

# STATES OF JERSEY



## FORESHORE: POLICY FOR ALLEGED ENCROACHMENT COMPENSATION PAYMENTS

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Lodged au Greffe on 27th January 2020  
by the Deputy of Grouville

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STATES GREFFE

## **PROPOSITION**

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

- (a) that Jersey Property Holdings should, with immediate effect, cease the imposition of ‘Compensation Payments’ on Islanders for alleged encroachments to the foreshore until a revised policy has been approved by the Assembly;
- (b) that such policy should be brought forward for debate by the Assembly by September 2020 and should confirm the date from which the deemed encroachments will be determined and be accompanied by a map clearly showing the boundaries used to establish land ownership;
- (c) that until such time as a clear revised policy is agreed by the Assembly, the Minister for Infrastructure should be asked to return, any monies so far received from people whose grievances have been upheld by a States of Jersey Complaints Board in relation to this matter; and
- (d) to request that the Department for Infrastructure publishes by the end of 2020, a map of all public accesses, footpaths and rights of way to the foreshore.

DEPUTY OF GROUVILLE

## REPORT

The issue of fines or States compensation payments being levied against certain property sellers for alleged encroachments on the foreshore came to my attention at the end of 2017, when a very distressed seller (Mr. A. Luce) brought the matter to me. I advised him to put his case together and take it to the Jersey Complaints Board, the official body set up by this Assembly to deal with the Public's grievances of States Administration. While preparing his case we were contacted by another property owner (Mr. J. Mallinson) who felt he too had been treated unfairly at the hands of the States in a similar compensation matter. A joint case was therefore prepared and presented at a Hearing of the Jersey Complaints Board (the "JCB").

It is worth noting that the first property owner had no knowledge that he did not have full title to his property before his compensation payment was demanded by Government, as the alleged encroachments had been undertaken by previous owners of his property many decades before and without any acknowledgement in Title Deeds passed by the Royal Court.

The JCB Hearing took place in public on 11th April 2018 ([R.71/2018](#)), and the Findings of the board were presented to the States on 1st June 2018 (see **Appendix 1**). The Island's General Election had taken place in the interim and a new Government took office on 7th June 2018. An initial response to the Findings was made by the new Minister for Infrastructure to the States on 7th August 2018 ([R.71/2018Res.](#)), (see **Appendix 2**) whereby the Minister (understandably) suggests in clauses 8.12, 8.13, 8.14 and 8.16 that more time is needed to consider this complex matter and that he will be reviewing the policy and contracts in detail. At the time of lodging this Proposition, the conclusions of the review are still awaited. In fact, it was stated by the Minister during a Scrutiny Hearing on 16th April 2019 that the review would be published before the end of the year and in a subsequent Scrutiny Hearing by December and then January or April 2020.

It is for this reason I have decided to lodge my proposition as I do not believe it is right to continue in this manner. It is simply not fair on those who went through a very stressful process of having to deal with Government and Jersey Property Holdings (the "JPH") demanding inconsistently applied compensation payments, nor is it fair on other property-owners who may be contemplating selling their homes along the coast to have the uncertainty hanging over them.

There was an unhealthy assumption made by the previous Minister that the property sellers must be able to afford whatever bill the Government choose to render against them, along with valuation costs, legal fees and delays. Some individuals may have had mortgages associated with their property, financial stresses, or personal reasons in which they were required to sell up.

In Mr. Luce's case, the action the Minister and Government of the day chose to take against him, did not only lose him the sale of his house, it then actually delayed any prospect of any sale for a further 15 months, while the Minister set about writing a policy to cover his actions and the department having to undergo a learning exercise in boundary setting and alleged encroachments. The result that this property owner then faced, was either paying compensation for an encroachment, which a previous owner had been responsible for, or not selling his home. Coupled with that, the value of the property had dropped by over £100,000 because of the uncertainty created by

Government. The Law Society of Jersey Property and Conveyancing Sub-Committee's opinion to JPH's approach is attached (see **Appendix 3**).

To be clear, I do not agree with the foreshore of this Island being encroached to the detriment of the public. I do not agree with private landowners blocking off public accesses, pathways and ancient rights of way to the Foreshore. But what I fail to appreciate, is how the actions instigated by the previous Minister for Infrastructure and seemingly up-held by the current Minister; (i) protect the land for the People of Jersey or (ii) "achieve best value for the public purse" as claimed by the Department.

The letter written by Advocate Richard Falle (see **Appendix 4**) touches on some of the complexities behind determining the ownership of the Foreshore and sets out very clearly, why it will not be a straight forward exercise to determine boundary lines – as the States knows only too well to its cost.

I should perhaps remind members at this juncture that there are currently 5 active Fiefs with engaged Seigneurs with valid claims yet to be tested. The law of unintended consequences must not cost the Tax Payer again by this apparent money-making exercise.

If the Department of Infrastructure is hoping to achieve best value for the public purse, then I am afraid I don't share the same optimism as the Minister that the current approach will achieve the best outcome for the People of Jersey. I consider I am probably more realistic of the outcome. Consider that, once Lawyers, Conveyancers, Professional Valuers, Negotiators and the States Administration set about determining boundaries, title, values, encroachments and setting fines with landowners – on a case by case basis – and by all accounts on a very selective and discriminatory basis, I am afraid I see absolutely no chance of 'best value' being achieved and delivered to the public.

Indeed, I fear the opposite will be the case and that is before any of the Seigneurs rights are challenged and it will be the public, who face the consequences of this situation.

I also wonder if any consideration has been given to the uncertainty and unease this situation has given rise to in the marketplace of coastal properties. The lending capacity, potential compensation for loss of sales, litigation against conveyancers who failed to pick up the Crown's interest and of course the loss in Stamp Duty? How much Stamp Duty are the States loosing because property owners are deciding to 'stay put' rather than face the uncertainty brought about by this randomly applied policy?

Ask yourself if homeowners, perhaps elderly couples who wish to downsize, would contemplate putting their home on the market to then face the possibility of having to go into legal battle with Government? The unknown cost of the compensation determined it seems, by Officers in the department on a case by case basis. The unknown legal and valuation costs. And should they dare take issue with the process, they can face more time and effort not to mention additional stress, in taking their case to the States Complaints Board – which may find in their favour – and then – nothing. No recognition. No redress. "No comment."

The fact that the States Complaints Board, a body set up by this Assembly, made up of a panel of people who give their time and consideration to cases brought before them by the public, who are supported by the States Greffe staff, and who present their



findings to the States in an orderly timeframe; to then have them ignored with impunity by Government, is simply not right.

I ask the question again; how is this benefiting or providing ‘best value’ for the Public of Jersey?

But there is something altogether more disdainful about the approach and timetable adopted by JPH and that is this; while the Foreshore was owned by the Crown, the States were prepared to give planning permissions, convey properties, oversee contracts being passed in the Royal Court and collect Stamp Duty. Yet 62 working days after the People of Jersey received Her Majesty’s gift of the Foreshore on 12th June 2015 (see **Appendix 5**), the Department of Infrastructure set about “going after” Her Majesty’s Subjects for encroachments they had previously overseen. This action was pursued so soon after receipt of the Gift, there was not even time for a proper policy to be in place.

I therefore ask; did the States of Jersey as leaseholders of the foreshore not have a duty of care to the Crown to stop these encroachments rather than encouraging them with Planning permissions and the collection of Stamp Duties? And having turned a blind eye to them whilst owned by the Crown, should they now be seeking to cash in on them?

But, if these encroachments were made during the Crown’s ownership of the Foreshore, then surely the ‘fines’ levied and the monies collected are owed to the Privy Purse and not the States Treasury?

The States of Jersey and Department for Infrastructure have a duty to protect the interests owned by the people of Jersey. Encroachments on the foreshore are intrusions to land owned by the Public, either by extending private properties, blocking public access, erecting unsightly fencing or whatever. None of which are necessarily acceptable and JPH must devise a way of dealing with them, in a fair, consistent, even handed way, so a policy – agreed by this Assembly – that recognises the States ownership of its land, can be applied in an open and transparent manner, not arbitrarily or discriminatory. Property owners need to know exactly where they stand.

JPH need to publish the maps they are using to determine the encroachments and clearly state the date from which they are determining the Foreshore boundaries. The Foreshore being defined as the area of land between “le niveau de la basse de mer” (the low water mark of tide) and “le niveau du plein de Mars” (the high water mark of the full spring tide). I want Members to consider where the high tide level might have been before the States themselves encroached the Foreshore by building a sea wall in 1864 or reclaimed land in various locations around the Island. This is not an issue confined to St. Clement and Grouville as my historic photographs and maps will demonstrate, (see **Appendix 6**). Depending which date we are using to determine the encroachments we might be looking at the high tide mark being on the slipway in front of the Royal Yacht Hotel, which gave rise to the names of our streets in that area – Pier Road, Wharf Street, Sand Street.

Hence my request in this proposition for a map and date which is being applied to establish the boundaries.

I recognise the need for these encroachments to be acknowledged and the title to be upheld since the 40-year rule of ownership started to tick from 12th June 2015. But this must be carried out in a fair transparent way, as many of the current property owners had no hand in them. The States must cherish our land and must not oversee anymore

blights on our seascape, unless it can be demonstrated there is good reason and it is for the public good.

In this proposition I also request that JPH focus some of their efforts into providing a map of all public accesses, pathways and public rights of way to the Foreshore which are also being eroded.

### **Financial and manpower implications**

I believe the mapping exercise is currently being carried out, but my proposition attempts to focus the issue to a conclusion and that a revised policy should be brought forward anyway to ensure that it is clearer and is up held in a fair consistent manner. Again, the public accesses, footpaths and rights to the foreshore is information which should be in the public domain and if it is not easily available, then the time of one person researching, collating and publishing the information is needed. It is difficult to quantify an exact sum but establishing a fair policy will avoid future legal challenges by residents at the taxpayers' expense.

**States of Jersey Complaints Board Findings**

KLS/

**STATES OF JERSEY COMPLAINTS BOARD**

**11th April 2018**

**Complaints by Mr. A. Luce and Mr. J. Mallinson against the Minister for Infrastructure and Jersey Property Holdings regarding the handling of foreshore encroachment claims.**

**Hearing constituted under the Administrative Decisions (Review) (Jersey) Law 1982**

**Present**

**Board members –**

G. Crill (Chairman)

J. Moulin

G. Fraser

**Complainants -**

A. Luce

J. Mallinson

**Minister for Infrastructure / Jersey Property Holdings –**

R. Foster, Director of Estates, Jersey Property Holdings

P. Ahier, Principal Property Manager, Jersey Property Holdings

S. Forrest, Estates Surveyor, Jersey Property Holdings

**States Greffe –**

L.M. Hart, Deputy Greffier of the States

K.L. Slack, Clerk

The Hearing was held in public at 10.00 a.m. on 11th April 2018 in the Blampied Room, States Building.

**1. Opening**

- 1.1 The Chairman opened the Hearing by introducing the members of the Board and outlining the process which would be followed. He indicated that this would be an informal hearing in order to ascertain an appropriate position from which the Board would reach its findings. There followed a short adjournment, during which the Board, accompanied by both parties, visited Grève d'Azette, St. Clement, in order to put the complaints of Messrs. Luce and Mallinson ('the Complainants') into context.

