

# STATES OF JERSEY



## ENCROACHMENTS ON THE FORESHORE: REVISED POLICY

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Lodged au Greffe on 18th September 2020  
by the Minister for Infrastructure

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STATES GREFFE

## **PROPOSITION**

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

to approve a revised policy for encroachments on the foreshore, as set out in the Appendix to the report accompanying this proposition.

## REPORT

### 1. Introduction

This report sets-out a review of the current policy<sup>1</sup> having regard to recent cases and recent information arising from the landside boundary project, and views from others – such as [P.101/2020](#)<sup>2</sup>. The review is to ensure that the policy reflects a fair approach to dealing with current, past and future encroachments on the foreshore, and to recommend the revised policy to the States Assembly for approval.

### 2. Reasons for the review:

The reasons that this review is deemed to be necessary are:

- a. The current policy was drafted subsequent to the 2015 foreshore transfer from the Crown<sup>3</sup>. It has been subject to scrutiny, including a Complaints Board's report on 2 foreshore encroachment cases<sup>4</sup>. It is now considered opportune to look at the policy completely afresh;
- b. Certain foreshore encroachments have been dealt with by Jersey Property Holdings (JPH) since the current policy was approved, and it is therefore timely to review how the policy performed in those cases;
- c. A project has recently been undertaken in connection with the landside extent/boundary of the foreshore, which has given JPH and the Law Officers' Department (LOD) a more complete picture than previously existed of the extent of encroachments around the Island. This gives rise to a review of the current policy, in particular existing encroachments;
- d. The Environment, Housing and Infrastructure Scrutiny Panel has raised with the Minister for Infrastructure the handling of foreshore encroachments cases and has been informed of the landside boundary project;
- e. The current policy made provision for a review to take place after the first year of operation;
- f. Regarding the Complaints Board's report - as part of the Minister for Infrastructure's response to that report, he agreed that a review would take place and that some of the report's findings would be considered;
- g. The Deputy of Grouville, Montfort Tadier, has recently lodged [P.101/2020](#)<sup>5</sup> in which she calls for a revised foreshore encroachment policy to be brought to the States for debate.

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<sup>1</sup> Policy: Encroachments on the Foreshore – December 2017 approved under MD-PH-2017-0054.

<sup>2</sup> Proposition P.101/2020 Foreshore: policy for alleged encroachment compensation payments.

<sup>3</sup> Parts of the foreshore were transferred from the Crown to the Public prior to 2015, with the 2015 contract being the completion on the transfer.

<sup>4</sup> States of Jersey complaints Board 11.04.2018 "Complaints by Mr A Luce and Mr J Mallinson against the Minister for Infrastructure and JPH regarding the handling of foreshore encroachment cases"

<sup>5</sup> "Foreshore: Policy for Alleged Encroachment Compensation Payments" Lodged by the Deputy of Grouville.

### 3. Specific aspects to be reviewed:

Having considered the above reasons for the review (a. - g.), there are deemed to be 5 specific aspects of the policy requiring more detailed appraisal. Those 5 aspects are:

- i. Reviewing the policy in respect of clarifying the landside boundary of the foreshore towards private properties;
- ii. Reviewing the policy in respect of the use of a 'sliding scale' to reduce the consideration payable on historic encroachments;
- iii. Reviewing the policy in respect of the use of essential maintenance access clauses included in encroachments contracts;
- iv. Reviewing the policy in respect of its application and use over the period 2018-2020;
- v. Reviewing the policy in respect of the principle that all existing encroachments which pre-dated the 2015 foreshore transfer<sup>6</sup> to the Public should be gifted to the respective third parties.

Taking each of those aspects in turn:

**i. Reviewing the policy in respect of clarifying the landside boundary of the foreshore towards private properties.**

Findings 8.9 and 8.11 of the Complaints Board's report referred to the matter of the landside boundary of the foreshore towards private properties. In the Minister's response to the report it was stated that that was an area of intended work.

JPH and the LOD acknowledge that at the time of the 2015 foreshore transfer contract, complete information on the landside extent of the foreshore was not held on one file, but that rather, numerous individual areas had been researched as circumstances required (often arising from individual encroachment cases).

