

STATES OF JERSEY



FIEF DE LA FOSSE: PROPOSED AGREEMENT WITH LES PAS HOLDINGS LIMITED

**Lodged au Greffe on 29th July 2003
by the Policy and Resources Committee**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to implement the agreement made on 27th May 2003, by and between Les Pas Holdings Limited, Her Majesty's Receiver General, the Policy and Resources Committee and Richard Arthur Falle, Seigneur of the Fief de la Fosse as set out in Appendix 1 to the report of the Policy and Resources Committee dated 25th July 2003; and
- (b) to authorise the Attorney General and the Greffier of the States to pass the necessary contracts in connection with the proposed transaction

POLICY AND RESOURCES COMMITTEE

Note. The Finance and Economics Committee's comments are to follow.

REPORT

1. This Proposition asks the States to approve an Agreement which, if implemented, would put an end to long-standing litigation relating to the ownership of the foreshore adjacent to the Fief de la Fosse, which stretches from approximately the Dicq at its eastern end to Payne Street at its western end. Members will see that one of the conditions of the Agreement was that this proposition was to be lodged by the 30th June, 2003. That date was extended by agreement with Les Pas to the 29th July, 2003.

History

2. The States began to reclaim foreshore immediately to the West of the Albert Pier in 1981. Initially they relied for their right to do so on a lease by the Crown to the Public of all the foreshore of the Island with some irrelevant exceptions. Subsequently, the Crown sold the relevant areas of foreshore to the Public by contracts passed respectively in 1983, 1989 and 1995.
3. Prior to the reclamation to the West of the Albert Pier, the States had in the 1960s reclaimed parts of the foreshore which had been acquired from the Crown in the area of La Collette.
4. In the early 1980s, a small commercial group became interested in reclaiming foreshore at La Collette and Havre des Pas and developing the land thus formed into a marina village. One of the group of promoters was Advocate R.A. Falle. Advocate Falle had formed the view that under the customary law of the Island the foreshore belonged, not to the Crown, but to the Seigneur of the adjoining fief. Accordingly, he acquired the Fief de la Fosse, which adjoins the foreshore as shown on the map at Appendix 2. The claim to the foreshore was used to support the group's plans.
5. In the autumn of 1986 the group made public their plans which received some measure of public and political support. The group and subsequently Les Pas Holdings Limited entered into correspondence with the Receiver General in relation to the claim to the foreshore.
6. In 1987, the group lodged a planning application for the proposed development. In 1989 they formed the company, which they called Les Pas Holdings Limited, and the company acquired such rights as the Seigneur had in the foreshore.
7. In December, 1989, Les Pas Holdings Limited commenced an action against the Receiver General on behalf of the Crown and the Greffier of the States on behalf of the Public. The action was by agreement of all parties held in abeyance, as it had been commenced to prevent its becoming time-barred. The litigation did not begin until January, 1995.
8. The action is one of a type which is known as an action *pour exhiber titre*. In effect, it was a claim to the ownership of the foreshore adjoining a fief known as the Fief de la Fosse. The area extends roughly from Le Dicq to the point at which Payne Street met the beach before the reclamation took place to the West of the Albert Pier. The boundaries of the relevant area of foreshore are shown on the map at Appendix 2.
9. The litigation has now reached the stage where there has been a preliminary hearing in front of the Royal Court. The substantive hearing is yet to come.
10. The action was tabled in December 1989 to prevent its becoming time barred, but by agreement between the parties the litigation did not begin. Instead, both sides continued with their plans for reclamation. The Les Pas promoters revised their plans, while the States for their part instructed consultants to prepare a development plan for the whole of the Waterfront between West Park and the Dicq. This plan was debated in the States in November 1991. It was adopted with modifications on the 10th November, 1992.
11. After the Waterfront plan had been received, Les Pas discussed the possibility of modifying the plans which it had previously lodged to accommodate them to the Waterfront plans. It filed amended plans, but the discussions came to an end in the middle of 1993.

