan Castle is one of the finest renaissance mansion houses in Scotland and a 'castle', in various forms, has existed on the site since the 14th century. In addition, the site has attracted settlement since the Iron Age. As a result, the scheduled monument demonstrates at least 7 identifiable periods of development, which show changing styles of domesticated and castellated architecture from the 13th to the 18th century. We consider that it constitutes one of the most complete castle complexes of its type to survive in such a well preserved state to the present day. Consequently, as indicated above, we find that the monument is of outstanding archaeological and historic significance. In these circumstances, we find that the undertaking of a programme of works that would cover and mask much of the structure of the building and valuable evidence which contributes to an understanding and appreciation of the development of the castle over the centuries would have an adverse effect on the archaeological and historic significance of the monument and its cultural value.

8.112 The programme of works set out in the SMC application is designed to allow the property to be used for residential purposes. While certain aspects of the proposed scheme of works may have benefits for the property in terms of improved protection from the elements and reduced moisture levels in the interior apartments, we find that the proposals do not constitute the minimum level of intervention necessary to ensure the preservation of the monument. On the basis of the site inspection and the evidence to the inquiry, we find that the monument is presently in a sound structural and physical condition. Furthermore, the property is under guardianship and care of Scottish Ministers who have the responsibility for ensuring its preservation. We have no evidence to suggest that Scottish Ministers are likely to neglect this duty or that the monument will be at risk from a lack of proper maintenance.

8.113 The proposal to restore the castle and use the property as some form of residential accommodation would require significant changes to be made to the interior of the building to provide additional bathrooms, toilet facilities, a modern kitchen, electrical lighting and power, water and drainage facilities and a heating system that can provide for modern standards of comfort. In addition, the replacement of the plasterwork in those rooms that have been taken back to the random rubble walls would obscure details of the construction methods used at the various stages in the development of the castle. We consider that the introduction of a residential use and the work required to provide accommodation that is suitable for modern day living would inevitably alter the character of the monument and affect its cultural significance.

8.114 We also have concerns that the increased intensity of use associated with the introduction of a permanent residential use could increase the risk of damage to delicate items, such as the door case in Room 21, the timber bed recess in Room 42 and the narrow stairways in the building, which are features that make an important contribution to an understanding of the history and cultural significance of the property.

8.115 It has been submitted on behalf of the applicant that much of the proposed work would be reversible should further investigations into the property be necessary. While it is accepted that this may technically be correct, we consider that it is highly unlikely in practice that harling or plasterwork would be removed in the future in order to allow further investigations and research on the history and archaeology of the castle.

8.116 It is acknowledged that the applicant's proposals for the castle have been well researched and have been carefully formulated. However, while the nature and extent of the works may be appropriate to the restoration of a listed building, which was not a scheduled monument, in this case the proposals do not represent the minimum level of intervention necessary to preserve Rowallan Castle as a scheduled ancient monument. We therefore find that the works proposed by the applicant exceed what is appropriate or necessary for the preservation of the monument.

8.117 Therefore, we find that the need for the extensive intervention proposed by the applicant has not been justified in terms of the requirements of the 1979 Act to preserve the monument. Similarly, the approach proposed in the SMC application would not be consistent with the policies of Scottish Ministers, as set out in the SHEPS, that work on scheduled monuments should normally be the minimum level of intervention that is consistent with conserving what is culturally significant in a monument.

8.118 We note that SHEP4 acknowledges that there can be exceptional circumstances in which the setting aside of an approach based on the principle of minimal intervention can be warranted. For example, more extensive works can on occasions be justified if they are likely to provide important information which would enable the long-term management and understanding of a monument to be improved. Reference was made in this context to the undertaking of more detailed archaeological investigations. However, it is not considered that this situation applies with respect to the SMC application for Rowallan.