A project has therefore now been undertaken in connection with the landside boundary of the foreshore, which has involved research of property contracts and other documents, including plans; along with site inspections and in some areas more detailed land surveys.

As at the date of this report, the research, site inspections and other associated work has been completed, including the production of individual reports on the sections of coastline around the Island. A Master Schedule has also been produced to provide a summary of the key findings of the individual reports on the sections of coastline around the Island. It provides a convenient reference as to key data such as the claimed upper limit of the foreshore at any particular property location, and the corresponding 'default boundary line' at which a new boundary could be resolved. It will be a live document which will be updated upon each encroachment case being resolved and new length of boundary line being set, and upon any new encroachments occurring. The Master Schedule allows relevant information to be analysed, such as the number and category of certain types of encroachment, and the recommended actions for resolution. At

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<sup>6</sup> Being the date (12.06.2015) when a contract to transfer the remainder of the foreshore from the Crown to the Public was passed.

the time of drafting this report, the Master Schedule data analysis was still taking place.

As stated, the project has produced information on the landside extent of the foreshore, and thus the cases where adjoining coastal properties have been extended over that line onto reclaimed foreshore behind seawalls, or onto seawalls themselves, or onto the foreshore in-front of seawalls.

This information has also given JPH a comprehensive understanding and record of the extent and nature of foreshore encroachments around the Island.

The Master Schedule is exempt from Public disclosure on 2 points: (a) it is derived from privileged and confidential legal advice provided by the Law Officers' Department (LOD) (b) it contains information which is effectively private to individual property owners, and it would be inappropriate to openly publish that.

However, it is JPH's intention to plan to start contacting individual property owners on a planned basis to discuss their boundary situation, and this will be as the department's resources permit. And should any owner whose property adjoins the foreshore wish to contact the department to discuss their boundary at that specific location, they are free to do so on providing proof of identity/ownership.

As mentioned above, having considered the nature and extent of the foreshore encroachments as gleaned from the research carried out, JPH is minded to advise and recommend "default boundary line positions" as set-out on the Master Schedule.

The "default boundary line positions" are the markers at which JPH will recommend that boundaries are ratified with adjoining property owners, subject to:

- Any encroachments which may exist up to, on, or over the "default boundary line positions" being agreed on a case-by-case basis in accordance with the Policy;
- The agreement of contract terms, including possible access rights behind seawalls for essential repair, reconstruction or heightening;
- The "default boundary line positions" being deemed to be subject to established conveyancing principles in respect of matters such as "offset" and customary set-back for openings etc.;
- The approval of the contract terms by the Minister for Infrastructure under Standing Order 168<sup>7</sup> and notification of decision to the States;
- The "default boundary line positions" not being applicable to cases where contractual boundaries have already been agreed with the Crown prior to June 2015<sup>8</sup> or the Public post June 2015.

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<sup>7</sup> Standing Orders of the States of Jersey R&O109/2005.

<sup>8</sup> Being the date (12.06.2015) when a contract to transfer the foreshore from the Crown to the Public was passed.

In light of the project which has been undertaken in connection with the landside boundary of the foreshore and the benefit of a comprehensive understanding and record of the extent and nature of foreshore encroachments around the Island, JPH supports the principle that the policy should reflect the importance of the foreshore landside boundary being ratified with every adjoining third party property.

The policy has therefore been revised to include that provision.

**ii. Reviewing the policy in respect of the use of a ‘sliding scale’ to reduce the consideration payable on historic encroachments.**

The rationale for the use of a sliding scale to reduce the consideration payable on historic foreshore encroachments is as follows:

If a third party has uninterrupted peaceably, enjoyment of an area of his neighbour’s land for 40 years, then he can claim good title to that land under the custom of prescriptive title. However, that practise does not apply to land owned by the Crown, and therefore, in respect of most of the foreshore, a third party claim to prescriptive title cannot start running until mid-2015 upon ownership transferring to the Public.

JPH acknowledges that many foreshore encroachments are historic, and that the Crown, and/or the Government, may not have taken action to restore the encroached land. However, if an owner is selling his seafront property and the buyer is unwilling to accept the uncertainty of a foreshore encroachment, leading to the Public being requested to resolve the matter, then it seems fair to JPH that the value of that land should be realised. Further, that the fair and proper price of the land should be reduced against a scale of time for which the encroachment has existed. In JPH’s opinion, this offers a fair compromise to both parties.