12. Following the acceptance of the Waterfront Plan, reclamation of the area of foreshore West of the Albert Pier was completed. The States proceeded to plan for development of the land thus formed, and Les Pas instructed architects to prepare a master plan for the area West of the Albert Pier.
13. Meanwhile, both sides to the litigation had obtained legal Opinions on the ownership of the foreshore. The Crown and the States obtained an Opinion from leading and junior counsel in London in the autumn of 1990 which supported the claim of the Crown. Les Pas consulted Jersey and leading English counsel whose Opinion supported the claim of Les Pas. This Opinion was shown to the defendants, but the defendants' leading counsel maintained his former advice. Accordingly, in December 1993, Les Pas was told that the Policy and Resources Committee had rejected their claim. It was following that rejection of the claim that Les Pas eventually activated the litigation.
14. At the date when the reclamation to the West of Albert began, and earlier in the 1960s when reclamation was carried out at La Collette, the Crown's ownership of the foreshore was not questioned by anyone, including the Seigneur of the Fief de la Fosse at the material times. The unchallenged position at that time was that the Crown owned the foreshore, and if the Crown sold the foreshore to the Public the Public became the owner of it.
15. The Les Pas promoters were advised by London and Jersey counsel that the claim of the Seigneur was a soundly based claim. The company only began to pursue the litigation actively when their proposals for the Havre des Pas development were not accepted.
16. Once the litigation was in train the States options were limited. These options were to defend their position; agree that a development could take place at Havre des Pas, which some regarded as environmentally unacceptable; settle the action on unacceptable terms; or not defend the action, which would have resulted in the loss of all the reclaimed land which the Public had acquired from the Crown.
17. The conduct of the litigation was passed to Crown Advocate Binnington, who confirmed the previous advice, and advised the Policy and Resources Committee that in his opinion the claim of Les Pas was not well founded.
18. The litigation proceedings have been long drawn out. Discovery, a procedural step which has to take place in every action, itself took some years because of the exceptional volume of the documents which had to be read through and listed.

Possible Settlements

19. It is fair to say that there was an attempt to reach a settlement before the litigation reached its final phase. Some members may recall that in 1997 the then Senator Horsfall, who at that date was President of the Policy and Resources Committee, informed the States that he had received an approach from Les Pas enquiring whether it would be possible to resolve the claim without further litigation.
20. Some preliminary talks did take place, but came to nothing. It was not possible to reach a settlement which could realistically be considered by the States.
21. As a result, the litigation continued. Mr. Howard Page, Q.C., was appointed Commissioner to hear the case, and during the course of 2002 he set a trial date for Spring, 2003. During the first part of 2002, an application was made by the defendants for security for costs. The application was refused by the Commissioner. This meant that even if the Crown and the States were to win the action, they would probably be unable to recover their costs from Les Pas.
22. Following the refusal of the application for security for costs, the legal advisers to the defendants gave further advice to the Policy and Resources Committee on the question whether it would be in the public interest to revive the possibility of settling the action which had been previously under consideration.

23. The Committee decided that it would wish to explore the possibility of settlement. Intensive meetings and discussions followed. The progress of the discussions has been marked by a continual modification of the proposals.
24. The area affected by the litigation claim is shown on Appendix 2. It is the crossed hatched area. Originally it also included the area immediately to the west of the Albert Pier within the western boundary line of the Fief. This is now in public ownership, because the interests of Les Pas and of the Seigneur were acquired by compulsory purchase in 1998/99. The amount of compensation to be paid for that interest remains, however, to be settled. The litigation claim is thus ownership of the area shown hatched on Appendix 2 and compensation for the area between the Albert Pier and the western boundary of the Fief, which is also shown on Appendix 2.
25. Les Pas began by proposing alternative options. One option was a package comprising a 100,000 square foot site at La Collette II, a 100,000 square foot site at the Esplanade car park for use as a supermarket, and confirmation of a percentage ownership of the foreshore at Havre des Pas, so that if any future stage there were development there the company would gain some benefit from it.
26. A second option was the same industrial site at La Collette II, an approximate one acre office development site in the Esplanade car park, an area of approximately 1.1 acres within the Waterfront housing site having a frontage to open water, and the same arrangement in relation to the foreshore at Havre des Pas.
27. Valuations were obtained for these sites which showed a total of value of some £22 million to £25 million plus whatever value was allocated to the foreshore interest at Havre des Pas.
28. Option 1 is shown on Appendix 3 and Option 2 on Appendix 4.

Proposed Basis of Settlement

29. None of these were acceptable to the Policy and Resources Committee, and the negotiations continued. The Committee offered the sites numbered 11, 12, 13 and 14 on map 2, which is attached to the agreement, but this was not accepted by Les Pas. Eventually, the settlement proposal was reduced to two sites by the Marina for residential development. These are shown on Appendix 5.
30. Appendix 6 puts this site into the context of the overall claim. To repeat what has already been said, the entire area claimed in the litigation is the areas lying between the eastern boundary and the western boundary shown cross hatched, and the area between the western boundary and the Albert Pier which is not crossed hatched because the interests have been acquired by compulsory purchase. It is nevertheless part of the area which Les Pas claims to have acquired from the Seigneur of the Fief de la Fosse. If Les Pas were to be successful, compensation would have to be assessed and paid under the compulsory purchase proceedings.
31. Just to the west of the western boundary are the sites which are the subject of the current settlement proposal. It will be seen that they are very small in relation to the entire site. They are indeed small in relation to the earlier settlement proposals.
32. Eventually, the agreement of 27th May, 2003, was signed by the Committee and Les Pas. Although the agreement bound the Committee to place a proposition before the States, it did not, and it could not, bind the States to approving the settlement proposals.
33. The terms of the Agreement which the States are asked to approve are set out in Appendix 1. The Agreement contains a number of conditions precedent which had to be satisfied by various dates specified in the Agreement. The last of the conditions precedent has to be satisfied by the 31st August, 2003, and if the debate takes place in September, 2003, it will be because the conditions precedent have been satisfied.

