

2. THE LEGAL ISSUES OF ALTERNATIVE USE

Alternative use may provide a major opportunity to help ensure the conservation of historic lighthouses. However, the opportunity needs to be balanced against the risk, taking into account legal and financial considerations. This includes checking that the lighthouse authority or other body has the necessary legal powers to undertake alternative use activities alongside its normal activities for the provision of marine aids to navigation. The relevant legal issues generally fall into one of four distinct areas:

- Constitutional – the organisation’s legal status and powers.
- Contractual - regarding ownership, title and access rights in respect of the properties.
- Duty of care to people, property and the environment.
- Compliance with public laws and codes of practice, including environmental and heritage designations and planning consents.

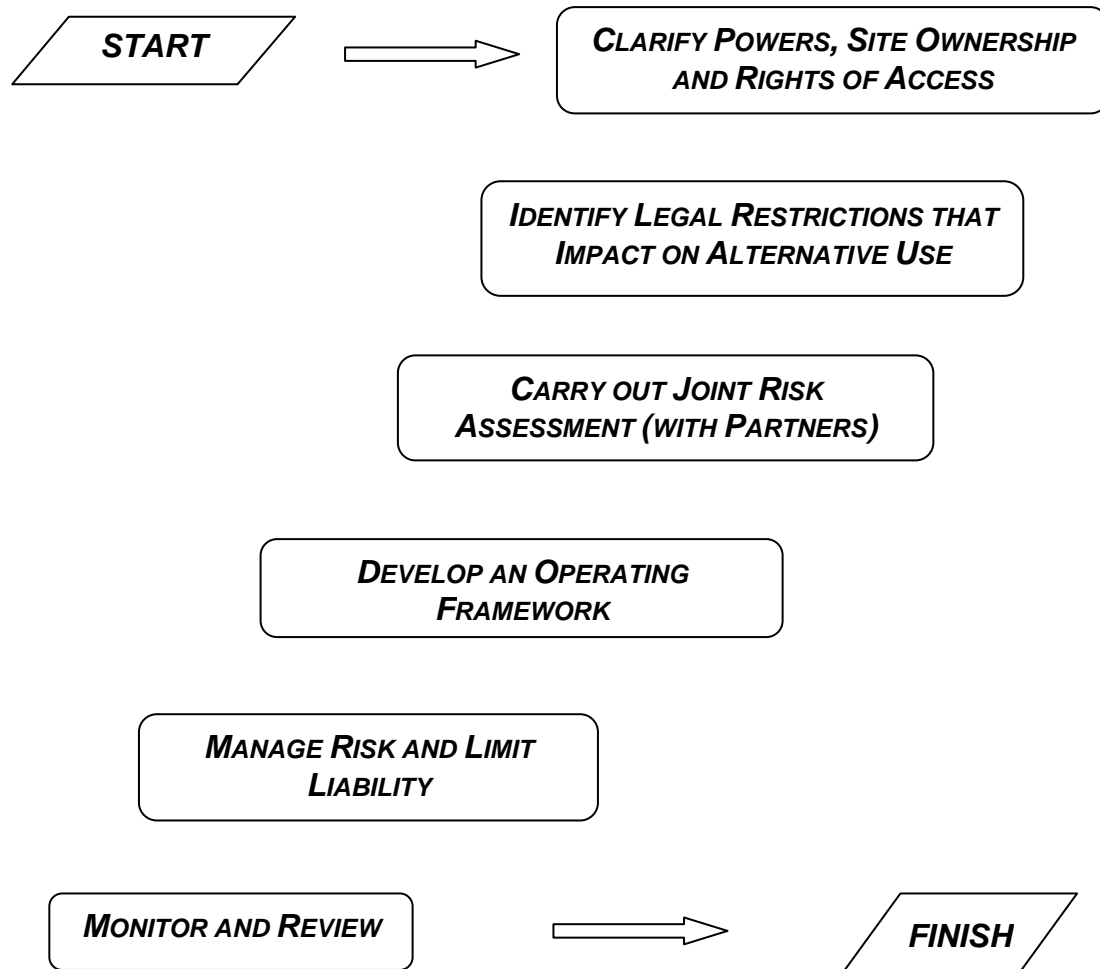
These are dealt with in sequence in the sections that follow, to show how the risks can be managed once a property has been identified as having potential for alternative use. However, it is important to keep in mind the wider aims of the lighthouse authority or heritage body, which may be to:

- *Conserve the properties (and associated equipment) as:*
 - *a platform for the effective operation of aids to navigation requirements.*
 - *historic structures of national or local importance.*
 - *A natural and distinct feature of the landscape environment.*
- *Reduce costs by adopting a wider scheme for effective management of the station, including measures for the transfer of certain risks and liabilities and the development of suitable schemes for revenue generation.*
- *Enable safe access for public enjoyment and education.*

To a greater or lesser extent, an understanding of the legal issues is required to enable appropriate safeguards to be established for the achievement of these aims. The purpose of this chapter therefore is to provide outline guidance to the main areas of risk, responsibility and liability and to the steps that can be taken to reduce exposure to liabilities.

PROFESSIONAL ADVICE SHOULD ALWAYS BE SOUGHT TO
VALIDATE ANY ASSUMPTIONS MADE

The Legal Issues of Alternative Use – Consider the following stages :



2.1 CLARIFY POWERS SITE OWNERSHIP AND RIGHTS OF ACCESS

2.1.1 Organisational Powers, Rights and Duties

Any organisation thinking about implementing schemes for the alternative use of historic lighthouses should consider carefully their foundation and purpose, scope of responsibility and the relevant legal jurisdiction in which they operate. The functions of a public body may be quite limited and it may face serious consequences if found acting outside its powers. However, partnerships between public departments - such as lighthouse authorities and heritage bodies – may produce a sound legal basis on which to proceed without the risk of being challenged.

Most public organisations have a constitution, usually laid down in the public law or governmental policy of the relevant state, defining their purpose and how their activities and resources will be financed. International charters or conventions may also have a bearing on what activities should be carried out by the relevant public departments of a signatory state. Other sources clarifying the scope of activity of the relevant authority may include, for example:

- Statements of strategy, policy, procedure or good practice.
- Custom and practice over time.
- Common law precedents.
- Service level agreements.

International charters or conventions on relevant heritage issues place clear obligations on signatory states e.g. Venice Charter 1964, European Charter of the Architectural Heritage 1975, Declaration of ICOMOS – Stockholm 1998, International Cultural Tourism Charter, ICOMOS, Mexico 1999.

Even if an organisation has the necessary powers, a lack of resources - human (including the right skills) and financial - may limit its capability to deliver sustainable solutions. Such factors should always be taken into account in deciding the best course of action.

*Is alternative use within the scope of the lighthouse authority's powers
AND is it something they can do alone?
OR through a third party – by disposal or leasing?
OR by cooperation between Government Departments?*

2.1.2 *Site ownership and rights of access*

Establish the ownership of the lighthouse property and clarify existing legal obligations associated with ownership, such as:

- rights of access including those acquired by use over time;
- restrictive covenants;
- rights of re-purchase in favour of any former owner;
- existing use by third parties e.g. leases, licences, access for services.

2.1.3 *Rights of third parties*

Check the ownership of adjoining land and clarify any rights of shared access. Ensure that neighbouring landowners will not be adversely affected by any alternative use of the lighthouse property. Consult with all those who may have an interest in the property or its future development as early as possible in the process.

Are there any local residents likely to object to wider use of the lighthouse property – particularly if it affects their outlook or privacy?

2.2 IDENTIFY LEGAL RESTRICTIONS THAT IMPACT ON ALTERNATIVE USE

2.2.1 *Public Laws*

A lighthouse authority's powers, duties and rights may be modified by the general public laws of the relevant country, province or municipality:

- Health and safety (see Chapter 4 on Making a Lighthouse Visit Safer).
- Regulations e.g. planning (including heritage) and building, disability discrimination.
- Environmental duties e.g. pollution cleansing, noise reduction, waste disposal and discharge.
- Consents e.g. catering, retailing and cinema.

The effect of these public laws should be established when developing an outline scheme for alternative use. The scheme should be modified, as appropriate, and the necessary consents applied for before commencing implementation. Consultation with heritage bodies and planning consents for changes to historic lighthouses are especially important to ensure that the scheme is adapted to the lighthouse rather than being driven solely by commercial considerations. Particular attention should be given to the possible constraints listed in the paragraphs below.