8.119 More extensive interventions can sometimes also be justified if it is considered that they would secure the long-term future of the monument. As indicated above, Rowallan Castle is not considered to be at risk and its long term future is secured through the guardianship agreement which places responsibility on Scottish Ministers to ensure its preservation and maintenance. Reference was made at the inquiry to Fenton Tower, in East Lothian, which has been restored to residential use from a ruinous state. However, we consider that there are clear differences between that case and the situation at Rowallan. In the case of Fenton Tower, the structure was in such a dilapidated condition that the choice was either to allow the re-roofing and adaptation of the building for residential use or to accept the probability that the monument would be lost completely. In the case of Fenton Tower, the restoration of the building was therefore considered to be the best way of ensuring its continued existence. In addition, the situation at Fenton Tower is somewhat different in that although the structure is a scheduled monument, it is not under guardianship. Given the different circumstances involved, we find that the example of Fenton Tower does not provide a precedent or justification for granting SMC in this case.

8.120 Comparisons were also made with the restoration and refurbishment of the Great Hall at Stirling Castle. It was suggested by the applicant that this was an example of HS operating dual standards with respect to the treatment of its own properties and those in private ownership. However, we consider that quite different circumstances exist in the two cases. In the case of Stirling Castle, the restoration of the Great Hall involved the removal of barrack accommodation that had been declared redundant by the army and its replacement with improved visitor facilities in a location that represents one of Scotland's major tourist attractions. The restoration at Stirling Castle is therefore justified on the grounds that the public benefits of the work were of national importance and that these benefits significantly outweighed the case for leaving the monument in its previous, but non-original, form. In the case of Rowallan, no evidence was provided in support of the view that the works proposed would deliver public benefits in terms of improved visitor facilities or that any other considerations were of such significance that they would warrant setting aside the national interest in preserving the monument.

8.121 Furthermore, although the applicant has agreed to provide a limited right of public access to the monument (a minimum of 25 days per year) if the SMC application is approved, there is no guarantee that this arrangement would necessarily lead to a material increase in the number of visitors to the castle in comparison to the existing situation where HS make arrangements for interested groups to visit the property. It is also considered that the disputes with the owner of the castle over access and parking have hindered efforts by HS to improve public access to the property. In addition, although some members of the public may prefer the experience of visiting the castle in its restored form with modern facilities and reinstated rooms, others may be disappointed that their understanding and enjoyment of an ancient monument has been diminished by its changed character, modern interventions and a lack of authenticity.

9. REASONING AND RECOMMENDATIONS

9.1 Rowallan Castle is a scheduled ancient monument under the terms of the Ancient Monuments and Archaeological Areas Act 1979. The castle is also subject to a Deed of Guardianship, which places the responsibility for the maintenance and preservation of the property in the hands of Scottish Ministers, through the Properties in Care division of Historic Scotland. As a scheduled ancient monument the castle is recognised as being of national importance. In addition, scheduling places considerable restrictions on what an owner or occupier can do to the monument.

9.2 The Act contains no specific guidance on the basis for the determination of applications for scheduled monument consent. Furthermore, at the time the Act came in to force no guidance or advice was issued by the Government to explain how the legislation was to be implemented. More recently, Scottish Ministers have issued a series of policy statements regarding the historic environment. One of these documents, Scottish Historic Environment Policy 4: Scheduled Monument Consent (SHEP4), sets out Scottish Ministers' policy for the control of works affecting scheduled monuments, i.e. scheduled monument consent. As recent statements of Scottish Ministers' policy, we consider that significant weight should be attached to the policy provisions of the SHEP documents in the consideration of an application for scheduled monument consent.

9.3 In terms of the 1979 Act we have found that the regulation and control of works affecting a scheduled ancient monument are directed at the purposes for which the Act provides. That is to say the investigation, preservation and recording of matters of archaeological and historic interest. 'Preservation' in this context is taken to mean maintaining the fabric of a property in its existing state and retarding deterioration. It also means changing only where necessary to prevent damage or decay, but otherwise leaving *in situ* in the existing state. We have also found that the provisions of the Act are consistent with the principles of minimal intervention set out in various international charters and conventions.

9.4 With respect to Scottish Ministers' policy on scheduled monuments, SHEP4 states that the purpose of including a monument in the Schedule is to secure its long term legal protection in the national interest, *in situ*, and as far as possible in the state in which it has come down to us. It is the value of a monument to the nation's heritage that is the primary consideration in the determination of applications for scheduled monument consent. The policy guidance also states that work on scheduled monuments should therefore normally be the minimum level of intervention that is consistent with conserving what is culturally significant in a monument.