**2. Site visit**

- 2.1 Looking west towards Havre des Pas from the slipway near the Rice Bowl restaurant, the Board viewed the location of Roche de la Mer and Brise de Mer *vis à vis* the sea wall at Grève d'Azette, St. Clement, which was of granite construction, curved smoothly southwards and whose height had evidently been increased at some point in the past along its length. The Board noted that several properties appeared to abut the sea wall and that there were a number of openings therein, some of which had steps which led down to the beach. There was also a concrete World War II bunker, which formed part of the sea defences.
- 2.2 The Board observed that Roche de la Mer had one set of steps down to the beach and that Brise de Mer had 2. Mr. Luce indicated that Roche de la Mer was located on the former site of 2 fishermen's cottages, which had been built in the same fashion as the extant neighbouring cottage, Prospect Place. Mr. Luce informed the Board that he had suffered tidal flood damage to Roche de la Mer. The attention of the Board was also drawn to the Carlton Hotel, which had entered into a contract in connexion with an encroachment on the foreshore.

**3. Hearing**

- 3.1 The Chairman indicated that the complaint by Mr. Luce, in relation to Roche de la Mer and the complaint by Mr. Mallinson, in relation to Brise de Mer, had been made separately. However, on the basis that they covered the same issues, it had been agreed by all parties that they should deal with together. It had also been stipulated, in advance of the hearing, that the issue of the ownership of the foreshore was not something on which the Board would give an opinion. Ultimately, Messrs. Luce and Mallinson had transacted with the Public as the *de jure* owner thereof. It was further agreed that where reference was made within the report to Jersey Property Holdings ('JPH'), this would be taken to include the Minister for Infrastructure.

4. Summary of the Complainants' case

Mr. Luce – Roche de la Mer

- 4.1 The bundle of papers provided by Mr. Luce, in advance of the hearing, demonstrated that he had acquired Roche de la Mer, formerly known as Littlecourt, on 23rd September 2005. At that time, the part of the property, which was later asserted to constitute an encroachment onto the sea wall, had already been constructed by a previous owner. The contracts of acquisition referenced a right to the opening in the sea wall and the steps, but made no reference to the sea wall itself. At the time of purchase, Mr. Luce had investigated the possibility of paying a one-off insurance premium in the event of there being a catastrophic breach of the sea wall, but had been unable to acquire cover, because he had no insurable interest in the sea wall, or the foreshore, which was, at that time, in the ownership of the Crown but leased to the Public. In June 2015, the Crown made a gift of the foreshore to the Public.
- 4.2 In September 2015, Mr. Luce placed Roche de la Mer for sale with Broadlands Estates. He was subsequently written to – as was Broadlands Estates – on 9th September 2015 by Mr. Forrest, Estates Surveyor, JPH, to the effect that the construction of Roche de la Mer constituted a clear encroachment onto the sea wall, which belonged to the Public of the Island. The letter indicated that JPH had the intention to devise a politically supported policy in respect of encroachments over sections of the foreshore and sea defences. The letter continued, *'In the meantime, it is JPH's intention to commission a valuation of the encroachments and revert with in-principal (sic) terms for a settlement, however, prior to doing so, JPH will require your confirmation that you are willing to participate and that you will be responsible for all fees incurred by the Public, regardless of the outcome.'*
- 4.3 The result of this letter was to cause uncertainty over title issues, which led to potential purchasers withdrawing from the process, or offering significantly below the asking price, subject to the issue being resolved. It also prompted Mr. Luce's mortgage lender to notify him that it would be renewing its arrangement with him every 6 months, as it had concerns over the security of the 'asset'. Mr. Luce indicated that at this time he felt that he was *'at the mercy of progressive buyers'*.
- 4.4 Mr. Luce and Mr. Forrest subsequently spoke on the telephone and on 11th December 2015, the latter sent Mr. Luce an electronic mail message, which stated, *'While one possible solution is to allow the encroachments to remain upon payment to the Public of a financial consideration and the passing of a contract before the Royal Court in which the terms upon which the encroachments could remain would be set out, the Public reserves the right in the alternative to seek the complete removal of all and any encroaching parts of your property. I cannot stress too strongly the seriousness of the encroachments and this should be brought to the attention of any prospective purchaser(s).'* This

correspondence and others emanating from JPH were caveated 'Subject to contract and Ministerial approval'.

- 4.5 In February 2016, JPH wrote to Carey Olsen, whom Mr. Luce had instructed to represent him in this regard. The letter referenced the land on which Roche de la Mer was constructed, which appeared to be sand dunes abutting the high tide mark, having first been the subject of a transaction in February 1824. The sea wall was constructed in 1846 and JPH contended that some part of the foreshore lay behind the inner face of the sea wall to the extent of the '*plein de Mars*' (high water mark of the Spring tide). The letter stated that the Law Officers' Department had undertaken title research and had not found any contracts to give legal rights to Roche de la Mer, or any of the neighbouring land owners, to build either on, up to or against, the sea defence, or to create openings therein. In that letter, Mr. Forrest indicated that the Minister for Infrastructure had not, at that juncture, been consulted on its contents and it was not, therefore, possible to confirm what his views would be. In that letter, reference was made to the base of the sea wall extending further inland than was visible by '*probably Jfi bins*', the premise being that the wall had foundations, which were wider than the section of wall that was above ground.
- 4.6 In April 2016, JPH informed Mr. Luce that it would be instructing BNP Paribas Real Estates ('BNP') to undertake a valuation of the encroachment and that he would be required to meet the costs thereof. Mr. Luce had previously proposed using another valuer and felt that JPH was restricting his freedom of choice. In response to JPH's electronic mail correspondence, Mr. Luce sought confirmation in writing that the Minister for Infrastructure had approved the claim against him and others and requested clarification on the position taken by the States. An answer to this enquiry was not forthcoming at that time.
- 4.7 On 2nd June 2016, Mr. Luce's lawyers wrote to JPH and raised a number of points. In respect of the claim for 'monetary compensation' from their client they asserted that '*the Public ... pitches its unlimited resources against an ordinary homeowner; it intentionally blights the homeowner's prospects of selling by threatening both the landowner and prospective purchasers ... the only way the ordinary homeowner can force a resolution is by costly and time consuming litigation*'. It was also submitted that the Crown had not, in fact, owned the foreshore in the location of Roche de la Mer and that it had been owned by the Seigneur of the Fief de Samarès. Mr. Luce's predecessor in title had owned the land as far as the high water mark. If the sea wall, which had been constructed in 1846, had been built on the high water mark, or to the north of it, the Public had encroached on the land belonging to Mr. Luce's predecessor in title. If it had been built below the high water mark, the Public had encroached on land belonging to the Seigneur. It was questionable, therefore, how the Public

claimed to acquire good title to the wall and how, by its own encroachment, it sought to claim a 'relief'.<sup>1</sup> This notwithstanding, Mr. Luce reluctantly agreed in this correspondence that BNP should be appointed as valuer. It was recalled that the issue of the ownership of the foreshore was not something on which the Board would give an opinion at the hearing.

- 4.8 There followed an exchange of letters and electronic mail exchanges between Mr. Luce's lawyers and JPH over the proposed wording of the instructions to BNP, on the basis that there was no agreement over the extent of the alleged encroachment and Mr. Luce wished for the valuation to be based on various scenarios. On 24th July 2016 Carey Olsen wrote to JPH, '*Our client's position is that the claim is not made out on the arguments you have put forward, but he needs to sell his property and may be forced by the States' never before made claim to settle it.*'
- 4.9 During August 2016 amendments to the letter of instruction for BNP were proposed by Mr. Luce's lawyers and JPH. In an electronic mail message, Mr. Forrest indicated that a new policy in respect of the foreshore and the Island's sea defences was being developed, which would '*address the operational requirements of the Island's sea defences and how these defences can best be maintained ... take in account the provisions of Part 4 (Flood Defence) of the Drainage (Jersey) Law 2005 ... address the Public's position with regard to existing and future encroachments onto the Foreshore and the sea defences and provide a framework for dealing with these on a case by case basis*'. However, it also conceded that '*With regard to ... the diminution in value of the Public's property (the seawall and the land claimed behind it), this land has no inherent value per se. However, as with any land, its value should reflect the use to which it is put.*'
- 4.10 Having instructed BNP, it subsequently emerged that that company was unable to undertake the work until the end of November 2016, which was unacceptable to Mr. Luce as it would have had the effect of further delaying the sale of his property. He had proposed that his original preferred valuer should be used, but this was declined by JPH, who instructed Buckley & Co.
- 4.11 The valuation by Buckley & Co. was obtained on 12th October 2016, in excess of a year after JPH had initially contacted Mr. Luce. Buckley & Co. provided an opinion on a range of possibilities, due to the differing views of the parties. On the one hand, the Public argued that the encroachment at Roche de la Mer extended as far as 8 feet and 5 inches beyond the southern face of the parapet and

<sup>1</sup> An offset. Boundary structures (including boundary stones) can be owned with or without a *relief*. A standard *relief* is 1 1/2 Jersey feet (1 foot 4 1/2 inches imperial) wide but this measurement can vary in certain circumstances (taken from the Jersey Legal Information Board glossary of legal terminology).

that the compensation payable should be the resultant increase in the value of the property. On the other hand, Mr. Luce contended that, in the interests of fairness, compensation should be payable on the diminution in the value of the land over which the property was said to encroach, mindful that the alleged encroachment had been constructed before he purchased the property.

- 4.12 Buckley & Co. assessed the diminution in the value of the property alleged to be owned by the Public as building land with planning permission for development as it existed at the time arising from the encroachment. It explored a number of scenarios and the parties agreed the average of the following valuations. The width of the sea wall plus 4ft 4½ inches (3ft of sea wall foundations plus the sea wall relief of 16½ inches) was valued at £51,000. The width of the sea wall, plus 5ft 9 inches (3ft of sea wall foundations plus the relief of the property of 2ft 9 inches) was valued at £62,000. This gave an average of £56,500, which was reduced by half to give the figure of £28,250 plus GST (£29,662.50). Mr. Luce was also required to pay professional costs of £4,500, plus GST (£4,725.00), comprising a share of the costs of the valuation by Buckley & Co. and the Public's legal costs. His total outlay in connexion with this matter was, therefore, £34,387.50.
- 4.13 Buckley & Co's valuations were based on the hypothesis that the sea wall was wider at its base than was actually visible above ground (as referenced in paragraph 4.5 above) and that the foundations 'extended northwards underground for a distance of 3 feet'. These additional 3 feet cost Mr. Luce in excess of £15,000. However, Mr. Luce provided evidence, within his bundle of papers, that JPH had been made aware in March 2015 - almost a year before they had written to him contending that the foundations extended further inland than was visible - that the sea wall at the location of Brise de Mer had a vertical face to its landside.
- 4.14 When excavation work had been undertaken at Brise de Mer in order to lay the foundations for the columns which supported the balcony, it had been noted that the sea wall had a vertical face. Mr. Mallinson had furnished Mr. Luce with a letter from his structural engineer, which confirmed this. He had also provided electronic mail correspondence between him and an Assistant Engineer at the Department for Infrastructure, in which the latter had opined 'I would not expect the wall construction to extend further landside. I would expect a vertical face ...'. It was extremely unlikely that the sea wall should be constructed in a different fashion at the location of Roche de la Mer, because the 2 properties were located within 50 metres of each other.
- 4.15 On 9th December 2016, Mr. Luce eventually sold Roche de la Mer. The Public of the Island was party to the contract of sale. Clause 15 of the contract read as follows:



*'THAT the Minister for the Department for Infrastructure such other department of the States or other body having the administration of the Sea Wall or the Foreshore or any person or body to whom the functions of that person body or department may be transferred hereafter ('MDPI') on behalf of the Public may at any time require the Purchaser by notice served on it in writing to immediately (i) remove the encroaching walls, structures (or any part thereof) (ii) remove the terracing (or any part thereof) (iii) block up the openings in the Sea Wall and (iv) repair remove and / or replace the steps joined to the Sea Wall where such is necessary to maintain the safety of any persons making use of the Foreshore and / or the structural integrity of the Sea Wall and any associated sea defence works in the vicinity, such written notice to be issued on such terms and conditions as MDPI may in its absolute discretion determine having regard to the necessity to maintain the safety of any persons making use of the Foreshore and / or the structural integrity of the Sea Wall and any associated sea defence works in the vicinity, all such works being undertaken at the sole cost of the Purchaser.'*

- 4.16 Mr. Luce indicated that this was an unfair clause as although he had been obliged to pay a significant sum in relation to the encroachment, this clause afforded him no guarantees that it could remain in place, as it gave the Minister the power to oblige him to remove it immediately. Further, he informed the Board that Clause 14 of the contract was incorrect in that it referenced 2 openings and sets of steps in the sea wall onto the beach at Grève d'Azette, whereas there was, in fact, only one opening and set of steps from Roche de la Mer onto the beach. The error had been highlighted to JPH in August 2017, but had elicited the response from Mr. Forrest that *'It is clearly an error that could be easily rectified in the future sale of the property, to which sale the Public would be happy to be party if so required.'* At the hearing, Mr. Luce described this error in the contract as *'sloppy'*, which was accepted by Mr. Foster.
- 4.17 In relation to the 'trigger events' (see paragraph 5.5 below), which would prompt JPH to contact a landowner in respect of a suspected encroachment, Mr. Luce noted that the Department had indicated that it was always willing to discuss a resolution on a 'without prejudice' basis. In his view, this was misleading and contradicted the stated aim of JPH to extract *'optimum benefit from property assets'*.
- 4.18 Mr. Luce notified the Board that having reached a settlement with JPH, albeit under duress, he felt that the Department should treat all people, whose properties potentially encroached on the foreshore, in an equitable manner. He was concerned that the owners of the properties, who were direct neighbours of Roche de la Mer, had not been approached by JPH, presumably on the basis that they were not seeking to sell. He described this as an inadequate and selective process.

- 4.19 Mr. Luce indicated that he felt '*ambushed*' and '*let down by the process*' which was based on '*unfair leverage*'. He informed the Board that he had been told it would take approximately £100,000 and 10 years to challenge the actions of JPH through the Courts, which he stated was '*not justice*'. The uncertainty over title, the delays and the duress from JPH had such a significantly adverse effect on his health and wellbeing that he had decided to leave Jersey on completion of his complaint against JPH.

Mr. Mallinson – Brise de Mer

- 4.20 The bundle of papers provided by Mr. Mallinson in advance of the hearing demonstrated that he was the beneficial owner of Ksum Ltd, which had commenced the purchase of the freehold interest in the Brise de Mer Apartments at the start of 2009.
- 4.21 At that time, Mr. Mallinson instructed lawyers to act on his behalf, whose title checks raised the issue of the ownership of the sea wall. Since 1886, the owners of the land, on which the Brise de Mer Apartments had been built, had claimed ownership of the sea wall. Moreover, uncertainty existed over the extent of the southern boundary of the property and the location of the original foreshore. Accordingly, the vendor's lawyers were requested to liaise with the Law Officers' Department to seek ratification of the boundary. An electronic mail message, dated 6th February 2009, from the Head of Conveyancing to Appleby indicated that '*I have now had the opportunity of discussing this matter with the Receiver General and he has instructed me that he is not prepared to give the confirmation requested in your email. He is not satisfied that our records are definitive enough to ascertain the extent of the Crown's foreshore and as he is dealing with several other similar cases at present he does not want to set any form of precedent*'. A later electronic mail message (24th March 2009) from the same individual, stated, '*The Receiver General has instructed me that he is not willing to enter into any form of agreement in respect of the foreshore at present*'. In the light of the foregoing, the lawyers acting for Mr. Mallinson agreed with the opinion of the vendor's lawyers that as the Crown had no reliable evidence of the extent of the foreshore, it was inconceivable that money would be expended in seeking to change the *status quo*. Accordingly, Ksum Ltd acquired the Brise de Mer Apartments in May 2009.
- 4.22 At the time of acquisition, there was one set of steps down from the Apartments to the beach, but there had previously been a second set, which had been removed and the section of sea wall blocked up. In October 2013, Mr. Mallinson contacted Her Majesty's Receiver General, requesting his consent to be a joint applicant on the form to seek planning permission to reinstate the second set of steps, on the basis that the Crown was the owner of the foreshore. H.M. Receiver General acquiesced, as had similarly been the case in 2010 when the Girl Guides Association had applied for permission to install

steps to the beach from a neighbouring property and on 28th January 2014 Ksum Ltd obtained permission to erect an external staircase onto the beach. No charge was made by H.M. Receiver General for either consent. Planning permission had also been obtained in August 2013 to transform 9 apartments into 6 and to construct balconies to the south-west elevation of Brise de Mer. This work to the apartments and the reinstatement of the steps onto the beach was completed in December 2014.

- 4.23 At this juncture, Mr. Mallinson received an offer to purchase Brise de Mer Apartments. Lawyers acting on behalf of the prospective purchaser opined that *'We consider that on balance the claim of ownership of the South wall of the Property towards the foreshore is not 100% clear.'* When Ksum Ltd had acquired the Brise de Mer Apartments, Mr. Mallinson's lawyers, Ogier, had carried out their own research, which demonstrated that the sea wall at the site of Brise de Mer (and Roche de la Mer) was constructed in 1846. As noted above, the first claim of ownership of the sea wall, by the owners of properties on which Brise de Mer is situated, was made in 1886. In the view of Ogier, it was not coincidental that this claim to ownership should have been made 40 years after the construction of the wall, because of the notion of *'possession quadraginaire'*<sup>2</sup>, which would have been a familiar concept to conveyancers in the mid-19th century. Furthermore, they would have been fully aware that whilst it was not possible to bring such a claim against the Crown, it was possible against another owner, which gave significant weight to the view that the foreshore in this area was in the ownership of the Seigneur of the Fief de Samarès. This opinion had also been expressed by the lawyers representing Mr. Luce (see paragraph 4.7 above).
- 4.24 The advice of the prospective purchaser's lawyers, was forwarded by the former, without the advance knowledge of Mr. Mallinson, to the Minister for Infrastructure, asking if a deed of arrangement could be entered into. The Minister, in turn, redirected the enquiry to Mr. Foster, Director of Estates, JPH, on the basis that it was not strictly a political matter. On 15th January 2015, Mr. Mallinson sent an electronic mail message to Mr. Foster, maintaining that Ksum Ltd had the legal ownership of the sea wall and that no encroachment had occurred. He offered to pay any reasonable legal fees incurred by the Crown, or Public, in order to resolve any uncertainty over boundary issues, but asserted that he would not pay any *'compensation'*.
- 4.25 Mr. Forrest responded to Mr. Mallinson on 27th January 2015, having sought the advice of the Law Officers' Department. As was the case with Mr. Luce, this correspondence and others emanating from JPH were caveated *'Subject to contract and Ministerial approval'*. JPH contended that *'The seawall*

<sup>2</sup> Prescriptive possession was a customary law codified in the Code of 1771. Forty years peaceable, uninterrupted and unchallenged possession of land can give good title to that land (taken from the Jersey Legal Information Board glossary of legal terminology).

... cannot form part of the property owned by KSUM Limited by way of prescriptive title and the recently constructed balconies appear to constitute an encroachment onto the sea defences ... We see little reason, then, why KSUM Limited should benefit from the ratification of its encroachments on the preferential basis you seek.' Mr. Mallinson subsequently met with Mr. Forrest and Mr. Foster, who refused to entertain any suggestion that the sea wall was not in the ownership of the Crown at that juncture, reiterated that Ksum Ltd had encroached onto the sea defences and sought compensation in order to ratify the boundary.

- 4.26 On the basis that the prospective purchaser's lenders would not provide the funding for the acquisition of Brise de Mer Apartments until such time as the boundary had been ratified, Mr. Mallinson felt that he had no alternative other than to offer £10,000 to effect this ratification and by way of compensation for any alleged encroachments, thereby foregoing his claim to the ownership of the sea wall.
- 4.27 On 9th March 2015, H.M. Receiver General indicated that, in principle, he had no objection to being a party to such a transaction. He referenced Mr. Mallinson's offer of compensation and stated '*Normally I would need to employ the services of a valuation agent for an impartial assessment but this would be time consuming and I believe that time is critical in this matter.*' This notwithstanding, JPH and H.M. Receiver General decided that a valuation was required to calculate the proposed compensation for the alleged encroachment. The valuation was to cover the encroaching parts of the balconies onto the *relief* of the sea wall; access rights to maintain the boundaries; and the use of the sea wall's *relief* as an amenity space. At Mr. Mallinson's request, it was agreed that a separate price would be obtained for the latter. JPH instructed BNP to undertake the valuation, but Mr. Mallinson was not permitted to jointly instruct the firm, so was unable to be party to the terms of reference. Moreover, he was not allowed to have sight of the valuation, which was undertaken on 17th April 2015, despite numerous requests and having been required to pay for it. It was not until the documents were circulated by the parties in advance of the hearing of the Complaints Board that Mr. Mallinson finally had sight of the valuation by BNP, because it had been included in the papers provided by JPH. According to the report of JPH, this initial valuation by BNP suggested a value of between £5,000 and £6,600.
- 4.28 In April 2015 the Brise de Mer Apartments Association was formed in order to facilitate the sale of individual apartments at Brise de Mer.
- 4.29 On 11th May 2015 the Principal Property Manager, JPH, Mr. Ahier, wrote to Mr. Mallinson to the effect that the Law Officers' Department had advised H.M. Receiver General not to participate in the

contract to ratify the boundary on the basis that it would be unsatisfactory to agree a boundary line without addressing the encroachments and that there were concerns around liability in respect of the opening in the sea wall and the steps down to the beach.

- 4.30 On 12th June 2015, the Crown gifted the Foreshore to the Public of the Island and Mr. Mallinson was informed by JPH that a revised valuation would need to be commissioned to cover additional alleged encroachments on which BNP had not previously been requested to provide an opinion, viz the 2 sets of steps, which led from Brise de Mer down to the beach and the *relief* of the sea wall. This notwithstanding that the western set of steps had been in place for in excess of 100 years and the eastern set had been installed, following a joint planning application by Mr. Mallinson and H.M. Receiver General (see paragraph 4.22 above). As previously, Mr. Mallinson was not permitted to jointly instruct the valuer and nor was he permitted to know the contents of the valuation. It was not until the documents were circulated by the parties in advance of the hearing of the Complaints Board that Mr. Mallinson finally had sight of the second valuation by BNP, because it had been included in the papers provided by JPH. According to the report of JPH, the second valuation by BNP suggested a consideration of £18,750.
- 4.31 On 3rd June 2016, the Public sold and transferred to the Brise de Mer Apartments Association various rights in connexion with the foreshore and sea wall, resulting from the alleged encroachments, for £19,500, plus £5,000 for professional fees incurred by the Public and GST thereon (£25,725). This was some 18 months after Mr. Mallinson had initially approached JPH with a view to seeking a resolution to the boundary issue. Clause 6 of the contract of sale was in almost identical terms to those contained within clause 15 of Mr. Luce's contract of sale (see paragraph 4.15 above), which allowed the Public to require encroachments to be removed in the future. Mr. Mallinson notified the Board that even though the Brise de Mer Apartments Association had entered into the contract with the Public, the absence of full title arising therefrom continued to be problematic and at least one apartment owner had encountered difficulties when attempting to sell, as had others in similar circumstances.
- 4.32 Mr. Mallinson highlighted that the amount that he had been required to pay JPH for the alleged encroachment at Brise de Mer was excessive when compared with Roche de la Mer and Petit Chateau de la Mer, whose owner had also entered into a contract with the Public. He indicated that there was no correlation between the extent of the alleged encroachments and the valuation thereof, particularly as, at Brise de Mer, the complaint related to a balcony which was overhanging by just 1.13 square foot on to the *relief* of the sea wall. He referenced a letter to Mr. Luce's lawyers, in the case of Roche de la Mer, where JPH had written '*We would seek a valuation based on the diminution in the value of*

*your client's property occasioned by the removal of the encroachments, but as we are seeking a solution which permits the encroachments to remain (upon terms to be set out in a future Deed of Arrangement), I see little point in seeking a valuation based on the costs of the removal of the encroachments.'* However, when BNP had been instructed by JPH to value the encroachment at Brise de Mer, the valuation was to be based on the cost of removing the same.