2.2.1.1 *Planning regulations*

Planning and building regulations may apply to schemes for alternative use of lighthouse stations in the following areas:

- Alterations to, or change of use of, the property.
- Transport infrastructure including highways, footpaths and parking.
- Building construction standards.

Failure to obtain the necessary consents could lead to fines or enforcement orders and consequent interruption, or even termination, of the venture.

2.2.1.2 *Heritage conservation*

Lighthouse authorities have duties in respect of stations included on registers of buildings listed as having historic or architectural significance. It may not be immediately apparent from the registration entry, as opposed to the closer scrutiny of the regulations that similar rules could apply to adjacent buildings within the area of the main lighthouse. If an application for a heritage grant is being considered then check the conditions laid down by the authorities offering grants, as there may be a liability to pay back a significant proportion of the money granted if the venture fails or the property is disposed of in the future.

2.2.1.3 *Safety*

Apart from general health and safety requirements, which should be clarified, the remoteness of the station from the nearest community and public services may be a major factor in deciding whether to proceed with alternative use. For example, the provision of hot and cold running water, toilets and related drainage and first aid facilities might be a legal requirement for any visitor attraction.

2.2.1.4 *Environmental*

International concerns about the environment have led to provisions in the public laws of many countries. As a result, organisations, landowners and others have a clear duty to adopt a cleaner and more caring approach and take remedial action for any previous harm done. In particular, lighthouse authorities, in carrying out their normal operations and any alternative use, may be forced to consider:

Inishtearaght Lighthouse, Ireland converted to solar power, which is environmentally friendly. This does not encourage public access due to the very limited non-essential power for lighting and heating for building conditioning.



- Noise reduction from fog signals and generators.
- Avoidance or clean-up of substance pollution.
- Removal of hazardous materials e.g. asbestos.
- Reductions in gas emissions from generators.
- Use of alternative energy sources.
- Provision or improvement of foul drainage treatment.

In addition, many lighthouses are within protected areas designated as national parks, sites of special scientific interest, heritage coast, special areas of conservation, or otherwise. These may impose restrictions on the use of buildings and access to the site, due to potential damage to flora, fauna and wildlife.

2.2.1.5 National security

Laws or policies on national security may restrict any use of, or access to, the station to activities compatible with national security requirements.

2.2.1.6 Intellectual property

Trademarks, copyright and patents can be valuable property. A lighthouse authority needs to protect any such property that it can rightfully claim ownership to, as far as possible. Equally, measures need to be adopted to ensure that the rights of any other party are not infringed when using images, brands, printed works, computer software and designs.

2.2.2 Private legal relationships

Careful consideration will need to be given to the effect on any existing agreements permitting multi-use or occupation of the station e.g. weather reporting, coast lookouts, bird watching. In addition, third party rights of access to services for repair and maintenance will need to be kept in mind.

2.2.3 Interference with aids to navigation

Any wider use of the station may be limited, to some extent, by the need to prevent any interference to the operation of the aids to navigation e.g. obstruction of the light, interference with radio signals. Careful thought also needs to be given to the possible impact on the normal activities on station such as maintenance and helicopter operations.

A property register or manual is a useful tool – containing details of the aids to navigation and any operational, heritage or environmental restrictions, as well as ownership, rights of way etc.

2.3 CARRY OUT A JOINT RISK ASSESSMENT

2.3.1 Risk assessment

A joint risk assessment with any partners in the venture will help to identify the key risks and enable proper controls to be established. This should include an evaluation of the skills, experience and level of investment that each of the parties will bring to the venture and the overall suitability of each of the partners for the venture.

An example of a simple risk assessment procedure appears at Annex B.

For property disposals or major works, a more complex environmental assessment may be required with solutions to remedy any problems identified. This is likely to involve consultation with all the relevant stakeholders and will almost certainly cause delays in the timetable for implementation of the scheme.

2.3.2 Liabilities

2.3.2.1 Criminal

Criminal liability may result in a fine for an organisation, or even a custodial sentence for an individual belonging to the organisation, if found guilty of an offence e.g. inadequate health and safety standards or environmental pollution.