9.5 Accordingly, we consider that the determining issues in the consideration of this application are whether:

- (i) the works proposed in the application would serve to preserve the monument *in situ*;
- (ii) the works would constitute the minimum level of intervention consistent with the conservation of the cultural heritage of the monument; and,
- (iii) there are any reasons of national importance that would warrant the setting aside of these principles.

9.6 With respect to the first issue, in the application form for scheduled monument consent, the description of the works and their purposes is stated to be the conservation and restoration of the building to ensure habitable use. The works proposed are therefore designed to enable the building to be used for residential purposes. In pursuit of this objective, substantial alterations are proposed to the exterior and interior fabric of the property to create accommodation and facilities that would satisfy the requirements of modern living. We have found that the extent and nature of these modifications would change the type and level of use of the property and alter its character. However, the primary purpose of scheduling a monument under the 1979 Act is to secure its long term preservation. As stated above, 'preservation' in this context is taken to mean maintaining the fabric of a property in its existing state. While the proposed scheme of works, if undertaken, would ensure that the property was structurally sound and maintained in a good condition, in altering its use and appearance the works would also materially change the existing state of the building and affect its character. Consequently, we conclude that the proposed works would not serve to preserve the monument in situ.

9.7 Turning to the second issue, we have found that the provisions of the 1979 Act and Scottish Ministers' policy on the handling of scheduled monument consent applications, as contained in SHEP4, are consistent with the overall thrust of the guidance and advice on best conservation practice contained in a number of international conventions and charters. One of the key principles of this guidance, which is reflected in ministerial policy, is the concept that any work carried out on a monument should normally be the minimum level of intervention that is consistent with conserving what is culturally significant in a monument. In this case, the works proposed in the application involve making substantial changes to the exterior appearance and internal accommodation of the monument. The change of use to provide residential accommodation requires the provision of bathrooms, a modern kitchen, significantly enhanced electric power and lighting, plumbing and drainage services, the installation of a heating system and the extensive replastering of the internal wall in a number of rooms. The works proposed are therefore extensive and would alter that character and appearance of the monument.

9.8 We have found that the monument has considerable archaeology, architectural and historic significance which contribute significantly to its cultural value. The undertaking of works that would obscure large parts of the exterior and interior surfaces of the building would deny access to evidence which could be of value to archaeologists and others in the future regarding the construction and development of the castle over the centuries. Consequently, we conclude that the works associated with the introduction of a residential use and the provision of a level of accommodation that is suitable for modern day living would inevitably change the character of the monument and detract from its cultural significance in terms of its historic and archaeological interests. While technically it may be possible to remove the work associated with the replastering and harling of the building, we conclude that it is highly unlikely in practice that this would happen in the future in order to allow further investigations and research on the history and archaeology of the castle. On the second issue, we therefore conclude that the works proposed do not constitute the minimum level of intervention consistent with the conservation of the cultural heritage of the monument.

9.9 In terms of the third issue, Scottish Ministers' policy on scheduled monument consent recognises that there can be exceptional circumstances in which the setting aside of an approach based on the principle of minimal intervention can be justified. This is demonstrated by the use of the word 'normally' with respect to the minimum level of

intervention that will be permitted. However, for the reasons set out in paragraphs 8.118 to 8.120 we conclude that there are no circumstances applicable to the present application that would justify exceptional treatment in this case. Furthermore, as indicated in the findings of fact (at 8.53), we conclude that there is no requirement for a scheduled monument to have an economic use or to 'earn its keep'. The preservation of a scheduled ancient monument, whether as complete or ruinous structures, can be justified on cultural grounds alone.

Recommendation

9.10 Accordingly, we recommend that the application for Scheduled Monument Consent for works at Rowallan Castle to conserve and restore the building to ensure habitable use (reference AMH/90254/1) should be refused.