- 4.33 Moreover, Mr. Mallinson highlighted that he had, in his view, been treated prejudicially by JPH as he was the only person to be required to pay compensation for the existence of steps from his property onto the beach. The owners of Roche de la Mer and Petit Chateau de la Mer had not been treated in the same way.
- 4.34 At the hearing, Mr. Mallinson asked officers from JPH why they had taken the valuation by BNP and then charged him extra. He cited their own policy, which referenced a '*fair and proper price*' and queried how the actions taken by JPH could be described as fair when they had approached an external valuer to obtain a fair value and then asked for more.

Joint areas of complaint:

- 4.35 Both Complainants expressed the view that JPH had been 'high handed' in rejecting outright any doubts in respect of the ownership of the foreshore, which they had both raised viz that the foreshore at the location of both Roche de la Mer and Brise de Mer had been owned by the Seigneur of the Fief de Samarès, rather than the Crown. In early correspondence, JPH had stated that, as far as the Public was concerned, the ownership of the sea wall was not in question. This notwithstanding that a company acting on behalf of a Seigneur of another fief had been given a settlement of land on the Waterfront, worth £10 million, which was indicative of the assertion that legal title to the foreshore of the coast of Jersey was vested in the Seigneurs of those Fiefs that bordered the sea.
- 4.36 Although the Complainants had to meet the cost of the valuations of the encroachments, the way in which the instructions for the valuations were commissioned was a source of frustration for them both. Mr. Luce was refused his choice of valuer, albeit he was afforded input into the letter of instruction and was able to see the valuation. Mr. Mallinson was not permitted to jointly instruct the valuer nor was he informed of the contents of the valuation. Moreover, the Complainants emphasised that JPH had not dealt in an equitable manner with all landowners. They cited the example of the Carlton Hotel, which had paid a significant consideration (£230,000) to the Public in relation to a number of doors

and windows, which had encroached onto La Collette Promenade. They described it as '*astounding*' that hotels on either side of the Carlton had not been pursued in a similar manner.

- 4.37 Both Complainants cited the lengthy delay between their first contact with JPH in relation to the issues around boundaries and encroachments and the passing of the relevant contract before the Court. In the case of Mr. Luce this took from September 2015 to December 2016; and in the case of Mr. Mallinson from December 2014 to June 2016.
- 4.38 The Complainants also felt that the contracts were imposed on them by JPH, from a position of power, rather than being negotiated. JPH acted at a time when they were at their most vulnerable, because they were seeking to sell their properties. JPH required them to agree their terms, or to force a resolution by lengthy and expensive litigation. To quote Mr. Luce's lawyer, '*...it is not in Mr. Luce's best interests to litigate. Litigation is expensive and the Public has unlimited funds to draw upon. So, he must negotiate.*'
- 4.39 The Complainants alleged that as soon as the Public had acquired the foreshore in June 2015, it had begun to pursue 'low hanging fruit' albeit JPH did not develop a clear policy in relation to encroachments on the foreshore until December 2017. When the foreshore had been in the possession of the Crown, there was little evidence that alleged encroachments had been actively acted upon. Accordingly, for long periods of time many homeowners had been led to believe that an encroachment onto the sea wall was not an issue. Reference was made to the land upon which the sea wall from Pontac to La Rocque was built and the reclaimed land to the rear. In 1971 the States had approved the purchase of the land with a view to gifting it to the neighbouring properties as extended gardens. A severe storm had caused a land collapse which had resulted in the States constructing and backfilling a new sea wall. However, the transaction was not completed and, in 2009, JPH sought the approval of the Minister to acquire the sea wall from the Crown and to transfer to the 63 neighbouring properties the relevant co-extensive sections of reclaimed land behind the sea wall. In the report to the Minister, it was stated, '*the land was acquired from the Crown for the sole reason of building the sea wall in 1971, and it would be morally wrong to seek to profit from that land*'.
- 4.40 It was argued that the conditions imposed within the contracts (clause 15 in the case of Mr. Luce and clause 6 in the case of Mr. Mallinson) were unreasonable, given that they permitted the Minister for Infrastructure to require the purchaser to immediately undertake work, including the removal of any encroaching wall or structure, for which they had paid compensation. Moreover, these 'clawback' clauses were causing some lawyers acting for prospective purchasers to advise their clients not to buy

the properties that were subject to such clauses, thereby 'blighting' possible sales. When lawyers acting for the Complainants had highlighted to JPH that the conditions were onerous, JPH had not been willing to negotiate.

5. Summary of the case of the Minister for Infrastructure / Jersey Property Holdings
- 5.1 JPH had also provided a bundle of papers in advance of the hearing. It indicated that prior to the acquisition of the foreshore from the Crown in 2015, it had leased the same and had, with the consent of the Crown, effected a level of land management control as if it were the owner. It further stated that it had responsibility as the flood defence authority in the Island, under the Drainage (Jersey) Law 2005, to provide, maintain, improve and extend facilities and measures to protect Jersey from flooding. The sea wall at Grève d'Azette was considered to be a valuable flood defence structure for a large number of properties and the coast road. In general terms, JPH's case was that any encroachment onto land in the ownership of the Public should not obstruct, or make it more difficult for it to exercise any of its powers or functions and this was particularly the case in relation to the maintenance and repair of sea defences.
- 5.2 JPH argued that in passing contracts with Messrs. Luce and Mallinson it had not simply been a case of obtaining a consideration for the encroachment, but to reflect the stewardship role that JPH had in respect of the custody and care of the asset held by the Public. Further, its policy, 'Statement on Land Valuation', which had been approved by the States in 2006 indicated that it should extract '*optimum benefit from property assets*'. If the Public disposed of property, or granted rights over property, at less than the best consideration, this could be deemed a subsidy for the purchaser and it was important to ensure that the nature and amount of the same could be justified. Accordingly, such matters had to be considered on a case by case basis.
- 5.3 According to JPH, the granite sea wall at Grève d'Azette, which had been constructed in 1846, had been built on the foreshore in order to operate as a sea defence. Part of the foreshore lay behind the inner face of the sea wall to the extent of the full spring tide ('*plein de Mars*'). As a result, when the Public was gifted the foreshore by the Crown, it acquired the area of land behind the sea wall, which was part of the foreshore. This was on the basis that the foreshore was defined as the area lying between the low water mark and the high water mark of the '*plein de Mars*'.  
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- 5.4 The granting of planning permission, such as Mr. Mallinson had obtained in relation to the second set of steps at Brise de Mer, did not remove the requirement for the person obtaining such permission to have the relevant legal rights to build, or carry out other operations on another person's land. It would  
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be expected that a property owner would be aware of the extent of their own property, having been advised of such by their lawyer on acquisition. JPH indicated that there appeared to be an increased awareness of the Public's ownership of the foreshore, as evidenced by the location of the Homestill development at Grève d'Azette, which had been set back from the sea wall.

- 5.5 JPH made the point that there was no expectation for the Crown, as former owner of the foreshore, or the Public, as current owner, to continually monitor any developments on properties adjacent to its land. This had particularly been the case for the Crown because, as previously noted, *possession quadraginaire* did not run against it, whereas it did for any other land owner, including the Public. As a consequence, there were certain 'trigger events', which would prompt JPH to contact the owner, or agent, when an encroachment came to light. These could be a planning application, the marketing of the property, or change of ownership, or the receipt of information. JPH indicated that they would then take a view on how to proceed, generally in dialogue with the owner.
- 5.6 According to JPH, the Crown had not developed a policy to deal with encroachments, because *possession quadraginaire* did not run against it. It did not wish to lead proceedings in relation to the foreshore, so would rely on the Public, as tenant, to deal with them. Each case would be dealt with on its merits, but would usually result in the removal of the encroachment, or the 'sale of the value of the rights consistent with the benefit to the encroacher'. H.M. Receiver General would, by agreement, receive between 5 and 10 per cent of the valuation.
- 5.7 Mr. Foster indicated that JPH had not been involved in the transfer of the foreshore from the Crown to the Public, but had been aware of it. The foreshore policy, which had been approved by the Minister in December 2017, had been based on the experience of the Public when dealing with encroachments as the tenant of the Crown and was intended to complement and supplement the 2006 'Statement on Land Valuation' policy. It was argued that the way in which JPH dealt with encroachments currently was not materially different from before the policy had been introduced. The contracts with the homeowners whose properties abutted the sea wall at Pontac (as referred to in paragraph 4.39 above) had been used by JPH as the template contracts for subsequent sea wall arrangements. Those properties had been authorised in writing to extend and use up to what was then a new sea wall and contracts had since been passed to reflect that they encroached with permission thereon.
- 5.8 The foreshore policy set out the procedure that was to be followed when encroachments were brought to the attention of JPH. The policy provided that landowners were to be notified within 28 days of the discovery of the encroachment. Depending on the 'severity' of the encroachment, there were various

options. If it was considered too trivial to warrant action, it would be left in abeyance. If the encroachment was more than trivial, but recovery of the land was not 'currently' required, the land might be licensed, or leased, to the landowner, subject to further investigation and agreed terms. As an alternative, disposal of the land, or the sale of the rights, might be felt more beneficial to the Public than licensing or leasing. In other cases, where voluntary compliance had not been achieved, the Minister would take formal steps, as appropriate.

- 5.9 As regards the assessment of the 'value' of the encroachment, Mr. Foster indicated that there was no set policy on whether, or not, to engage a valuer. In cases where a piece of land had little value, JPH would be unlikely to use a valuer, particularly if it was the vendor. Where an issue was contentious, JPH would be more likely to engage the services of an external valuer. There was nothing to prevent a landowner from commissioning their own valuation if they were not satisfied with the valuer selected by JPH. In relation to Brise de Mer, JPH had taken the view that because the encroachment was recent, the Department could take its own valuation advice. In the case of Roche de la Mer, the encroachment was historical and had not been constructed by Mr. Luce, so the decision had been taken that the valuer could be commissioned jointly. Once the valuation was received, JPH would take legal advice and then make a recommendation to the Minister as to the level of compensation payable, either at the value provided, or at a different figure.
- 5.10 The policy provided that a valuer, when assessing the value of an encroachment, might consider the following, or a combination of the following: the value added to the freehold interest of the property, which had benefitted from the encroachment; the cost of rectification, by means of removing the encroachment and reinstating the land to its prior state; or evidence of other settlements and ongoing negotiations. In the case of existing encroachments, the value sought might be reduced to reflect the length of time that the encroachment had been in place, or other relevant factors. These were set out in a sliding scale and ranged from no reduction for any encroachment less than 5 years old, to a maximum 50 per cent reduction for any encroachment aged over 40 years.
- 5.11 In JPH's written case it was stated that '*Encroachment involving a seawall is not a scenario which fits into traditional property transaction. There is not a market place for such land, and it becomes a special transaction between the two parties. There is no other party which the Public can seek to sell to. All that the Public can do is look at what the encroacher has gained from building on the Public's land*'.