What are the consequences of failing to protect visitors, or causing damage to, or loss of, property?

2.3.2.2 Civil

The civil courts will normally award damages for any organisation or person found to have failed in their duty of care to people or property, or for copyright infringement etc. This could mean a large financial loss for one or more of the venture partners.

2.3.3 Opportunities and threats

In the final analysis, the venture partners will need to balance the opportunity against the potential liabilities and how effectively the risks can be managed, based on the laws of the relevant country or region.

2.4 DEVELOP AN OPERATING FRAMEWORK

2.4.1 *Non-legal documentary systems*

The production of relevant policies, procedures and work instructions will be advisable to provide a suitable operating framework. This includes details about the ownership of the lighthouse property and the key factors that will have an impact on alternative use.

2.4.2 *Produce legal agreements*

Identify the parties, clarify each of their roles and set out the main *heads of agreement*, in the first place.

Then decide what types of agreements are needed:

- lease - including rights of access;
- licence;
- franchise;
- retailing.

The following list contains some pointers to forming a workable agreement:

- Set out the main purpose of the agreement and its duration;
- Identify the parties and clarify their roles, responsibilities, liabilities and duties;
- Reserve rights of access for maintenance of aids to navigation, if appropriate;
- Manage and control visitor access including pricing policy and numbers;
- Clarify financial provisions and accounting responsibilities;
- Protect intellectual property;
- Protect the interests of other users of the site;
- Limit the nuisance to adjoining landowners;
- Establish processes for supervising the scheme with contact names;
- Establish the process for dealing with disputes.

Make sure that the final written agreement covers all the main areas and replaces any previous verbal or written undertakings, otherwise misunderstandings and disputes may arise at a later date.

2.5 **MANAGE RISKS AND LIMIT LIABILITY**

2.5.1 *Risk management*

Adopting the principles of risk management will help to safeguard the lighthouse authority and venture partners from exposure to liabilities and the consequential costs:

- risk assessment;
- loss control;
- insurance and self-insurance;
- contractual indemnities;

The lightkeeper at Cap Frehel Lighthouse, Brittany, France has been retained despite the automatic status of the light. His training and experience makes him invaluable as a guide, not only for his knowledge but for his appreciation of the Health and Safety on site.

- people training and development;
- professional advice where appropriate.



2.5.2 *Sharing the risk*

Having identified the major risks associated with the scheme, steps should be taken to minimise exposure to potential liabilities. As a general rule, the risks should be shared among the partners in proportion to their roles and responsibilities and their share in the proceeds from the venture.

2.5.3 *Standards*

Apply recognised standards and good practice to the venture e.g. quality assurance, health and safety. Ensure the recruitment and development of people with the right skills and experience to operate the venture.

2.5.4 *Risk transfer measures*

Negotiate contractual indemnities backed-up by commercial insurance cover, where appropriate, to protect the lighthouse authority. Maintain insurances at the correct level.

2.5.5 *Communication*

Good communication among named contacts representing each of the parties can significantly reduce risk and help the venture to run smoothly and minimise the input of human resources by the lighthouse authority.

2.6 MONITOR, REVIEW AND AMEND AS REQUIRED

2.6.1 Site inspections

Periodic site inspections should be carried out jointly with the partners, each represented by competent personnel, to:

- ensure protection of the aids to navigation equipment;
- monitor safety measures;
- secure environmental management;
- discuss and resolve any problem areas;
- check compliance with heritage laws;
- agree on improvements to the scheme.



A group of international visitors are shown round Punta de la Silla Lighthouse, San Vicente de la Barquera, Spain to offer advice on the provision of public access and café facilities based on their experiences on their own projects.

2.6.2 Visitor surveys

Gain feedback from visitors as a useful measure of whether the scheme is providing value for money and operating efficiently.

A typical example of a visitor survey form appears at Annex C.

2.6.3 Review the plan

Review the business plan with the partners if circumstances have changed significantly. The venture may be influenced by external factors or a major re-structuring exercise within one or more of the organisations involved. Modify legal agreements as necessary.

2.6.4 Enforce legal agreements

If a significant dispute arises that cannot be resolved by discussion among the parties, it may be necessary to resort to arbitration or the law to resolve the issue – particularly if the property is vulnerable to damage or decay.