Why Settle?

34. In recommending this Agreement to the States, the Committee has considered both time and cost. In doing so, it has borne in mind that which ever side loses in the Royal Court will almost inevitably appeal to the Court of Appeal, and which ever side loses in the Court of Appeal will almost inevitably appeal to the Privy Council. Given the nature and complexity of the case, the litigation could last for another seven or eight years. Either the States has to accept the uncertainty of ownership for this time, or else take further compulsory purchase action to secure further areas for development. This would be costly and time consuming. In terms of cost, the Committee also considered the balance of the cost of settling versus the cost of proceeding with the litigation. Taken together with the legal advice these two considerations tipped the balance in favour of an early settlement.

Implications of not settling

35. The Committee has considered all of the relevant facts before recommending the agreement to the States, and in particular –

- the legal advice;
- there are very considerable costs even if the States win (some £7m);
- if the States were to lose the public would lose massive land holdings, including some land on which major assets are situated, and the legal costs would be even greater, (£12 -£14m);
- the legal case could last many years creating very disruptive uncertainty;
- the area of land proposed for transfer to Les Pas as the basis of the settlement has been valued at £10m.

Cost of Winning

36. Even if the States win, it will be at considerable cost to the public purse. The usual rule is that costs are awarded to the successful party, but in the past this has not invariably been the case where the States have been the successful party. Even if costs are awarded, the likelihood of that order being satisfied is remote. That means that the States will have to bear the costs of having continued to defend the claim.

37. It is never an exact science to forecast what the costs of an action are likely to be, and the more complex and protracted the litigation the more difficult the assessment and the greater the chance that the actual costs will be either greater or less than what has been estimated. They are only likely to be less in a case where for some reason contested issues fall away. The actual costs are likely to be greater in a complex case where new points may be raised by the Court and need to be researched during the progress of the trial.

38. At this stage in the legal proceedings it is not possible to provide a definitive figure for the costs of defending the action. However when the application for security for costs was made in the spring of 2002, costs of £1.5 million had already been incurred and the projected costs to the end of the trial in the Royal Court were projected to bring the total cost to the order of £3m. Hearings in the Court of Appeal and the Privy Council could conceivably double these amounts.

39. These are the costs which the defendants incur by way of legal and other professional fees. There is however a hidden cost in continuing litigation. That cost stems from the fact that it is the public purse which maintains and funds the Courts and the judicial system. If the action were to proceed to Privy Council the total “hidden cost” could easily amount to £100,000 or more.

40. To this indirect cost would have to be added the unquantifiable cost of the time which will necessarily be spent by officers of the Policy and Resources Committee and members of the Law Officers’ Department, including in particular the two Law Officers themselves, which will be taken up in the usual liaising which goes on between a lawyer and his client during the course of a protracted trial.

41. It will be obvious from these figures that the total cost to the public of protracted litigation is very

substantial indeed, and can never be recovered in any way whatsoever, regardless of who wins or loses.

42. Based on the estimate produced for the security of costs application and taking together they could equate to the value to the States of the land which it is proposed would be passed to Les Pas as the basis for settlement.

Cost of Losing

43. If the States lose, the position is infinitely worse. The public will lose massive land holdings. The hatched area on Appendix 2. shows the extent of the claim. It speaks for itself. The value of these holdings to the public are very significant and have been equated to the size of the States Strategic Reserve at many hundreds of millions of pounds. Significant public assets (e.g. the Power Station) are situated on this land.
44. In addition the States will be liable as before for their own costs, and the public will be liable as before for the costs of providing the Courts to hear the case. The defendants will also inevitably be ordered to pay the costs of the successful plaintiff. It would be unrealistic to expect these to be significantly different from the costs incurred by the defendants. As an estimate this could double the estimated States costs.
45. Furthermore, it would become necessary to assess the compensation for the area of contested foreshore which was acquired by compulsory purchase in 1998/9. It is no exaggeration to say that the Arbitration could be as long-running as the litigation, and would give rise to professional costs in respect of valuations and legal representation which would be very considerable indeed.