- 5.12 In the case of Brise de la Mer, the valuation provided by Buckley & Co. had been £56,000. The foreshore policy had not been in place at the time, but JPH indicated that it had been under development and had, accordingly, reduced the compensation payable by 50 per cent in recognition of the length of time that the encroachment had existed.
- 5.13 Specifically in respect of Mr. Luce, JPH opined, *'The settlement was for a modest consideration compared to the overall value of the property ... the encroachments are not trivial in scale ... A 50% reduction was accepted to reflect the historic nature of the encroachment and period of existence of the encroachment. At no time was Mr. Luce forced to admit guilt (sic) for the encroachments. It was accepted that he himself was not responsible for them. Nevertheless it was a problem that he inherited when he bought the property and should have been dealt with by his lawyers at that time. In addition, he enjoyed the benefit of the encroaching parts of his property'*.
- 5.14 JPH's concluding view in respect of the case of Roche de la Mer was that it had *'dealt with the encroachment fairly, looking after the interests of the Public of the Island in a manner that is also consistent with the future maintenance of the sea wall as a flood defence'*.
- 5.15 Specifically in relation to Brise de Mer, JPH indicated that the encroachments were not historical, but arose from works carried out once planning approval had been obtained. According to JPH, the balconies were built in part onto the Public's *relief* on the rear face of the sea wall, the patios for the 2 south-west ground floor apartments encroached onto the same Public land and the access openings through the sea wall, with the steps down to the beach, were being used for direct access, despite there being no contractual access rights. *'... the balconies, patios and direct beach access were only possible by utilising adjoining land in Public ownership. Brise de Mer was therefore deriving gain from land not in its ownership.'*
- 5.16 As was also the case with Roche de la Mer, JPH's view in respect of Brise de Mer was that the encroachments were not trivial in scale and the settlement was for a modest consideration compared to the overall value of the property.
- 5.17 JPH's concluding views in respect of Brise de Mer was that, *'Mr. Mallinson has no grounds for complaint. JPH has dealt with the encroachment fairly, looking after the interests of the Public of the Island in a manner that is also consistent with the future maintenance of the sea wall as a flood defence.'*

**6. Questioning by the Board**

- 6.1 Mindful that the Board had indicated that it did not intend to voice an opinion on the ownership of the foreshore, JPH challenged the allegation by the Complainants that it had been 'high handed' in relation to this issue. Mr. Foster indicated that it was not for JPH to determine ownership, because they acted on advice from the Law Officers' Department. He informed the Board that he was not aware of any challenge to the ownership of the foreshore in this area and was clear that the Public had ownership thereof.
- 6.2 The Board indicated that, in correspondence between JPH and the Complainants, reference to encroachments implied that the boundary was clear and that the neighbouring owners had obviously extended beyond it. However, during the site visit to Grève d'Azette, the Board had observed an arc of sea wall and queried whether that absolutely followed the boundary of the foreshore, or whether it, in fact, was built according to other topographical, structural and geographical considerations. It was mooted that whilst properties along the length of the sea wall might encroach, in places, onto the foreshore, it could equally be the case that the Public, as owner of the sea wall, was encroaching onto land in private ownership.
- 6.3 JPH accepted the point and informed the Board that the boundary of the foreshore was not a matter on which it had sought advice, as there was a legal definition of 'foreshore'. The presence of fixed structures provided JPH with an indication of the relative positions, but it was conceded that it was not possible to be absolutely certain. The Board was mindful of JPH's own policy on encroachments on the foreshore, which stated *'It may fairly be said that there is no map showing (with a sufficient degree of accuracy) the extent of the upper limit of the Foreshore nor the extent of private land towards it, albeit Admiralty charts, Ordnance Survey and other materials have been reviewed to see whether greater certainty could be provided.'* Officers from the Department explained that, when dealing with these issues, JPH sought to achieve a reasonable position and needed a starting point for any discussions, because it was of no benefit to either party to have an unresolved boundary.
- 6.4 Mr. Foster informed the Board that during 2018 JPH would be seeking the necessary resources to clearly identify boundaries around the foreshore and to highlight any potential issues. Encroachments onto the foreshore had the potential to interfere with the maintenance of the sea defences and from a public perspective this was the primary reason for seeking to resolve matters where these existed. He accepted that this was a significant piece of work, which would take time to complete. The Board questioned whether it was the policy of JPH to establish the sea defence area, or merely to identify

any encroachments. Mr. Ahier expressed the view that both went hand in hand. JPH wished to establish the extent of the foreshore by means of research, but in cases where the foreshore was found to be located behind the sea wall, it would have to consider how to deal with any properties that were abutting, or encroaching on, the same.

6.5 The Board noted that JPH wished to create consistency in respect of boundaries *vis à vis* the foreshore, but that it was constrained currently by a lack of resources. It suggested that when the foreshore had been in the ownership of the Crown, which was not adversely affected by '*possession quadraginaire*', there had been no driving need to achieve this, but that the transfer of ownership to the Public meant that '*the clock was ticking*'. Accordingly, the Board suggested that there would be people who owned property which encroached onto the foreshore, but they would not come to the Department's attention for 15 years, for example, due to a lack of resources. As a result of the sliding scale adopted by JPH in its foreshore policy, these people would benefit from a fundamentally different outcome from those individuals who were unfortunate enough to come to the attention of JPH as soon as the policy had come into force. Mr. Foster indicated that JPH intended to deal with the more substantive encroachments at an early juncture and anticipated that the work could be completed within a 5-year period. He was, however, unable to indicate how many properties currently adjoined the foreshore. The Board queried how JPH's stated aim to deal with people in a consistent manner could align with the sliding scale contained within the foreshore policy. Mr. Foster responded that the Government sought to be fair and reasonable in its approach, in balancing the needs of individuals against those of the Public. Where these needs did not coincide it could be difficult, but it was in the best interests of all concerned to reach a solution and he believed that JPH was successful in this regard.

6.6 The Board queried the delay between JPH first making contact with the Complainants in relation to the encroachments and the passing of the relevant contracts. The Chairman, as a lawyer, indicated that, in his experience, it should have taken no more than 3 weeks to ascertain the definition of a boundary and encroachment. In the cases of the Complainants it had taken up to 18 months to resolve and this was, in his view, indicative that there was something very much awry in the process.

6.7 Although it had not previously been raised by JPH, the Department indicated that where it was safe and practical, its policy was that the foreshore was to be enjoyed by the public of the Island and it would seek to identify whether there was a genuine prospect of preserving and enhancing those areas, mindful that the work to do so would be resource hungry and would have to compete with other demands on public funds. It was noted that a promenade already existed thereon in many places around the coast. If the foreshore was not accessible, because it had been blocked by an encroachment, JPH would consider the type of encroachment and take a view on whether it should be removed.

Mr. Foster informed the Board that a judgment would be taken on a case by case basis because *inter alia* there was no point in creating a land-locked amenity space to which no-one could gain access. However, it was not possible to prescribe every eventuality within a policy. Mr. Forrest indicated that under the provisions of the Drainage (Jersey) Law 2005, there was a prohibition on any construction within 5 metres of a designated flood defence (which included the defence of the land against sea water and coastal erosion), which would relate to any sea wall so designated. In other cases, it was proposed that there should be an access strip of 8 feet to enable access for machinery, if so required.

- 6.8 The Board opined that the neighbours of the foreshore would need to be involved in order to establish a clear boundary and suggested that when dealing with Messrs. Luce and Mallinson, JPH could have notified the owners of neighbouring properties that it would be prepared to negotiate in relation to their boundaries, on the basis that the Public required land behind the sea wall in order to ensure the efficient maintenance thereof. It mooted the establishment of a default position whereby the Public, as owner of the foreshore, would consider any approach in order to establish a boundary up to the sea wall and deal with any encroachments on a separate basis. Mr. Foster agreed that this would, in principle, be possible. He indicated that the Department had invited anyone who believed they might be affected to contact them and agreed that a communication exercise would form part of the larger piece of work to establish the location of the foreshore.
- 6.9 The Board questioned the 'clawback' provisions imposed within the contracts (clause 15 in the case of Mr. Luce and clause 6 in the case of Mr. Mallinson). It was suggested to JPH that they were oppressive, on the basis that the Public had taken money from the Complainants, but had not passed good title. Whilst indicating that these were standard provisions and that the Law Officers' Department had been responsible for drafting the contracts, the officers from JPH undertook to review them. The Board also highlighted the section of the contracts which related to repairs and maintenance of the sea wall and expressed surprise that these afforded the Public access rights onto neighbouring properties. The Chairman indicated that whilst he could understand the requirement to retain access over Public land which had been encroached upon, it was a different matter to create new rights onto another person's property, where such rights had not previously existed. Mr. Ahier informed the Board that the Public had the responsibility to maintain the sea defences and whilst every effort would be made to repair the sea wall from the sea side, it was possible that access from the land side would be required.
7. Closing remarks by the Chairman
- 7.1 The Chairman thanked the Complainants and the representatives of JPH for their time and contributions and indicated that a report of the hearing would be prepared in due course, which would

be circulated to both parties for their input on the factual content. The findings of the Board would subsequently be appended thereto.

**8. The Board's findings**

8.1 One of the complaints made by both Complainants was that JPH did not adequately consider their arguments in respect of the ownership of the foreshore. As stated at the outset of this report, the Board was not prepared to consider the matter of the ownership of the foreshore, in part because that is a legal issue rather than an administrative one, but also because both Complainants ultimately chose to enter into contracts passed before the Royal Court on the basis that the Public was the legal owner of the foreshore and both swore oaths to abide by the terms of those contracts. The Board therefore considered the complaints, accepting at face value that the Public is the legal owner of the foreshore, rather than making any finding to that effect.

8.2 Prior to the transfer of the foreshore by the Crown to the Public of the Island, it is apparent that there was no set policy as to how the Crown dealt with matters relating to boundaries, or encroachments, between the foreshore and neighbouring properties in private ownership. Requests from the owners of properties adjoining the foreshore for clarification of boundaries, or encroachments, were dealt with by the Crown on an *ad hoc* basis, acting on the advice of the Public as lessee of the foreshore. Arrangements tended to be on a pragmatic and case by case basis and were generally prompted by the neighbouring owner requiring clarity of boundaries, usually for the purposes of the sale of the relevant property.

8.3 It is worth reiterating that the most critical factor differentiating the ownership of the foreshore by the Crown from the ownership by the Public is the legal principle of prescription. Time does not run against the Crown, meaning that the Crown could take steps to remove an encroachment towards the foreshore at any time, irrespective of the length of time such encroachment had been in place. The same principle does not apply to the Public, meaning that once the foreshore was transferred into the ownership of the Public, any encroachment towards the foreshore, which can be shown to have been in place for a period of 40 years subsequent to the date of transfer, was legitimated by the passage of time. As soon as the foreshore was transferred to the Public, 'the clock started ticking' as far as any encroachments towards the foreshore were concerned. With that in mind, it was, therefore, entirely appropriate that the Public should formulate a policy relating to its ownership of the foreshore and, by extension, how it approached the matter of encroachments towards it.