Having considered arguments made against the use of the sliding scale, such as those made by the Complaints Panel, JPH remains highly uncomfortable with the suggestion that the sliding scale should cease and that all encroached foreshore should be gifted. Such a policy would be contrary to the remit of the department, and at significant risk of creating a precedent against realising the proper value of Public land.

The conclusion and recommendation of the review of this aspect is that the current position should stand.

**iii. Reviewing the policy in respect of the use of essential maintenance access clauses included in encroachments contracts.**

In most previous cases where Crown land behind a seawall was transferred to a third party, a set of conditions were drafted to reflect the critical storm/flood defence function of the Public’s seawall. The use of these conditions has continued in subsequent contracts, albeit with certain revisions on a case by case basis.

Essentially, in cases where it has been decided that it is permissible for private use to be made of land up to the back of a seawall, the third party has to:

- (a) understand the important purpose of the seawall as a flood defence for Public benefit;
- (b) understand that if the seawall is badly damaged by the sea, the reinstatement of the wall may only be possible by excavating the soil behind the structure.

That is the position with seawalls, which are items of Public infrastructure, built and maintained at the Public's expense, for Public benefit.

The suggestion from the Complaints Panel's report seems to be that the Public should incur extra cost in the future maintenance of a seawall if a third party has made use of Public land to the rear of a wall. JPH cannot agree to that, and instead seeks to place the risk on the third party.

It is absolutely the case there when seawalls are damaged by the sea, the Government will always attempt to effect the repair causing the least possible disruption to neighbouring properties. But if the only option to repair a breach is to remove soil from behind a wall, then any private constructions have to be removed at the third party's expense. Any coastal third party is free to discuss the position and risks with an engineer from the Infrastructure division of Growth, Housing and Environment (GHE).

Having considered arguments made against the use of the essential maintenance access clauses, such as those made by the Complaints Panel, JPH remains highly uncomfortable with the suggestion that such a provision should cease. Such a move would potentially place the Government in a worse position, with increased seawall maintenance costs for the Public arising from encroached land.

The conclusion and recommendation of the review of this aspect is that the current position should stand.

**iv. Reviewing the policy in respect of its application and use over the period 2018-2020.**

Without question, the Complaints Board hearing and the associated publicity, plus other attention on foreshore encroachments, has had positive consequences for JPH and the Public as the owner of the land.

It strongly appears that owners of seafront properties, prospective purchasers, and lawyers are now fully reminded that there are likely 2 matters to resolve on boundaries towards the foreshore.

JPH is being contacted more frequently by such parties to seek a resolution, and the nature of the discussions seems to have been more positive than was typically experienced when cases were dealt with pre-2015.

The application of the 2017 policy, and the department's ability to explain the Public's claim to the upper limit of the foreshore, has been very satisfactory.

On that basis, JPH wishes to continue its work on ratifying foreshore boundaries.

The proposed revised policy is attached to this report.

- v. **Reviewing the policy in respect of the principle that all existing encroachments which pre-dated the 2015 foreshore transfer to the Public should be gifted to the respective third parties.**

The Assembly will be aware that the Deputy of Grouville has lodged a Proposition P.101.

JPH's interpretation of P.101 is that it does not directly detail the principal points of a revised foreshore encroachment policy as desired by the Deputy, but gives a strong assertion from the report was that all existing encroachments as at the date of transfer of the foreshore to the Public in 2015 should be allowed to remain. And in cases where private owners wished to formalise a robust boundary agreement with the Public towards the foreshore, any encroached residual foreshore should be gifted to them for free, and with rights for steps and stairs to remain etc.

The unease about such a policy is that selective private owners would be receiving valuable land annexed to their properties for free, which land was held by lease by the Public for 65 years, and is now owned by the Public.

It is difficult to think of another case of an asset owned by the Public of the Island, which would be freely given to individuals for their personal enjoyment and benefit.