Recommendation regarding conditions if scheduled monument consent is granted

9.11 If however Scottish Ministers do not accept the above recommendation and decide to grant scheduled monument consent, we recommend that the conditions set out in Appendix 1 should be imposed. In the main, these conditions reflect the consolidated version of the conditions agreed by Historic Scotland and the applicant. However, in addition to the agreed conditions we consider that it would be appropriate to include additional conditions to cover the following matters: (i) A requirement that the scheduled monument should be open to the public on a minimum of 25 days per year. The issue of ensuring a reasonable level of public access to the property was discussed at the inquiry and the suggested minimum number of days is in line with the proposal put forward by the applicant. (ii) In support of this objective, the need for arrangements to be made for the provision a reasonable number of car parking spaces. Given the nature of the property this should be done outwith the boundary walls of the monument. In addition, provision should be made for parties visiting the monument by coach. In this case, the provision should be made closer to the public road and beyond the gatehouse to the estate. (iii) A requirement that Historic Scotland should be consulted regarding any detailed works affecting the monument in connection with the installation of heating and ventilation water supplies and drainage provision, fire protection and access for the disabled.

IAIN G LUMSDEN

JOHN H MARTIN

REPORTERS

17 October 2008

APPENDIX 1

CONDITIONS WHICH SHOULD BE APPLIED IF SCOTTISH MINISTERS GRANT SCHEDULED MONUMENT CONSENT

Condition 1

Prior to the commencement of any of the works hereby consented (the works), the applicant shall submit for the prior written approval of Historic Scotland (which approval shall not be unreasonably withheld or delayed), a Programme of Works (the Programme). None of the works shall commence until Historic Scotland has given the aforementioned approval.

Reason: to ensure that the work pursuant to the Scheduled Monument Consent is carried out to a satisfactory quality, in a manner and to a timescale agreeable to Historic Scotland.

Condition 2

The Programme shall detail:

- (a) The works to be undertaken, in terms of the Schedule Monument Consent, to include:
 - 1. Detailed drawings of the works;
 - 2. Written specifications for the materials to be used in the course of the works;
 - 3. Detailed method statements for the carrying out of the works;
- (b) A written programme of archaeological work, to address both the buried archaeology and the archaeology and recording of the castle structure, and which shall provide for the preparation and production of:
 - 1. Project design for fieldwork
 - 2. A data Structure Report
 - 3. A costed Archaeological Assessment
 - 4. Project design for post-excavation, which shall comply with the Royal Commission on Ancient and Historical Monuments of Scotland's Guidelines for Archiving of Archaeological Projects;
- (c) Means of protecting archaeological deposits on site;
- (d) The phases in which the works in (a) are to be undertaken;
- (e) A timetable, to be submitted no less than four weeks before the works are due to commence, detailing each phase and the works comprised within those phases.

Reason: to ensure that the works are carried out with the minimum disturbance to the site.

Condition 3

Any changes to the Programme shall be notified to Historic Scotland as and when such changes are proposed, but shall not be permitted or carried out until they have been authorised in writing by Historic Scotland, which authorisation shall be notified to the applicant or his agents.

Reason: to enable the approval by Historic Scotland for the execution and timing of the works and to allow monitoring of and adherence to the Programme.

Condition 4

Historic Scotland, or any person authorised or appointed by them, shall have a right of access to the work at any time. Such access shall include the right to enter upon the Rowallan Estate and Rowallan Castle, whether on foot or by vehicle, and the right to park in the vicinity of the Castle during such visits.

Reason: to enable access for Historic Scotland in order to ensure compliance with the approved Programme of Works supplied for their execution.

Condition 5

Notwithstanding any relaxations that may be applied for, full details of all the works to which the Building Standards apply shall be submitted to and approved by Historic Scotland prior to the commencement of the works.

Such details shall include:

- Heating and ventilation
- Hot & cold water supply
- Foul and surface water drainage
- Fire protection and means of escape
- Access for the disabled (where appropriate)

Reason: to ensure that Historic Scotland are consulted on any detailed works affecting the monument.

Condition 6

The monument shall be available for public visits by arrangement with Historic Scotland for a minimum of 25 days per year, and on any other days that might be agreed with the owner, with access to the guardianship area (edged in blue) and the Interpretation Room 29 available to escorted groups at other reasonable times.

Reason: to comply with the requirement for the Scheduled Ancient Monument and Properties in Care to be open to the public.