Conclusion

46. The Committee recommends this agreement to the States. It does so on the basis of the advice which it has received from its professional advisers. That advice was not simply rubber stamped by the Committee. It has been the subject of protracted and searching discussion among Committee members, and their ultimate conclusion is that the interests of the Public are best served by this agreement.
47. The Law Officers have been concerned in legal advice given to the Committee in connection with the possible settlement of this litigation and the Solicitor General will be on hand to give advice to the States Assembly when this proposition comes to be debated.
48. The Committee recognises that the Assembly will want to receive the same advice as the Committee has received. The Committee is able to state that both the Law Officers and Advocate Binnington have recommended this agreement as an appropriate settlement of the litigation having regard to the extended time it could take, the cost involved in the litigation which may be irrecoverable regardless of who wins and the risks involved in the litigation. In addition, the Committee will ask the States to hold the debate in camera. This will enable the States to advise fully on all the legal aspects without falling foul of Standing Order 24, which provides that reference shall not be made to a case pending in a Court of Law in such a way as, in the opinion of the Bailiff, might prejudice the case.
49. The financial implications are set out above and there are no manpower implications.

25th July 2003

THIS AGREEMENT is made the Twenty-seventh day of May 2003 BY & BETWEEN LES PAS HOLDINGS LIMITED (hereinafter referred to as “**the Plaintiff**”), HER MAJESTY’S RECEIVER GENERAL (hereinafter referred to as “**the First Defendant**”), THE POLICY & RESOURCES COMMITTEE OF THE STATES OF JERSEY and RICHARD ARTHUR FALLE as Seigneur of the Fief de la Fosse (hereinafter referred to as “**the Seigneur**”).

WHEREAS:

- A. By summons dated 15 December 1989 the Plaintiff commenced an action “pour exhiber titre” against the First Defendant and the Greffier of the States of Jersey for the Public as Second Defendant in respect of certain areas of foreshore situate on the south coast of Jersey the said areas being more particularly set out in the said summons (such proceedings being hereinafter referred to as “**the litigation**”). The trial of the litigation was due to commence on Monday 19 May 2003 (the “Hearing”) and currently stands adjourned.
- B. Subject as is hereinafter provided the parties have agreed to compromise the litigation on the terms hereinafter set out:
- C. The Plaintiff has agreed to compromise the litigation on the basis that the Site (as hereinafter defined) will prior to conveyance be the subject of confirmation in principle from the Environment and Public Services Committee for the development thereon of no fewer than 100 three-bedroom apartments with acceptable underground car-parking and from the Housing Committee that any occupancy conditions in respect of units of accommodation to be constructed on the Site shall provide for no less than 90% being occupied by persons qualified under regulations (a) to (j) of the Housing (General Provisions) (Jersey) Regulations 1970 (as amended) and the remaining 10% thereof pursuant to regulations (a) to (k) thereof.
- D. It is noted and agreed that no capital or income taxes shall be payable by the Plaintiff or its nominee in respect of the compromise of these proceedings or upon the transfer of the Site to the Plaintiff or its nominee.
- E. The Policy and Resources Committee have notified the Plaintiff that the policy of the Environment and Public Services Committee has been to adopt a standard of a maximum of one car-parking space per dwelling at the Waterfront, given its proximity to the centre of St. Helier and the need to minimise the removal of tipped material from the area.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

Obligations of the States

1. Within three weeks of the later of the approval of the States of Jersey (hereinafter referred to as “the States”) to a proposition recommending implementation of this Agreement and the approval of His Excellency the Lieutenant Governor on behalf of the Crown to the terms contained herein
 - (a) the States shall transfer on behalf of the Public of this Island to the Plaintiff or to such persons or entities as the Plaintiff may nominate (hereinafter referred to as “its nominee”) in perpetuity and free of all charges encumbrances restrictive or other onerous covenants and servitudes in favour of third parties save as set out in paragraph (b) below by deed of gift passed before the Royal Court of Jersey (“the passing of the conveyance”) all that area of land generally described as sites 16 and 17 in the St Helier Waterfront Planning Plan Map 2 prepared by the Waterfront Enterprise Board Limited and more particularly located within the co-ordinate and descriptive definition of boundary points shown on drawing no. 304 a copy of which document is attached hereto as annexure 1 (such area of land being hereinafter referred to as “**the Site**”), a copy of the said plan (Map 2) being attached as annexure 2 hereto, the Site to be otherwise at the date of conveyance in the same physical state and condition at the date of transfer as it is at the date of execution of this

Agreement.