- 8.4 The Board accepts that the Public has a responsibility *inter alia* to provide, maintain, improve and extend facilities and measures to protect Jersey from flooding. However, the Public also has a responsibility to manage the property for which it acts as custodian on behalf of the people of the Island, in a fair and proper manner. It is right that, as a general rule, public land should not be given away, but it is also appropriate that negotiations involving public land should be conducted in a fair and transparent manner apposite to the nature of the transaction.
- 8.5 It is a fundamental pillar of both complaints that JPH exploited the vulnerability of the Complainants in requiring a clarification of the boundaries of their respective properties in order to conclude the sales of their properties and that there was really no negotiation over the terms upon which the Public would be prepared to ratify the *status quo* as far as the boundary and alleged encroachments were concerned. It is, of course, the sale of a property that most commonly prompts the clarification of a boundary, or the ratification of an encroachment and, in such a case, it can be said that the property seller who seeks clarification comes to the negotiations at something of a disadvantage. Nevertheless, the Board is in absolutely no doubt that when it is approached by a neighbouring owner seeking such clarification, or ratification, the Public has a clear duty to act fairly, promptly and transparently in its dealings with that owner. The Board does not consider that it did so in either of these cases.
- 8.6 Whilst the Board considers that it was appropriate that JPH should seek a valuation of the alleged encroachments and also that such valuation should have been at no cost to JPH, the Board is strongly of the view that, once obtained, any valuation should have been made available to the relevant owner to form the basis of negotiation, along with any other valuation that the owner may have commissioned separately. The basis on which any valuation was assessed would have been apparent and any disparity clear. Terms of settlement could have then been negotiated in the normal manner, whereas in both cases JPH appears very much to have adopted a 'take it or leave it' stance. The Board accepts that JPH believes that it was acting reasonably in that JPH considers that it could have demanded greater levels of compensation than in fact it did, but the fact remains that the financial terms and also the contractual terms of settlement were not the outcome of what anyone could reasonably regard as a negotiated settlement. In short, it appears that JPH exploited the vulnerable position that the Complainants found themselves in as owners urgently needing to sell their respective properties.
- 8.7 In addition, the Board considers that JPH acted unfairly by demanding from Mr. Mallinson a higher amount of compensation than that assessed by BNP, its appointed independent valuer. The Board is of the view that if an independent valuation is sought by the Public, then the amount of such valuation is the maximum that can be justified, whilst being only the starting point in any negotiation. In



non-commercial transaction such as these, it is inappropriate for the Public to seek to maximize profit but, rather, members of the public should be dealt with in a fair, equitable and transparent manner.

8.8 The Board acknowledges that each case of potential encroachment has to be dealt with independently and the appropriate level of compensation - if any - assessed and negotiated case by case. That will necessarily take some time, but the Board could see absolutely no justification for the inordinate amount of time it took for JPH to reach concluded arrangements with the Complainants (16 months in the case of Mr. Luce and 19 months in the case of Mr. Mallinson). JPH was aware of the stress and anxiety being caused to the Complainants by the continuing delay, yet it appears to have done nothing to bring matters to a timely conclusion. Given the huge potential number of similar situations which will arise in the near future, involving virtually every other property adjoining the foreshore where boundaries and possible encroachments may be unclear, the Board urges JPH to refine its procedures, determine responsibilities and above all make public its policy with regard to its stewardship of the foreshore. The Board was informed that JPH is seeking additional manpower to assist with the task, but the Board considers that the establishment and publication of a fair and transparent policy regarding the boundaries of the foreshore and encroachments towards it are an even greater priority.

8.9 The Board considers that there should be a policy which acknowledges that it is in the public interest for the landside boundary of the foreshore towards private properties to be clarified. The Board notes that since entering into contracts with the Complainants, the Minister has devised a policy to deal with encroachments, but that policy does not identify what the default location of the landside boundary of the foreshore should be.

8.10 The Board was extremely concerned by JPH's statement that the foreshore is an amenity to be enjoyed by the public at large. If, as the Public suggests, the foreshore extends landwards from the seawall, the implication is that JPH is happy for the general public to have free access onto what neighbouring owners have, for many years, thought of as 'their' property. Whilst the Board would applaud any plan to establish more accessible coastal promenades, or pathways, suitable for public access, such a plan must sit alongside a clear policy for the clarification of boundaries towards the seawall where it is not intended to establish a promenade, or other public access.

8.11 The Board suggests that the landside face of the seawall should be the starting point for the fixing of the boundary of the foreshore. The Public should retain such land as it considers essential for the safeguarding and maintenance of the seawall, with any residual part of the foreshore transferred to the adjoining owner for an appropriate consideration. In addition, on a case by case basis there should be

negotiations to allow encroachments within such retained areas of land to remain. Alternatively, it would be appropriate for the Public to require and enforce the removal of such encroachments, but only where the maintenance of the seawall, or the fulfilment of the Public's sea defence obligation is impossible.

- 8.12 As stated earlier, the Board considers it appropriate that the Minister should establish a clear policy with regard to the boundaries of the foreshore and the treatment of any perceived encroachments towards it. However, the Board considers that the sliding scale, which has been adopted by JPH to calculate an appropriate 'discount' in relation to encroachments which have been in place for a period of time is unfair, discriminatory and arbitrary and does not align with the stated aim of JPH to deal with private property owners in a consistent manner. Moreover, the Board considers the sliding scale to be something of a blunt instrument and thus an inappropriate remedy for the failure of the Public, as lessee of the foreshore for many years, to monitor adequately any potential encroachments.
- 8.13 The Board is further of the view that the contractual conditions that the Complainants were forced to accept were unreasonable. The Board is in no doubt that the Complainants had no choice but to accept the terms stipulated by JPH if they wished to sell their properties and to that extent they were 'forced to accept' them. JPH informed the Board that several of the clauses were 'standard', in that they had been included in a number of similar previous contracts with owners adjoining the foreshore. Be that as it may, the Board considers that a number of them were unreasonable and oppressive. For example, the Board considers it to be unreasonable for JPH to require payment of a substantial sum in compensation for permitting encroachments to remain, but then to impose an obligation on the owner to remove the encroachments at his, or her, own cost if requested by JPH to do so at some time in the future. Similarly, the Board found it unreasonable for JPH to impose a condition requiring the owner to allow the Public access onto the neighbouring property for the purpose of maintaining the seawall, when no such right previously existed and no compensation for the granting of such right appears to have been considered. Such conditions have a detrimental effect on the value of the properties, but no acknowledgement of that was made by JPH in determining the compensation demanded.
- 8.14 The Board notes that JPH has undertaken to review the wording that was used in the contracts with the Complainants in respect of similar circumstances that arise in the future and the Board considers it essential that it does so. The Board would expect that, having done so, JPH will offer the current owners of the properties, formerly owned by the Complainants, the opportunity to adopt revised conditions in place of those unreasonable conditions that the Complainants had little option but to accept; this at no cost to the owners.

8.15 By the same token, the Board expresses the hope that, notwithstanding that the contracts with the Complainants have been passed through Court, once a clear policy regarding the fixing of the boundary of the foreshore and the payment of compensation in relation to any encroachments has been adopted, the Minister will review the terms concluded with the Complainants and refund them any difference between the compensation each of them paid and the amount of compensation (if any) that would be payable had the new policy been in place at the time. In any event, the Board expresses the hope that the Minister will refund to Mr. Mallinson the difference between the compensation that he paid and the lesser amount assessed by BNP as being the appropriate amount of compensation.

8.16 In conclusion, the Board, having considered whether the complaints could be upheld on any of the grounds set out in Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, concluded that the actions of JPH (and thereby the Minister) in the cases of Messrs Luce and Mallinson were 'unjust, oppressive or improperly discriminatory' and 'contrary to the generally accepted principles of natural justice'. Accordingly the Board upholds the complaints.

8.17 The Board asks for a response from the Minister within two calendar months of the publication of its report.

Signed and dated by

G. Crill, Chairman .....Dated: .....

J. Moulin .....Dated: .....

G. Fraser .....Dated: .....

Minister for Infrastructure's response to States of Jersey Complaints Board

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STATES OF JERSEY



STATES OF JERSEY COMPLAINTS  
BOARD: FINDINGS – COMPLAINT BY  
MR. A. LUCE AND MR. J. MALLINSON  
AGAINST THE MINISTER FOR  
INFRASTRUCTURE AND JERSEY  
PROPERTY HOLDINGS REGARDING  
THE HANDLING OF FORESHORE  
ENCROACHMENT CLAIMS (R.71/2018) –  
RESPONSE OF THE  
MINISTER FOR INFRASTRUCTURE

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Presented to the States on 7th August 2018  
by the Minister for Infrastructure

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STATES GREFFE

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2018

R.71 Res.

**RESPONSE OF THE MINISTER FOR INFRASTRUCTURE**

**States of Jersey Complaints Board**

On 11th April 2018, a Complaints Board Hearing constituted under Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982 was held to review complaints by Mr. A. Luce and Mr. J. Mallinson against the Minister for Infrastructure and Jersey Property Holdings regarding the handling of foreshore encroachment claims.

On 1st June 2018, the Privileges and Procedures Committee presented to the States the findings of the Complaints Board Hearing (*see R.71/2018*).

**The Minister for Infrastructure's response to the final report as per paragraph 8.17 of the same**

*Introduction*

This response paper to the final report of the States of Jersey Complaints Board's Hearing on 11th April 2018 has been presented to the Minister for Infrastructure by Jersey Property Holdings ("JPH") as part of a report dated 18th July 2018.

The new Minister, having taken office on 7th June 2018, does not have the benefit of his predecessor's direct involvement in decisions MD-PH-2015-0098 and MD-PH-2016-0073, and the purpose of the 18th July report is, therefore, to set out the events of the 2 complaint cases, and to recommend a response for the Minister to make in respect of the Board's final report.

*Responses to findings*

- 8.1 No comment.
- 8.2 The transfer of the foreshore from the Crown to the Public in 2015 was in respect of the balance of the foreshore the Crown held in right of the Bailiwick that had not already been ceded to the Public. Whilst it is correct that there was not a set policy for the foreshore prior to December 2017, JPH, on behalf of the Public, acted in accordance with the 9th November 2006 Ministerial Decision reference MD-PH-2006-0094 "Statement on Land Valuation" to extract the optimum benefit from the Public's property assets.
- 8.3 The Minister is pleased to note that the Panel take the view that "it was, therefore, entirely appropriate that the Public should formulate a policy relating to its ownership of the foreshore and, by extension, how it approached the matter of encroachments towards it".
- 8.4 The expression "the Public" in contracts is one that has grown up over the centuries as a conventional description for property which is owned by the States of Jersey ("the States") on behalf of the Island community.

It is the Minister for Infrastructure who is the flood defence authority for Jersey and has power to "provide, maintain, improve and extend facilities and measures to protect Jersey from flooding" (Article 2(3)(c) of the Drainage (Jersey) Law 2005).

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The Minister for Infrastructure also has responsibility for the States' property. This is a separate function from his position as the flood defence authority.

The Statement on Land Valuation (made by MD on 9th November 2006) requires that the Public should not dispose of its land, or create rights over its land, for a consideration less than the best that can reasonably be obtained. The Minister agrees that negotiations should be conducted in a fair manner and considers that this was the case for both transactions. The Minister also notes that the Board comments that negotiations should be conducted in a "transparent manner apposite to the nature of the transaction". The Minister will not behave improperly, but is required to take a range of relevant factors into account in negotiating a property transaction.

- 8.5 The Board has made a finding that "*when it is approached by a neighbouring owner seeking such clarification or ratification, the Public has a clear duty to act fairly, promptly and transparently in its dealings with that owner. The Board does not consider that it did so in either of these cases.*"

The Minister does not accept this finding. Whilst the Minister does not seek to question the assertion that each complainant may have been financially distressed, the Minister does not accept that either transacting party was vulnerable.