Condition 7

On public open days, access shall be taken via the gatehouse at the entrance to the estate. Provision should be made available for the parking for up to 6 cars on the monument side of the bridge that crosses the Carmel Water, but this should not be within the northern boundary wall of the monument. If required, arrangements should also be made for overflow parking on the track to the east of the access road to the castle, and east of the bridge. Coaches should not enter the estate and these vehicles should park on the main road side of the gatehouse with visitors walking to, or being transported by car to, the monument Subject to the prior agreement of the owner, mini buses may be used to transport visitors from the gatehouse.

Reason: to ensure a reasonable level of public access and parking on open days.

LIST OF DOCUMENTS

1. CORE DOCUMENTS

Legislation and Published Policy

- CD1 Ancient Monuments and Archaeological Areas Act 1979
- CD2 Planning (Listed Buildings and Conservation Areas)(Scotland) Act1979
- CD3 National Planning Policy 5: Archaeology and Planning
- CD4 BS 7913: Guide to the Principles of Conservation of Historic Buildings (1998)
- CD5 The Stirling Charter
- CD6 Passed to the Future: Historic Scotland's policy for sustainable management of the historic environment (2001)
- CD7 Conservation of Architectural Ancient Monuments: Guidance and Principles (2001)
- CD8 Scottish Historic Environment Policy 1 (SHEP1): Scotland's Historic Environment (2007)
- CD9 Scottish Historic Environment Policy 2 (SHEP2): Scheduling: Protecting Scotland's Nationally Important Monuments (2006)

Consultation Documents

- CD10 Scottish Historic Environment Policy: Scheduled Monument Consent: Consultation Paper
- CD11 Scottish Historic Environment Policy: Properties in care of Scottish Ministers

International Charters

- CD12 Burra Charter

The current application

- CD13 Scheduled Monuments Consent Application: 31 August 2006
- CD14 Conservation Plan prepared by Simpson and Brown, Architects (3 volumes)
- CD15 Historic Scotland Board Paper: 26 August 2007
- CD16 Historic Scotland published Minute: 26 April 2007

CD17 Letter from Historic Scotland dated 10 May 2007

Historic Environment Advisory Council for Scotland (HEACS)

CD18 Report and recommendations on whether there is a need to review heritage protection legislation in Scotland: August 2006

CD19 Report and recommendations on the availability of adequate and appropriate traditional materials and professional and craft skills: August 2006

CD20 Report and recommendations on the role of local authorities in conserving the historic environment: July 2006

CD21 Report and recommendations on the criteria that should be used to assess whether a property should be taken into state care: July 2006

CD22 Report and recommendations on the need for a heritage audit in Scotland and how to take it forward: October 2004

CD23 Written responses from the Minister for Europe, External Affairs and Culture, Linda Fabiani, to the five HEACS reports of 2006

CD24 House of Commons Culture, Media and Sport Committee – Protecting and Preserving our Heritage – Third Report of Session 2005-6 volume 1: July 2006

Miscellaneous

CD25 Deed of Guardianship

CD26 Inventory of Designed Landscapes

CD27 Scheduled Monument Consent Application: 27 November 2000

CD28 Report of Conjoined Planning Inquiry: June – August 2002

2. APPLICANT'S DOCUMENTS

APP1 Extract from AMBS 1985 Report

APP2 AMBS Furnishings and Plinishings within Monuments 1985

APP3 Minutes of joint meeting between AMBS and HBC: 23 July 1985

APP4 Minutes of joint meeting between AMBS and HBC: 27 June 1986

APP5 Listing and Scheduling: June 1986

APP6 The AM Inspectorate approach to the Preservation of Monuments: 1992

APP7 AMBS Minutes: 3 December 1993

- APP8 The Preservation of Ancient Monuments: 1994
- APP9 The Portfolio of Monuments in Care: HS Feb 2000 (AMBS (00) page 3)
- APP10 Notice advertising a Seminar on Tower Houses organised by the Society of Antiquaries of Scotland: 23 April 1998
- APP11 "The Restoration of Tower Houses"
- APP12 Contemporary Summary of discussion at a second seminar on Tower Houses organised by the Society of Antiquaries of Scotland: 8 December 1998
- APP13 Commentary on the two seminars made by Professor Michael Lynch: 26 January 2008
- APP14 Images of Rowallan
- APP15 List of Historic Scotland's Non-executive Directors, downloaded from HS website: 11 March 2008
- APP16 Simpson & Brown's Newsletters 2007 and 2007
- APP17 Simpson & Brown – Practice Profile
- APP18 Simpson & Brown – Practice Sheets
- APP19 Simpson & Brown's letter and enclosures: 3 April 2004
- APP20 Historic Scotland's (Mr Tabraham) letter to Mr Campbell: 6 September 1994
- APP21 Letter from Lord Rowallan to Mr N Campbell, dated 21 May 2002
- APP22 Letter from Lord Rowallan to Mr Campbell, dated 12 March 1996