- (b) The transfer of the Site to the Plaintiff or its nominee shall by contract in standard form but subject to the covenants referred to in annexure 6 convey the freehold thereof with the benefit of all such consents from the Environment and Public Services Committee the Housing Committee and the Economic Development Committee as are envisaged in Paragraphs 7 (b) (c) and (d) hereof and further with the benefit of all such rights servitudes and services as may be necessary for the development and thereafter the subsequent full use and enjoyment of the site as anticipated at Recital C. above by the Plaintiff or, as the case may be, its nominee and their successors in title.
2. The stamp duty payable on the transfer of the Site as provided in paragraph 1 hereof shall be borne by the States.
3. In the event that the Plaintiff or its nominee shall obtain development permission for the construction of a one or two storey underground car park on the Site the States shall bear the cost of any tipping charges relating to the disposal of spoil off-site which the Plaintiff or its nominee may reasonably incur in respect of such excavations as may be necessary to complete such construction.

Obligations of the Plaintiff

4. The Plaintiff shall within 7 days of the passing of the conveyance:
 - (a) consent to the discontinuance of the litigation with no order as to costs;
 - (b) confirm that it will not make any future claim in respect of any matters arising from the litigation and will release the Crown and the States from any further actions claims demands suits or proceedings whatsoever concerning the same save insofar as such may arise out of the terms of this Agreement;
 - (c) withdraw its claim for compensation pursuant to the order of the Royal Court dated 22 July 1998 in respect of the compulsory purchase proceedings commenced by Representation dated 29 May 1998 and confirm that it will not make any future claim in respect thereof.
5. In order to facilitate the Plaintiff's obligations under paragraph 4 hereof, the Plaintiff shall:
 - (a) on the execution hereof deliver to the Defendants' Advocates executed documents in the form of the drafts attached hereto as annexures 3 to 5. These documents are to be held to the Plaintiff's order pending the passing of the conveyance and thereafter whereupon the Plaintiff shall irrevocably release them to the First Defendant and to the Second Defendant with authority to date and do all things necessary to complete these said documents; and
 - (b) take such further steps as are reasonably necessary or requested, including without limitation the entering into of documents in substitution for those attached hereto as annexures 3 and 5.

Obligations of the Seigneur

6. The Seigneur hereby:
 - (a) confirms that he has no claims to ownership or any other rights of any nature whatsoever in respect of the foreshore of the Fief de la Fosse in his capacity of Seigneur of the said Fief and does releases the Crown and the States from all and any actions claims demands suits or proceedings whatsoever concerning the same;
 - (b) undertakes that in any transfer by or from him of all or any of the rights or title of the Seigneur of the said Fief he will not purport to transfer to the transferee any claims to ownership or any other rights of any nature whatsoever in respect of the foreshore of the said Fief.

Conditions precedent to the obligations contained in paragraphs 1 to 6 hereof

7. This agreement is further conditional upon:
 - (a) the lodging of the proposition referred to in paragraph 1 hereof by the Policy and Resources Committee by 30 June 2003;
 - (b) confirmation in principle from the Environment and Public Services Committee to the Plaintiff or its nominee for the development of the Site by the creation of no fewer than 100 three-bedroom apartments and acceptable underground car-parking or such other consent in principle as the Plaintiff may confirm to be acceptable in lieu thereof prior to 31 August 2003 (it being provided and it is acknowledged by the Plaintiff, that its subsequent applications for development of the Site shall meet all usual requirements for such applications and that subject to the Plaintiff's usual rights of appeal in respect thereof the said Committee shall be entitled to attach such conditions as it may think fit to the said consent); and
 - (c) Consent by the Housing Committee of the States to the transfer of the Site by the States to the Plaintiff or its nominee and confirmation from the Housing Committee to the Plaintiff that any occupancy conditions in respect of units of accommodation to be constructed on the Site on the transfer of the Site to the Plaintiff or its nominee shall provide for no less than 90% being occupied by persons qualified under regulations (a) to (j) of the Housing (General Provisions) (Jersey) Regulations 1970 (as amended) and the remaining 10% thereof pursuant to regulations (a) to (k) thereof;
 - (d) a letter of comfort in relation to the development of the Site from the Economic Development Committee pursuant to the Regulation of Undertakings and Development (Jersey) Law, 1975 with an assurance that a future consent will attach only standard and reasonable conditions and will not unreasonably delay the development of the Site;
 - (e) approval by the States of the proposition referred to in paragraph 1 hereof;
 - (f) agreement by His Excellency the Lieutenant Governor on behalf of the Crown to the discontinuance of the proceedings on the terms hereof;
 - (g) agreement between the Plaintiff and the Policy and Resources Committee as to the relevant value of the site for stamp duty purposes prior to 30 June 2003.
8. In the event that the conditions referred to in paragraph 7 (a) and (g) hereof shall not have been satisfied on or by 30 June 2003 this Agreement shall be null and void and no party hereto may rely on the terms hereof for any purpose whatsoever. In such event any of the Plaintiff, the First Defendant or the Second Defendant may thereafter on twenty four hours' prior notice to the other parties apply to the Royal Court for the continuation of the Hearing.
9. In the event that the conditions referred to in paragraph 7 (b), (c) and (d) hereof or any of them shall not have been satisfied on or by 31 August 2003 and those in paragraph 7(e) and (f) by 30 September 2003 this Agreement shall be null and void and no party hereto may rely on the terms hereof for any purpose whatsoever. In such event any of the Plaintiff, the First Defendant or the Second Defendant may thereafter on twenty four hours' prior notice to the other parties apply to the Royal Court for the continuation of the Hearing.
10. All parties agree that they will take all reasonable steps to ensure:
 - (a) that the conditions referred to in paragraph 7 hereof are satisfied;
 - (b) that the passing of the conveyance is not delayed or prejudiced;