2.6.5 Communication

Maintain consultation with local authorities and other stakeholders with an interest in the venture. Tourism bodies and the local press can be useful marketing agents.

2.7 ANNEX A - CHECKLIST

The following provides an aid to check that all points have been considered.

| Items that should be considered | Is Item Applicable? Yes/No | Comments |
|---|-------------------------------|----------|
| Powers | | |
| Ensure that you and your partners have the necessary powers | | |
| Do you have the resources? | | |
| Consider strategic partnerships | | |
| Site ownership and rights of access | | |
| Clarify basis of occupation and access to the site | | |
| Confirm rights or concerns of any other parties and consult with them | | |
| Identify legal restrictions | | |
| Consider planning implications and heritage conservation requirements | | |
| Evaluate safety and environmental requirements | | |
| Consider national security needs | | |
| Protect intellectual property | | |
| Safeguard the rights of existing occupiers | | |
| Protect against interference to the effective operation and maintenance of the aids to navigation | | |
| Carry out a joint risk assessment | | |
| Identify the major risks | | |
| Assess potential liability | | |
| Balance the opportunity with the threats to the organisation | | |
| Develop an operating framework | | |
| Produce policies and procedures | | |

| Items that should be considered | Is Item Applicable? Yes/No | Comments |
|---|----------------------------------|----------|
| Negotiate legal agreements | | |
| Manage risks and limit liability | | |
| Share the risk | | |
| Adopt clear standards and best practice | | |
| Use risk transfer measures such as commercial insurance | | |
| Maintain communication | | |
| Monitor, review and amend | | |
| Carry out periodic site inspections | | |
| Invite visitor feedback | | |
| Review the business planning assumptions | | |
| Enforce legal agreements | | |
| Maintain communication | | |

2.8 ANNEX B

Risk Assessment Report

Date

Station

Place

PHOTO OF STATION TO BE INSERTED

AUTHOR

Assessment details:

Assessor:

Assessment Date: **Review Date:**

Initial Risk Level: **Residual Risk:**

Job Number: **Process:**

Process Cat:

Hazards & Controls

Hazard:
Control Measure:

Hazard:
Control Measure:

Hazard:
Control Measure:

Hazard:
Control Measure:

Hazard:
Control Measure:

Signed:

Date:

Assessment Details:

2.9 ANNEX C

Name of Organisation Conducting Tour

We hope you enjoyed your visit to our Lighthouse Visitor Centre. We would be grateful if you could take a few moments to answer the following questions.

Lighthouse Visited **Date**

Party Size :

Adults

Children

Pensioners

| | | |
|--|--|---|
| <p>What was the main reason for your visit today?</p> <p><input type="checkbox"/> Lighthouse enthusiast</p> <p><input type="checkbox"/> An interest in historic buildings</p> <p><input type="checkbox"/> Educational visit</p> <p><input type="checkbox"/> It was recommended by a relative/friend</p> <p><input type="checkbox"/> Somewhere to take the children</p> <p><input type="checkbox"/> The weather</p> <p><input type="checkbox"/> In the area and it was something to do</p> <p><input type="checkbox"/> Other (please specify)</p> | <p>How did you learn about the Lighthouse Visitor Centre?</p> <p><input type="checkbox"/> From a relative / friend</p> <p><input type="checkbox"/> Advertising leaflet</p> <p><input type="checkbox"/> Tourist Information Centre</p> <p><input type="checkbox"/> Resort Guide</p> <p><input type="checkbox"/> Internet</p> <p><input type="checkbox"/> Brown Information Signs</p> <p><input type="checkbox"/> Other (please specify)</p> | <p>How would you rate the performance of your tour guide?</p> <p><input type="checkbox"/> Poor</p> <p><input type="checkbox"/> Acceptable</p> <p><input type="checkbox"/> Good</p> <p><input type="checkbox"/> Very Good</p> <p>How would you rate your visit in terms of value for money?</p> <p><input type="checkbox"/> Poor</p> <p><input type="checkbox"/> Acceptable</p> <p><input type="checkbox"/> Good</p> <p><input type="checkbox"/> Very Good</p> |
| <p>Comment (Please suggest how we could improve our Lighthouse Visitor Centre)</p> | | |