The starting point for entering into agreements relating to land owned by the Public is that the States Assembly is the elected body through which the Public makes its decisions. That includes decisions relating to the Public's land. This has been modified by Standing Orders, and Standing Order 168 of the Standing Orders of the States of Jersey provides that the prior agreement of the States is not needed for certain transactions in land if the action is recommended by a body established by the States to manage land and buildings owned by the Public [JPH] and the recommendation is accepted by the Minister for Infrastructure.

Both transactions involved the Public acting as a landowner and were carried out in accordance with the 2006 Valuation Statement and Standing Order 168.

- 8.6 The Minister does not accept the finding at paragraph 8.6. The Minister does not accept that it is appropriate for the Public to share the valuation advice that it has received with the other transacting party. Such an approach would severely compromise the Public's ability to engage in a meaningful transaction.

It is open to the parties to a transaction to seek and obtain their own valuation advice.

- 8.7 No comment.
- 8.8 To reach an agreement requires both parties to agree terms. Having reviewed the chronology in relation to each matter, the Minister is satisfied that officers provided information and responded in an appropriate timescale to the various parties involved. The time taken to conclude a transaction will vary depending on the nature of the matter, and in this case the nature of the transaction and the

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number of parties involved contributed to the length of time taken to conclude the matter.

- 8.9 Landward boundaries will be dealt with as part of the Minister's intended work concerning the foreshore.
- 8.10 The Minister acknowledges that it will not always be possible to open up access to the foreshore.
- 8.11 The Minister disagrees. The landside face of the sea-wall requires access for maintenance, repair, replacement and possible improvement. The Minister accepts that a degree of pragmatism is required, but that also has to be balanced with the Drainage (Jersey) Law 2005, which provides for 5 metres as the space required behind a sea-defence. Furthermore, the Board's finding does not take into account areas of foreshore where there is no sea-wall.
- 8.12 The Minister notes the Board's finding and will review the policy in light of the comments, including the Board's recommendation that the sliding scale be removed. If the sliding scale is removed, then it would mean that property owners would have to pay the full value of the encroachment.
- 8.13 The Minister will give consideration to whether there is an alternative clause which meets the requirement to enable the sea-wall to be maintained which can be included in future contracts.
- 8.14 As above. The Minister will review the wording for future contracts.
- 8.15 The Minister does not accept the recommendation of the Board.
- 8.16 The Minister has carefully considered the Board's findings. Although the Minister does not accept all of the conclusions of the Board, some of the points raised in respect of the policy on the foreshore will certainly be considered as part of a review.

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The Law Society of Jersey Property and Conveyancing Sub-Committee's opinion  
to Jersey Property Holdings' approach



Your Ref:  
Our Ref: JDK/SC/1031782/0001/J10401778v1

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12 July 2016

Dear Chief Minister

We write this letter on behalf of the Law Society of Jersey Property and Conveyancing Sub-Committee. In the last year or so, Jersey property lawyers have encountered a new approach by the States of Jersey Department for Infrastructure and Jersey Property Holdings whereby they seek to extract compensation from property owners whose properties border a seawall and over which it is alleged they encroach. Having discussed this development, the Sub-Committee has decided to raise with you whether this policy is a fair way to proceed in all the circumstances. We therefore write to request a meeting with you to discuss the subject.

As a starting point, the approach appears to have been initiated following the transfer by the Crown to the Public of the foreshore on 12 June 2015. The modus operandi our clients have experienced is as follows: a client advertises his or her property for sale. The estate agent's particulars are monitored by the States of Jersey and, shortly after advertising the property for sale, a letter is received by the estate agent from the States of Jersey alleging an encroachment. Typically the States of Jersey invite the estate agent to notify the vendor and any prospective purchasers of the alleged encroachment. The States of Jersey then demand compensation to allow the encroachment, but actually allow it only in a very limited way which ultimately leaves them free subsequently to require the encroachment to be removed.

It is clear that rather than identifying in a public way to all owners whose properties border and encroach on a seawall that the States intend to take action in relation to such encroachments, the States of Jersey are targeting individuals at a particularly vulnerable point i.e. when they are trying to sell their property. Discreet conversations with several politicians indicate that many of them appear to be unaware of this practice and it does not appear to be an officially sanctioned States policy. As you will appreciate, a party facing allegations of encroachment when he or she is trying to sell their

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home is not placed in a particularly strong negotiating position. Either they pay up or cannot sell their home.

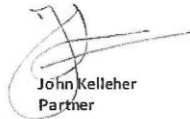
The policy adopted is in stark contrast to that which has been adopted previously by the Crown and the States. It is the Crown which, according to the States of Jersey at least, owned the foreshore (and presumably anything built on it) until 2015. What this meant is that for many decades a lot of homeowners were led to believe that any encroachment onto the seawall was not an issue.

As you will be aware, ownership of the foreshore is not a settled question in Jersey law. However most homeowners cannot afford a lengthy legal dispute with the States of Jersey to establish who owns the bit of seawall at the edge of their home.

You may ponder why local lawyers might wish to become involved in this matter. The simple answer is we do not consider the policy to be fair. Whilst one can see a case for the States of Jersey to intervene when a commercial property developer builds a block of flats intentionally and directly encroaching onto the foreshore, that is far removed from a small property owner trying to sell the family home in which they have lived peacefully and undisturbed for some time.

We would be grateful to attend upon you to discuss this matter.

Yours sincerely



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Advocate Richard Falle's Letter

Ref: JGLR Final Draft Letter to Editor 2 re Foreshore 10.8.18

The Editor,  
Jersey and Guernsey Law Review

August 2018

Dear Sir,

My object in this letter is to question the validity and effect of an hereditary contract dated 12 June 2015 ["the Contract"]. This, a gift from the Crown, is the purported conveyance to the Public of the seabed and all the foreshores surrounding the Island of Jersey excepting only those parts of the Ecrehos and Minquiers reefs which are above the high water mark of the spring tide. On the strength of the Contract, the Department for Infrastructure now claims proprietary possession and in December 2017 published a paper entitled "Encroachment upon the foreshore". The titles of a number of property owners whose land extends to the high tide mark have since been challenged, raising for conveyancers questions bristling with technical interest, for those whose titles are affected potential cost and uncertainty, and for the wider community concerns for the continuing inviolability of proprietary rights in land.

As Seigneur of the fief of Lulague dit Mourier in the parish of St John which claims foreshore at Ronez, I consider my title to have been disparaged by the passing of the Contract. Save therefor, I have no personal or professional interest to declare. I also have to make it clear that although I am a member of the editorial board of this Review, the views expressed below are mine alone.

It is my opinion that the Contract is defective. Not only is the subject matter of the gift uncertain in extent but it appears to have been made without regard to settled principle, third-party rights, conveyancing practice and the Jersey law of property, all of which would appear to justify the following observations:

1. The words of conveyance employed in the Contract are at first sight, wide, comprehending "all that foreshore situate all around and adjacent to the ... Bailiwick of Jersey including... all those parts of the land, rocks, reefs, islands, islets and beaches which are found thereon" and the seabed. This description is however, qualified, because what is to pass in virtue of the conveyance is expressly limited in these terms

"The Public being bound to conform to all the clauses conditions and restrictions to which Her Majesty was subject for and on account of the title rights and interests of Her Majesty now given ceded and transferred of which Her Majesty has been possessed from time immemorial and by sovereign right."

It is not in issue that title to everything described above and possessed from time immemorial [foreshore] and by sovereign right [seabed] would pass with that conveyance. But what of those "title[s] rights and interests" in the "land, rocks, reefs, islands, islets" such as Green Island, and beaches which Her Majesty has not possessed from time immemorial or at all? It must be arguable that on a

proper construction only land with the provenance expressly given could have passed in the Contract. The development of that argument is however not central to my purpose in writing this letter. What follows is not unrelated; but it is my theme that the parties intended by the passing of the Contract to suppress private titles in the foreshore.

2. The Crown's paramount feudal title to land in right of the Norman dukes is not in question. The nature and extent of its proprietary rights in land are, however, like those of any private person, determined by law and subject to investigation and proof. Fundamental to the proof of title is a demonstration of provenance. It follows that, if the Crown's claim to have enjoyed immemorial possession of all the foreshores surrounding Jersey is not sustainable, its capacity to pass title must be vulnerable to scrutiny. In what follows, I seek briefly to demonstrate that the provenance given in the Contract is not only in large part inaccurate, but worse, seriously misleading. The evidence is clear: the Crown could not claim immemorial or indeed any Crown possession of those many foreshores which for centuries fell within the strictly territorial jurisdiction of the Seigneurs of maritime fiefs. Such jurisdiction existed largely to enforce feudal rights, e.g. *Varech*, which before the Abolition of Seigneurial Rights (Jersey) Law 1966 were fundamentally based upon ownership of the foreshore. Moreover, that seigneurial jurisdiction and its exercise over the foreshore were for centuries repeatedly recognized by judgments of the Royal Court and the Privy Council.

3. Support for this position is not entirely dependent upon ancient authority. Before the International Court of Justice in 1953 the Crown succeeded in proving sovereignty over the Minquiers Reef, basing its case upon the territorial jurisdiction of the Seigneur of Noirmont over the foreshores of that fief.

The pleaded reply of the United Kingdom states this on the question of the fief of Noirmont [ICJ Vol 1 page533]

"An essential fact to be stressed regarding the Fief of Noirmont is that the Minquiers were considered to be part of that fief. In the submission of the Government of the UK, the Minquiers were included within the Fief of Noirmont by the Crown's exercise of its manorial right to the wreck of the sea".

Professor Wade, counsel for the UK Government, who was also a distinguished historian, had no doubt -

"There can be only one conclusion: the basis of jurisdiction and of the claim was territorial, and only territorial. If a claim was made, or jurisdiction exercised, it could only be on the basis that the wreck had been washed up on the Lord's shore."<sup>1</sup>

The finding of the Court was equally clear. Citing the *Grand Coutumier de Normandie* as authority, it stated -

"The Court inclines to the view that it was on the basis of this ancient Norman Custom that the Manorial Court of Noirmont dealt with them on behalf of the Lord in whose fief the wreck is found: the Lord of Noirmont ..."

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<sup>1</sup> ICJ *The Minquiers and Ecrehos Case*, oral arguments etc. Vol II Pages 125-127

4. It is worth recording that Professor Wade, when addressing the ICJ, was able to confirm that this same custom continued to be recognized in Jersey in 1953. He said this -

" It is totally contrary..... to all those feudal concepts that seemed to have regulated such matters in Jersey, it is contrary to English law, and it is contrary to Jersey Law at the present time..."<sup>2</sup>

The source of that information must surely have been Mr Cecil Harrison, then Jersey's Attorney General, also appearing for the Crown.

It is surprising to note the striking inconsistency between the Crown position in 1953 and the advice given by the Crown Officers in 2015 which founded a claim to Crown title to all the shores around the Bailiwick based on "immemorial possession". It is surely also ironic to recall that this was the very claim made by the Men of the Islands in response to the mediaeval *Quo Warrantos* and one which would ultimately be conceded and confirmed to them by Edward III in his Great Charter of 1341, and thereafter repeatedly confirmed by successive sovereigns and finally by Parliament.

5. All this of course is not to cast doubt on Crown title to the seabed under territorial waters. The seabed has always belonged to the Sovereign. There is moreover no evidence that any interest in the seabed under the waters around Jersey has ever been granted to a subject. But seabed and foreshore have throughout legal history been treated as distinct legal entities. The seabed is not and never has been in law or in physical fact, part of the foreshore. The attempt therefore in this procrustean Contract to conflate an unchallengeable title to the seabed with a quite different one to the foreshore was to do violence to established legal concepts.