- (c) the Royal Court grants such adjournments as are necessary for the purposes of this Agreement.
11. The Plaintiff shall request the confirmation referred to in paragraph 7(b) hereof and the consent and letter of comfort referred to in paragraph 7(c) and (d) hereof on or by 7 June 2003 and the Policy and Resources Committee shall forthwith after the execution of this Agreement request the Environment and Public Services Committee the Housing Committee and the Economic Development Committee respectively to consider and process such requests with all reasonable expedition.
 12. It is acknowledged by the parties hereto that the Plaintiff intends to seek clarification as to the principles upon which receipt by it or its nominee of the Site and its subsequent disposal may be liable to taxation. In the event that such principles are regarded by the Plaintiff as unfavourable then the Plaintiff shall have the right by written notice to the Policy and Resources Committee, such notice to be received on or by close of business on 23 June 2003, to cancel this Agreement in which case this Agreement shall be null and void and no party may rely upon the terms hereof for any purpose whatsoever. In such event any of the Plaintiff, the First Defendant or the Second Defendant may thereafter on twenty four hours' prior notice to the other parties apply to the Royal Court for the continuation of the hearing.
 13. The Policy and Resources Committee shall invite the States to debate the proposition referred to in paragraph 1 hereof *in camera*.
 14. The parties hereto will at all material times in relation to this Agreement act in good faith.

Confidentiality

15. The Plaintiff and the Seigneur acknowledge that the existence and terms of this Agreement are until the passing of the conveyance confidential to the parties and undertake not to disclose any of these provisions to any person not a party save as may be necessary for the purposes of implementation of this Agreement and save if compelled to do so by any court or authority of competent jurisdiction it being nevertheless provided that disclosure for specific purposes may be permitted with the express consent of all of the parties hereto Without prejudice to the foregoing, the Plaintiff and the Seigneur further undertake that save for a disclosure made to the Royal Court they will procure that any disclosure hereof will only be made subject to the disclosee first undertaking in like terms to those set out in this paragraph to keep the existence and terms of this Agreement confidential. This clause shall continue to subsist notwithstanding that this Agreement shall have become null and void pursuant to the terms of this Agreement.
16. The Policy and Resources Committee, the Plaintiff and/or the Seigneur may by prior written consent of the parties hereto issue joint press releases on any subject including a statement to the effect that the parties are pleased to announce a settlement which reflects and acknowledges Les Pas' longstanding interest in development at the Waterfront. The Policy and Resources Committee agree to use their best endeavours to reach agreement with the Plaintiff and the Seigneur as to a joint press release in the event of publicity hostile to the Plaintiff and/or the Seigneur.

Assignment

17. This Agreement shall be binding upon and enure for the benefit of the States of Jersey and the heirs and successors of the parties but shall not be assignable other than once by the Plaintiff to its nominee.

SIGNED on behalf of
LES PAS HOLDINGS
[T.Scott]

SIGNED on behalf of
THE POLICY & RESOURCES COMMITTEE

OF THE STATES OF JERSEY

[F.Walker]