A further consequence of P.101, arguably even more significant than the aforementioned, is that it would weaken the Public's future position in dealing with land encroachments on any of its estate. JPH can foresee encroachment cases happening in the future, where the party in question would quote P.101 and Public land on the foreshore being given away.

Further, P.101 implies that every party who has completed an encroachment type transaction for a strip of foreshore, no matter how long ago, will seek application for the consideration paid to be returned to them.

Another consequence is that certain owners who have refrained from encroaching, but have seen their neighbours encroach and seemingly 'get-away' with it, may well feel highly aggrieved and take further action.

Also connected with the above is the known position that tidal levels are forecast to continue rising, necessitating heightening and other modifications to many seawalls, including closing-up unauthorised openings. In my position as the Minister for Infrastructure I have had to deliberate very carefully about a decision to 'open the floodgates' by implying that all foreshore encroachments as at mid-2015 can remain and the land gifted for free. The Government must retain control of its sea defences and the land immediately behind, for the sake of flood defence of the Island.



Having considered arguments made against achieving a fair and proper price for strips of encroached foreshore, such as those made in P.101, JPH remains highly uncomfortable with the notion for the reason set-out above.

The conclusion and recommendation of the review of this aspect is that the current position should stand.

#### **4. Conclusion**

JPH now has a comprehensive understanding and record of the extent and nature of foreshore encroachments around the Island, and is thus well placed to monitor and deal with new encroachments, and to seek to resolve existing encroachments.

The scale of existing encroachments is deemed significant, both in terms of the number of cases, but also the extent of the encroachments in certain cases.

It is apparent that many cases have existed for significant periods, and therefore the present policy position of allowing encroachments to remain, but for settlements to be reached, is deemed to remain the fairest position for both the Public as the landowner, and the third-parties enjoying and benefiting from the Public land.

In JPH's view, it cannot be overstated as to the importance of more formally identifying and addressing all future encroachments. However, for this change to happen, the Government and States Members will be required to endorse this, and adequately resource and support the various teams in Government departments who are placed to deal with foreshore encroachments.

#### **5. Financial and Manpower Implications**

It is planned that the revised policy will be implemented from existing budget and manpower resources, although it is proposed that the progress of implementing the policy will be regularly reviewed to determine whether additional resource is required.

#### **6. Recommendation**

It is recommended that the Assembly approves the accompanying revised policy.



**Growth, Housing and Environment**  
*Jersey Property Holdings*

**Policy: Encroachments on the Foreshore**

December 2017  
**Revised 2020**

## DOCUMENT PROFILE

<b>Document registration</b>	0624-01-001 Po1
<b>Document purpose</b>	To set out the policy of JPH - as approved by the Minister – for resolving encroachments on the foreshore
<b>Short title</b>	Foreshore Encroachments Policy
<b>Author</b>	[REDACTED]
<b>Publication date</b>	11 December 2017
<b>Target audience</b>	Property owners bordering the foreshore States Members All GHE and LOD Officers Property agents and law firms
<b>Circulation list</b>	States website
<b>Description</b>	A policy of JPH dealing with encroachments on the foreshore
<b>Linked documents</b>	JPH's 2006 valuation policy "Statement on Land Valuation" as approved under MD-PH-2006-0094. JPH's Procedure on Encroachments ref 0624-01-001 Pr1 of 11.12.2017.
<b>Approval route</b>	Director of estates, JPH and the Minister for Infrastructure
<b>Planned review date</b>	January 2019
<b>Actual review date</b>	
<b>Contact details</b>	[REDACTED]

**Purpose:**

The purpose of this document is to set out the revision to the “Policy: Encroachments on the Foreshore” (reference MD-PH-2017-0054). The necessary background for the need for a policy on foreshore encroachments is in MD-PH-2017-0054.