3. HISTORIC SCOTLAND'S DOCUMENTS

- HS1 Rowallan Castle Monument Management Plan: 2002
- HS2 Rowallan Castle Conservation Plan: 2000
- HS3 Photos of Rowallan Castle
- HS4 Rowallan Castle – Sale particulars
- HS5 Report on Rowallan Castle PLI: 2000 (Vols.1 & 2)
- HS6 File note of site visit by applicant and HS: 7 February 2007
- HS7 HS Memo regarding the SMC application: 22 February 2007

- HS8 Response from HS PIC team to SMC application
- HS9 HS guidance note on dealing with PIC casework
- HS10 Valletta Convention: 1992
- HS11 Report of Inspector of Ancient Monuments: 1912
- HS12 HS Corporate Plan: 2005/08
- HS13 Floor Plans of Rowallan Castle (with Room Numbers)
- HS14 Statement of Cultural Significance
- HS15 HS Listing of Property
- HS16 Summary of conservation works to Rowallan Castle
- HS17Pre=application correspondence with Applicant
- HS18 Ancient Monuments - Ministry of works List: 1955
- HS19 Conservation Management Plans – Heritage Lottery guidance
- HS20 Venice Charter: 1964
- HS21 HS Report: October 2005
- HS22 Properties in Care Guidance Note 19
- HS23 Scottish Historic Environment Policy 4 (SHEP4): Scheduled Monument Consent
- HS24 Scottish Historic Environment Policy 5 (SHEP5): Properties in Care of Scottish Ministers
- HS25 Statutory Instrument 1981, No.1467: Ancient Monuments
- HS26 Castle Tioram Inquiry Report

Historic Scotland's Supplementary Documents (in relation to rebuttal precognition)

Services

- HSRP1 Fax from Scottish Power to HS: 23 July 1998
- HSRP2 Letter from HS to Scottish Power: 23 July 1998
- HSRP3 Fax from Scottish Power to HS: 31 July 1998
- HSRP4 Letter from HS to Scottish Power: 5 August 1998

HSRP5 Letter from HS to Scottish Power: 10 August 1998

HSRP6 Letter from Scottish Office to Scottish Power: 3 December 1998

HSRP7 Letter from Scottish Power to Scottish Office: 7 December 1998

Planning permissions for Historic Scotland's use

HSRP8 Town and Country Planning (Application of Subordinate Legislation to the Crown)(Scotland) Order 2006

Public Access

HSRP9 Letter from Peter Bromley to Niall Campbell: 13 December 2006

HSRP10. Email thread between Peter Bromley and Niall Campbell: December 2006

HSRP11 Letter from Peter Bromley to Niall Campbell: 1 February 2007

HSRP12 Letter from Doreen Grove to James Murdoch: 13 February 2007

HSRP13 Letter from Doreen Grove to Bill Stewart: 13 February 2007

HSRP14 Letter from Doreen Grove to Stuart Adams: 13 February 2007

HSRP15 Letter from Peter Bromley to Niall Campbell: 14 August 2007

HSRP16 Letter from Peter Bromley to Niall Campbell: 4 September 2007

HSRP17 Letter from Peter Bromley to Niall Campbell: 29 November 2007

HSRP18 Duffield Morgan v. Scottish Ministers – Declarator: 7 March 2008

HSRP19 Letter from Peter Bromley (with plan) to Niall Campbell: 18 March 2008

Miscellaneous

HSRP20 Memorandum from Public Appointments and Public Bodies Etc (Scotland) Bill: 2008

HSRP21 Hansard extract on progress of the Ancient Monuments and Archaeological Areas Act 1979

HSRP22 Extract from Ancient Monuments in Scotland: 31 December 1976