SIGNED on behalf of

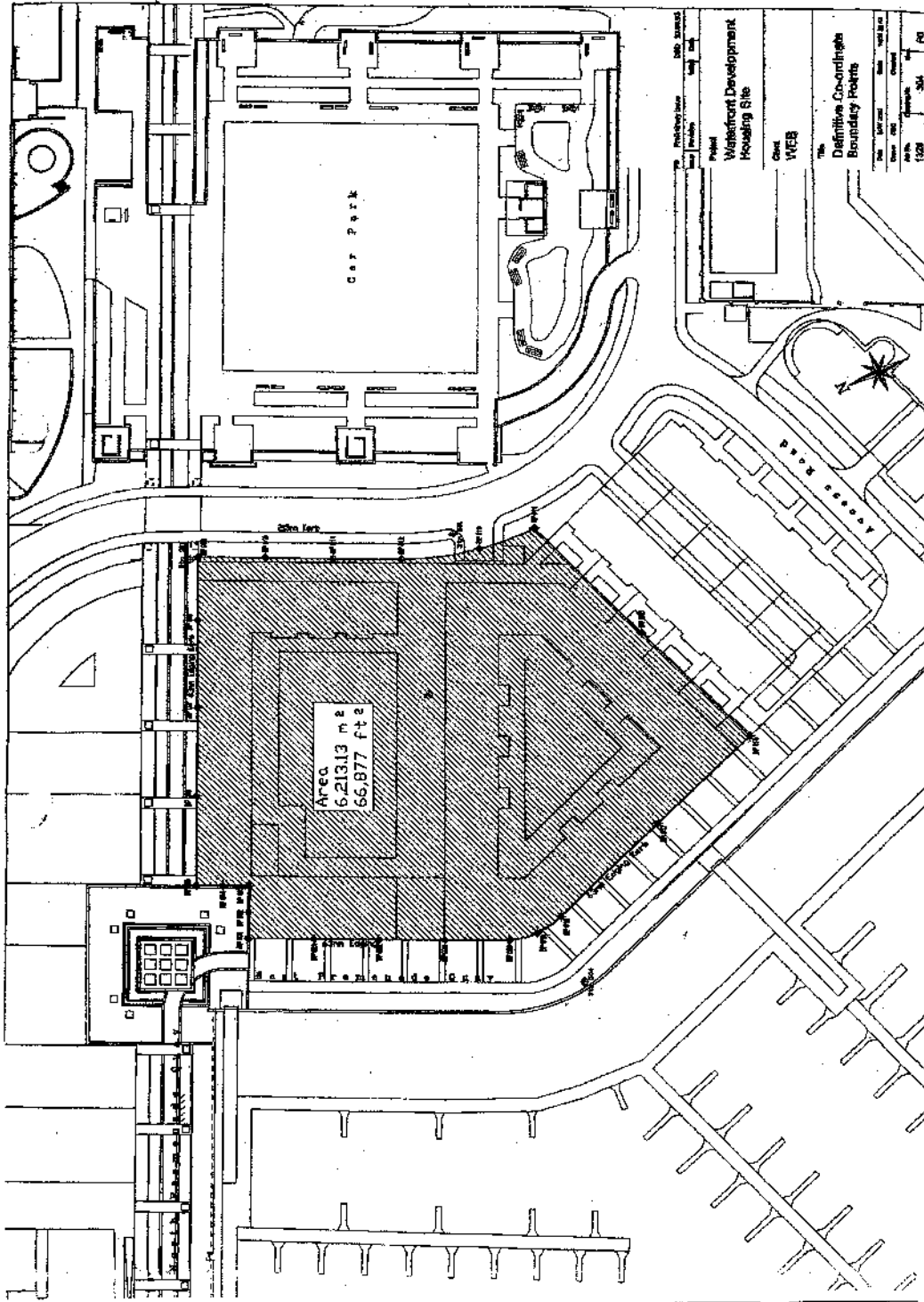
HER MAJESTY'S RECEIVER GENERAL

[C.Woodrow]

SIGNED by

RICHARD ARTHUR FALLE

[R.A.Falle]





IN THE ROYAL COURT OF JERSEY
(Heritage Division)

Plaintiff

Between: LES PAS HOLDINGS LIMITED

**And: (1) H M RECEIVER GENERAL
FOR HER MAJESTY**

**And: (2) THE GREFFIER OF THE STATES OF -
JERSEY -
FOR THE PUBLIC**

Defendants

LETTER OF CONSENT

To the Judicial Greffier, Royal Court House, Royal Square, St Helier, Jersey JE1 1JG.

We, the advocates for the parties herein, hereby consent on the basis of instructions received from our respective clients, to the discontinuance of the proceedings herein, with no other orders made, whether as to costs or otherwise.

We should be obliged if you would kindly issue an Acte of Court reflecting this discontinuance and its terms.

.....
Plaintiff's Advocate

Carey Olsen
47 Esplanade
St Helier
Jersey
JE1 0BD
(JK)

.....
Defendants' Advocate

Mourant du Feu & Jeune
22 Grenville Street
St Helier
Jersey
JE4 8PX
(ARB)

ANNEXURE 4

THIS INSTRUMENT OF RELEASE AND COVENANT is made the day of 2003 BY & BETWEEN LES PAS HOLDINGS LIMITED (hereinafter referred to as “**the Plaintiff**”), HER MAJESTY’S ACTING RECEIVER GENERAL FOR HER MAJESTY (hereinafter referred to as “**the First Defendant**”), THE GREFFIER OF THE STATES OF JERSEY (hereinafter referred to as “**the Second Defendant**”) and RICHARD ARTHUR FALLE the Seigneur of the Fief de la Fosse (hereinafter referred to as “**the Seigneur**”).