**Definitions:**

Certain terms are used in this policy document, which for convenience are defined as follows:

Consideration:	A monetary sum paid for land/property in a transaction, including for granting rights.
Default boundary line:	The proposed line at which a boundary with an adjoining private property will be ratified when a foreshore encroachment transaction is being agreed.
Encroachment:	The unauthorised and unlawful entering upon the land, property, or the rights of another party including title encroachments.
Fair and proper price:	The price paid for land/property in a transaction as determined by a valuation undertaken with reference to the publication: “RICS Valuation – Global Standards 2020” (the “Red Book Global Standards”) effective from 31 January 2020.
Flood defence:	A structure intended to provide defence to land against sea water or coastal erosion. Commonly referred to as a seawall or sea defence. Provisions are made for the designation of flood defences in the “ <i>Drainage (Jersey) Law 2005</i> ”.
Foreshore:	The land surrounding Jersey, owned by the Public, as customarily described as lying between the “High Water Mark of full Spring Tide” and the “Lowest Mark of Tide”.
GHE:	The Growth, Housing and Environment Department of the Government of Jersey.
HWMoFST:	High Water Mark of full Spring Tide.
Historic encroachments:	Encroachments which have existed for more than ten years.

Interfering encroachments:	Encroachments which: <ul style="list-style-type: none"><li>a. frustrate, obstruct or make harder the exercise of any of The Minister's/GHE's/JPH's duties, especially in respect of access for maintenance and repair of flood defences, and/or</li><li>b. reduce any right of access or exercised right as a matter of longstanding habitual and recognised custom by the general Public, and/or</li><li>c. have the potential to undermine or cause damage to a flood defence or pollute the foreshore</li><li>d. affect the delivery of a service by the Government of Jersey.</li></ul>
JPH:	Jersey Property Holdings (part of GHE).
Licence agreement:	A conditional agreement giving permission to a third party to use, access or place something on an area of the foreshore.
LMoT:	Lowest Mark of Tide.
LOD	Law Officers' Department.
Minor encroachments:	Encroachments onto the foreshore which are of a trivial nature in scale, for example, an encroachment by a boundary fence or hedge of a few inches.
New/recent encroachments:	Encroachments which have existed for less than ten years.
Non-interfering encroachments:	Encroachments which do not: <ul style="list-style-type: none"><li>a. frustrate, obstruct or make harder the exercise of any of The Minister's/GHE's/JPH's duties, especially in respect of access for maintenance and repair of flood defences, and/or</li><li>b. reduce the general Public's access to, or over, the foreshore or any right of access or exercised right as a matter of longstanding habitual and recognised custom by the general Public, and/or</li><li>c. have the potential to undermine or cause damage to a flood defence or pollute the foreshore</li><li>d. affect the delivery of a service by the Government of Jersey.</li></ul>

Openings, gates, steps and stairs:	Encroachments onto the foreshore comprising openings, gates, steps and/or stairs from a third-party property onto, or over an adjoining part of the foreshore.
Reclaimed foreshore:	Areas of the foreshore which have been reclaimed, typically from the construction of a flood defence and the in-filling of the void behind the new wall to create a level area of land.
Surface water discharge pipes:	Encroachments onto the foreshore comprising drainage pipes which discharge surface water from a third-party property either through or onto a flood defence or onto or over an adjoining part of the foreshore.
The Minister:	The Minister for Infrastructure.
Title encroachments	An encroachment on the foreshore, including onto a seawall, which is claimed/recorded in a property's title contract, but where the Crown or the Public has not been party to the contract to agree the terms.

**Categories of foreshore encroachment:**

For the purposes of this policy document, foreshore encroachments are categorised as follows:

- A. New/recent encroachments.
- B. Historic encroachments.
- C. Minor encroachments.

Encroachment categories A. and B. may be sub-categorised as follows:

- I. Interfering encroachments
- II. Non-interfering encroachments.

Encroachment sub-categories I. and II. may be sub-categorised as follows:

- Openings, gates, steps and stairs
- Surface water discharge pipes

Note: The above referenced categories, sub-categories and sub-sub-categories can all be classed as **technical encroachments** where applicable.

**Preamble:**

**The principles of the policies:**

The policies as set-out on pages 8-10 of this document are supported by two main principles:

1. That the Public is the owner of the foreshore, including any reclaimed areas situated to the rear of the seawalls. The Crown's gift of the Foreshore to the Public of the Island in 2015 was to the Public and not to individual private landowners.
2. JPH is a body established by the States Assembly to manage land and buildings owned by the public of Jersey and ensure best value is realised (as per "Statement on Land Valuation" as approved under MD-PH-2006-0094).