WHEREAS:

- A. This Instrument has been executed by the Plaintiff and the Seigneur in advance of the passing of the conveyance and will only become effective and enforceable when dated on or after the passing of the conveyance.

AND IN THIS INSTRUMENT:

- B. “the Agreement” means the agreement made on May 2003 between the parties thereto and by which the parties have agreed to compromise the litigation on the terms therein set out;
- C. words and expressions defined in the Agreement shall have the meanings there assigned to them;
- D. “claims” means all the Plaintiff’s and/or the Seigneur’s present and future rights or claims of any kind whatsoever which the Plaintiff and/or the Seigneur has, have or may have against any person in respect of any of the facts or matters arising from the litigation;
- E. “covenantees” means the First Defendant and the Second Defendant.

NOW THIS INSTRUMENT WITNESSES and it is hereby agreed and declared as follows, THAT:

1. The Plaintiff hereby releases each of the covenantees from all and any claims.
2. The Plaintiff agrees not to bring, to participate in, to pursue, directly or indirectly to finance, or otherwise to assist, any actions, claims, demands, suits or proceedings whatsoever in respect of any of the facts or matters arising from the litigation save in so far as may arise on the terms of the Agreement and if any such actions, claims, demands, suits or proceedings are brought immediately to discontinue the same or as the case may be immediately to cease such participation, pursuit, financing or assistance.
3. The Seigneur hereby releases each of the covenantees from all and any claims in respect of the foreshore of the Fief de la Fosse.
4. The Seigneur agrees not to bring, to participate in, to pursue, directly or indirectly to finance, or otherwise to assist, any actions, claims, demands, suits or proceedings whatsoever in respect of the foreshore of La Fosse save in so far as may arise on the terms of the Agreement and if any such actions, claims, demands, suits or proceedings are brought immediately to discontinue the same or as the case may be immediately to cease such participation, pursuit, financing or assistance.
5. This agreement shall be binding upon and enure for the benefit of the States of Jersey and the heirs and successors of the parties but shall not be assignable.

IN WITNESS WHEREOF this Instrument has been duly executed by the parties hereto the day and year first above written.

SIGNED on behalf of

LES PAS HOLDINGS LIMITED

SIGNED on behalf of
HER MAJESTY'S RECEIVER GENERAL

SIGNED by
THE GREFFIER OF THE STATES

SIGNED by
RICHARD ARTHUR FALLE

IN THE ROYAL COURT OF JERSEY
(Samedi Division)

BETWEEN THE GREFFIER OF THE STATES Representor
AND LES PAS HOLDINGS LIMITED Respondent
AND WATERFRONT ENTERPRISE BOARD Party Intervening

LETTER OF CONSENT

To the Judicial Greffier, Royal Court House, Royal Square, St Helier, Jersey JE1 1JG

We, the advocates of the parties herein, hereby consent on the basis of instructions received from our respective clients, to an order being made in the following terms:

1. that the Greffier be permitted to withdraw his application for a Board of Arbitrators to be convened in the light of the parties’ agreement that the amount of compensation to be paid by the Planning and Environment Committee for such interest (if any) as the Respondent may have had in the areas of foreshore the subject of the vesting order made on 22nd July 1998 be zero;

2. that there be no further order as to costs.

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Representor’s Advocate

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Respondent’s Advocate

Restrictive Covenants

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1. Access to and egress from the development on the Site for vehicles will come from the road to the east of the Site.
 2. Main services to the Site will enter from the road to the east of the Site.
 3. Ground level development of the Site may include retail, leisure, restaurant or similar active uses but shall not include uses that create nuisance or excessive noise.
 4. Development of the Site shall not include the following uses : hotel, night club, health club (other than available to immediate residents of the Site) or cinemas.
 5. The Public shall have the right to keep as established (on normal terms and conditions) any mains services and drainage apparatus serving any property belonging to it or to be retained by it generally in the area and which may currently run beneath and across the Site, the Plaintiff or its nominee having the right (on normal terms and conditions) to relocate such services and apparatus to another area of the Site or beyond the boundaries of the same (subject to the approval of the relevant authorities) at its own cost.
 6. A strip of land 3.5 metres wide to the South East of the Site shall not be developed above ground level save for landscaping and/or a ground level footpath and shall be subject to public access.