Where Public land of any type is annexed to third party properties without authorisation, JPH has to act in the Public interest to reach the best resolution on behalf of the Public.

When land is encroached, there are only three options: recover the land, transact in the land or do nothing.

Based upon the above-mentioned primary principles the main objectives are:

1. Resolve and/or regularise all foreshore encroachments for a clear landside boundary line.
2. Prioritise resolving and/or regularising new/recent encroachments.
3. Where the outcome involves (i) the transfer of an area of the foreshore or (ii) the grant of rights, to ensure that the transaction accords to the "Statement on Land Valuation" as approved under MD-PH-2006-0094).

**The Public's landside ownership of the foreshore:**

The Public of the Island owns the foreshore and seabed of Jersey, having been ceded the land by the Crown in a series of contracts starting in 1895 and culminating in 2015.

The extent of the Foreshore is customarily described in Jersey as all that land lying between “*le plein de Mars*” (the High Water Mark of full Spring Tide or, more correctly, the mark which the tide reaches during the highest tide in the month of March) and “*le niveau de basse mer*” (or the lowest mark of tide, often referred to as the *datum* level). The landside extent is highly relevant to this policy document as it is the line between the Public’s foreshore and adjoining private properties.

Where Public seawalls have been built on the foreshore, it is generally always the case that they were built forward of the “HWMoFST”, thus leaving strips of residual foreshore behind the masonry/concrete structures. In most, if not all cases, the voids behind seawalls have been backfilled/infilled, thus creating strips of reclaimed foreshore.

Apart from in a very limited number of cases where the Crown has previously conveyed parcels of reclaimed land behind certain seawalls to adjoining private property owners, the Public ownership includes all strips of the foreshore situate to the rear of the seawalls.

In 2019 JPH and the LOD commenced a project to research the upper limit of the foreshore in all areas not previously investigated, in order to gather as complete information as possible on the landside extent. The project has provided extensive information on the nature and scale of foreshore encroachments around the island. From this work a ‘default boundary line’ has been formulated to work from.

## Prescription

Prescriptive possession was a customary law codified in the Code of 1771 – “*possession quadragenaire*” - being 40 years peaceable, uninterrupted and unchallenged possession of land will usually give good title of the land to that person.

However, as a matter of customary law, it is not possible to establish title by *possession quadragenaire* against the Crown because prescription does not run against the Crown’s immovable property.

Prescription does however run against the Public. So, whilst the position of the Crown could not be affected by encroachments by third parties, the same does not hold for the Public, and 40 years of peaceable, uninterrupted and unchallenged possession of a strip of foreshore from 2015 to 2055 could render good title to the third party.



## Planning Permission

Cases exist where third party property owners have included strips of foreshore, sometimes including parts of seawalls, in development applications made to the Planning authority, which applications may have received 'planning approval' and the developments completed. Such approval/development does not change the ownership status of the encroached foreshore, or how it is to be resolved under this policy.

## Jersey Property Holdings

JPH was established by the States Assembly in 2005 under the framework of a Proposition<sup>1</sup> concerning the management of the Public property portfolio. The proposition set-out the aims of the organisation, which including realising the value of Public land and property. JPH replaced "Property Services"<sup>2</sup> which itself was established in 1991 – again with a remit including the principle of realising best value for Public land.

In 2006 JPH made a formal valuation policy "Statement on Land Valuation" as approved under MD-PH-2006-0094. That policy aimed to reinforce the intention to realise the proper value of all Public land and property.

In view of the established remit of JPH and its formal 2006 valuation policy, it is clear that one of its functions is to ensure that Public land, when disposed of, is done for a fair and proper price. Encroached strips of the foreshore typically enhance and add value to the coastal properties which have annexed the land. It is JPH's role to negotiate a settlement to reflect that position.

The Minister, through GHE and JPH, has certain responsibilities in respect of the foreshore including flood defences, control of encroachments and beach cleaning. In addition, other Ministers have a range of functions and duties relating to the foreshore such as development control, the policing of beaches and controlling deposits in the sea.

JPH, and its predecessor department Property Services have dealt with encroachments on the Foreshore since the early 1990s, with evidence of encroachments dating back considerably further than that. All cases dealt with by JPH and Property Services have had regard to the proper value of the land taken.

When decisions are made in respect of the management or disposal of the Public's land, the Public interest must be, and is, considered.

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<sup>1</sup> Policy and Resources Committee proposition lodged 03.05.05 "States of Jersey Property Holdings: Establishment"

<sup>2</sup> Established as the Property Management Office under P.43/1991

**Policies:****1. Landside boundary of the foreshore**

- a. A proactive approach will be taken by JPH to use the information held on the upper limit of the foreshore towards private properties and the recommended 'default boundary lines', to resolve foreshore encroachments and to ratify boundaries with adjoining properties. This is to include JPH communicating with such private owners the information held on the upper limit of the foreshore, and the recommended 'default boundary lines'.

**2. New/recent encroachments**

- a. A proactive approach will be taken by JPH to identify **new/recent encroachments** and to take action to resolve them with the respective third parties.
- b. New encroachments occurring after the date of this Policy document will be required to be removed and the foreshore restored to its prior state at the cost of the third party. This position applies irrespective of the sub-category **interfering encroachments** or **non-interfering encroachments** or the sub-sub-category **openings, gates, steps and stairs**.
- c. There is a presumption that **new/recent encroachments** in the sub-category **interfering encroachments** will be required to be removed and the foreshore restored to its prior state at the cost of the third party. This also applies to the sub-sub-categories **openings, gates, steps and stairs**, and **surface water discharge pipes**.
- d. However, in certain cases, the Minister may decide to allow **new/recent encroachments** to remain – primarily those in the sub-category **non-interfering encroachments**.
- e. Policy 2.d. is subject to:
  - i. a sale or lease of the encroached land taking place from the Public to the third party – as decided/approved by the Minister;
  - ii. the sale or lease of the encroached land being for a fair and proper price, and the Public's costs also being met by the third party;
  - iii. the sale or lease of the encroached land being subject to the 'default boundary line' being ratified; and

- iv. where applicable, the sale or lease of the encroached land being subject to reasonable provisions for the Public to retain necessary access onto the sold/let land for future essential maintenance of a sea defence or for future essential improvement of a sea defence, including heightening.
- f. Policy 2.d. may also be subject to, in the case of the sub-sub-categories **openings, gates, steps and stairs** and **surface water discharge pipes**:
  - i. a licence agreement covering the use of the openings, gates, steps and/or stairs and surface water discharge pipes between the Public and the third party, subject to terms to be decided by the Minister;
  - ii. however, where any part of an opening, gate, step or stair or discharge pipe is deemed to comprise an interfering encroachment and having an impact on the current or future function or integrity of a sea defence, then any necessary modifications to restore the sea defence will be required.

Policy 2 also applies to **title encroachments** and to encroachments which may have been granted 'planning permission' to a third party.

### 3. **Historic encroachments.**

- a. A proactive approach will also be taken by JPH to identify, record and monitor changes to **historic encroachments**.
- b. A proactive approach will be taken by JPH to notify third party owners with **historic encroachments** of the upper limit of the foreshore and the default boundary line.
- c. Changes to **historic encroachments** made after the date of this Policy document will be deemed to recategorize them as **new/recent encroachments**, with the relevant policies for that category then being applicable.
- d. A proactive approach will be taken by JPH to engage with third party owners with **historic encroachments** to resolve their encroachments, either by:
  - i. restoring the foreshore to its prior state on terms to be agreed between the parties.

- ii. a sale or lease of the encroached land taking place from the Public to the third party, subject to a fair and proper price being paid for the land, but subject to a reduction in the price to reflect the period for which the **historic encroachment** has existed.

Policy 3. applies to both **interfering encroachments and non-interfering encroachments**, and to **title encroachments** and encroachments which may have been granted 'planning permission' to a third party. However, in the case of the sub-sub-categories **openings, gates, steps and stairs** and **surface water discharge pipes**, the presumption is that such encroachments will be regularised by a licence agreement as set-out under Policy 2.f.i.

**4. Minor encroachments.**

- a. A proactive approach will be taken by JPH to identify, record and monitor change.
- b. JPH may decide to bring such encroachments to the attention of respective third parties, which parties may wish to seek to regularise the encroachments.

End of policy document.