6. Apart from provenance, there is the issue of formal validity. Article 21 of the *Loi (1880) sur la Propriété Foncière* provides that a contract conveying a parcel of land must, on pain of nullity, define its boundaries. The conveyance of foreshore does not constitute an exception to the law. It must be subject to the same formal requirements as any other parcel of land. It follows that it was wrong in practice to bundle the foreshore and seabed together and describe them in effect as a continuous strip of land surrounding the Island of Jersey.

Given the presence of experienced and competent conveyancers in the Law Officers' Department, it is difficult to avoid the suspicion that the form taken by the Contract flowed not from any want of competence on their part but was rather determined by other considerations.

7. It is nonetheless difficult to release the conveyancers from all responsibility for the shape and substance of the Contract. Apart from an obligation to treat foreshore as land, separate and distinct from the seabed, they must have known of the existence of third-party titles, that the foreshore is not one but is made up of a number of discrete parcels, each part of a maritime fief, only some of which had ever been in the possession of the Crown. Failure to reflect those facts in the Contract amounted to an unsupported assertion that no private titles in the foreshore exist

8. The Crown's landed titles in Jersey are well known. Until 1966, the parties to a contract of transfer of land were obliged to make a declaration of the fief - Crown or private- upon which the land to be conveyed was situated. It

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<sup>2</sup> Vol 1 page 128

has always been easy to identify the Ancient Domain. Over the centuries accounts of the Crown estate have been made at intervals in surveys known as *Extent*s. Established by Royal command, their preparation was closely supervised by the Royal Court. The *Extent*s therefore constitute an unchallengeable record of the contents of the Crown estate at particular times with the effect that, if a given parcel of land is not mentioned in the *Extent*, it is generally accepted that it is not on the Ancient Domain. The *Extent*s are published documents accessible to anyone drafting a contract involving rights in land and destined to be sworn by the parties on "*passation*" before the Royal Court. In preparing the Contract, the conveyancer should accordingly have determined, in relation to maritime fiefs, whether they were in the possession of the Crown or the subject of private titles and, if the former, the root of title. He could easily have established whether the particular fief and its foreshore was part of the Ancient Domain or held by the Crown in virtue of a feudal accident such as escheat or confiscation. A significant example of the latter would be the properties of the Alien Priors, whose foreshores have been held by the Crown and administered separately from those of the Ancient Domain since their seizure in the 15<sup>th</sup> century.

9. All the evidence shows that the Crown had never, until recently, claimed title to the foreshores of private fiefs. It is a matter, therefore, of particular concern that foreshores to which the Crown had no proprietary claim should have been included in a purported gift to the Public.

10. While the Queen can do no wrong, she can nonetheless be wrongly advised. Many of the affected titles are based, not only upon customary law, but upon ancient Crown grants, confirmatory Royal Letters Patent and/or supported by judgments of the Royal Court and the Privy Council. Those titles comprise much of the foreshore surrounding this Island. It must therefore be supposed that Her Majesty's advisers will have passed the Contract in her name in the mistaken belief that a simple contract could lawfully override such ancient titles and even override solemn reservations in earlier laws enacted by the States and confirmed by Order in Council.

11. The Crown is not above the Law and will therefore recognize and be bound by established principle, in this case one forcibly expressed in the dictum of Lord Mansfield in *Goodtitle d Edwards v Bailey*<sup>3</sup> -

"It shall never lie in the [grantor's] mouth to dispute the title of the party to whom he has so undertaken... No man shall be allowed to dispute his own solemn deed."

The dictum is not dusty. It was cited with approval by Lord Millett in *First National Bank plc v Thompson*<sup>4</sup>.

12. Perhaps it is in obedience to this or a like principle that it is generally understood that the Crown will not derogate from a grant made by Royal Letters Patent. It is difficult however to square that understanding with this particular contract where, if derogation was its intended effect, it would provide a remarkable example of indifference to Royal Charters, Royal Letters Patent, ancient Crown grants, and titles based upon immemorial possession.

<sup>3</sup> [1777] 2 Cowp 597 at 600-601

<sup>4</sup> [1996] 1 All ER 149

13. Challenged, the parties might point to the reservation of private rights made in paragraph 2 of the Contract.

" It being further agreed and understood -

...

2. That any right of access or of exploitation exercised as a matter of long-standing habitual and recognized custom by the general public of the Island or by any member thereof shall be and remain unaffected by this contract of gift cession and transfer."

This is a feeble form of words. What we have here are not mere "rights of access or of exploitation" but rights of property in land which are not dependent upon recognition by the general public. This clause is calculated not to preserve but to disparage existing titles to land. It should be contrasted with the unambiguous reservation of rights and titles made in 19<sup>th</sup>-century Laws confirmed by Order in Council, two of which remained law in Jersey throughout the 20<sup>th</sup> century. They include:

a). Three laws governing the harvesting of *vraic* [ seaweed]: 1829 [art11], 1866 [art12] and finally, art 13 of the *Loi [1894] sur la Coupe et la Peche des Vraics* all contain this statement

" *Il n'est pas entendu déroger, par cette Loi, aux droits qui peuvent exister à l'égard de quelques pecheries particulières, ni aux droits des Seigneurs de Fiefs particuliers.*

[ translated] "It is not intended by this law to derogate from the rights which may exist in relation to certain private fisheries, nor to the rights of Seigneurs of private Fiefs."

b). *Loi [1882] sur les Parcs à Huitres*. Art 3 provides, *inter alia*, that applicants for a concession to establish an oyster bed must in their supporting documentation...

"*donner les noms et adresses des propriétaires ou prétendus propriétaires du fonds ou de partie du fonds ou des personnes qui occupent le fonds ou partie du fonds qu'on propose d'approprier ainsi que la nature de leurs titres.*"

[translated] " give the names and addresses of the proprietors or intended proprietors of the subsoil or part of the subsoil or of the persons who occupy the sub-soil or part of the sub-soil which it is proposed to appropriate, as well as the nature of their titles".

Article 4 requires the authorities to give publicity to any application for a concession: -"*afin que tous ceux qui pourraient avoir ou prétendre avoir des droits particuliers ou antérieurs à telle partie du bord et rivage de la mer qui sera désignée ... puissent en avoir connaissance.*" [translated]"In order that all those who might have or pretend to have private or precedent rights to that part of the foreshore ... may have knowledge of it."

Article 18 of the 1882 Law provides: -

"*Il n'est entendu déroger par la présente Loi aux droits qui pourraient avoir les particuliers à certaines parties du bord et rivage de la mer en vertu de Chartres, Lettres Patentes ou usage immemorial.*"

[It is not intended to derogate by this present Law from the rights which particular persons might have to certain parts of the foreshore in virtue of Charters, Letters Patent or immemorial usage.]

14. It is noteworthy that Article 1 of the 1894 law mentioned above, before amendment in 1928, defined the extent of the foreshore by reference to the boundaries of fiefs -

*"La coupe du vraic sur la côte de l'Est ... sera permise... depuis les rochers du château Elizabeth allant Est jusqu'au courant d'eau qui sépare le Fief de la Reine en la Paroisse de St Martin d'avec le Fief de Rozel".*

[the cutting of Vraic on the the East coast shall be permitted..... from the rocks of Elizabeth Castle[ repeatedly confirmed by the Royal Court as the western extent of the Fief de la Fosse] going east as far as the stream which separates the Queen's Fief in the Parish of St Martin from the Fief of Rozel.]

This last provision unambiguously amounts to statutory recognition of legal boundaries between the Crown and private fiefs extending over the foreshore, boundaries which would have been familiar to the large number of people who, like their ancestors before them, had for centuries been involved in the harvesting of *Vraic*.

15. The express saving of "fisheries" in the vraicing laws was made to protect the lawful enjoyment of such private titles on the foreshore. One example is the fishery appurtenant to the *Manoir des Prés* in the parish of Grouville which the owner holds in virtue of an ancient grant from the Crown confirmed by judgment of the Royal Court following a title dispute in the 1740s. The fishery extends over a significant area of foreshore north of Seymour Tower, its boundaries marked with a large "P" [for the family Payn] cut into the rocks pursuant to that judgment.

16. Any response to these objections by those advising the Department of Infrastructure would in my opinion have to address the relevance of two ancient maxims "*Nemo dat quod non habet*" and "*Res inter alios acta alteri nocere non debet*". The first, although a statement of the obvious, is nonetheless, evergreen. Where the Crown lacks title it cannot dispose of the rights of others. The second embodies another fundamental legal principle: a transaction between others will not prejudice anyone who is not a party to it.

17. To some, this argument may appear arcane. For the reasons advanced above, I take a different view. But apart from those whose seigneurial titles are threatened by the Contract, the ownership of the *solum* of the foreshore is of immediate practical concern to a large number of persons with properties on the edge of the sea. Given the matters to which I refer in my opening paragraph, and in the light of the above generally, some might reasonably argue that on a proper construction of the Contract, the words of conveyance in terms limit the title passing to the Public to those foreshores of which..." Her Majesty has been possessed from time immemorial...". It is a construction which, if agreed, would surely offer the parties to the Contract a dignified withdrawal from what would seem to be an untenable position.

18. Unfortunately, settlement of the long running claim of Les Pas Holdings Ltd against the Crown and the States of Jersey some years ago in relation to the foreshore of the Fief de la Fosse meant there would be no definitive judgement on the Law governing foreshore titles. Two long articles in

this Review by Advocate John Kelleher and me, written following that settlement, preserve some of the evidence and rehearse the arguments . Yet despite what was a largely unanswered claim, the parties to the Contract have on one construction, which it must be assumed they favour, attempted without lawful authority to appropriate private titles in land. In doing so they have in my view done violence to the principle of private property upon which our society is substantially based . It is surely an exceedingly bad precedent.

Yours faithfully,

Richard Falle

Ville es Philippes,  
Grouville  
Jersey JE3 9UZ



## Deed of Transfer

**To all to whom these present letters shall come**

Timothy John Le Cocq  
Deputy Bailiff, representing

WILLIAM JAMES BAILHACHE, Bailiff of the Island of Jersey under our Sovereign Lady Queen Elizabeth the Second by the Grace of God Queen of the United Kingdom of Great Britain and Northern Ireland and her other realms and territories Defender of the Faith sends greetings.

BE IT KNOWN that there appeared personally before us in the Royal Court of Jersey at Saint Helier on 12<sup>th</sup> June, 2015:

HER MAJESTY (which expression shall include Her heirs) represented by DAVID MICHAEL PETT, Her Majesty's Receiver General, acting pursuant to a Letter signed by the Lord Chancellor and Secretary of State for Justice dated 1<sup>st</sup> May, 2015 of the one part; and

THE PUBLIC OF THE ISLAND (the "Public" which expression shall include its successors in title) represented by ROBERT JAMES MACRAE, Q.C., Her Majesty's Attorney General and MICHAEL NELSON DE LA HAYE, O.B.E, Greffier of the States of Jersey acting pursuant to an authorisation dated 11<sup>th</sup> June, 2015 signed by the Assistant Minister for Treasury and Resources, of the other part.

HER MAJESTY has GIVEN CEDED AND TRANSFERRED in perpetuity to the Public all such title rights and interests of the Crown in right of the Bailiwick of Jersey in the hereditaments set out hereunder:

THE sea bed ("*le fond marin*") and all rocks reefs islands and islets found therein situate between the Low Water Mark of Tide ("*le niveau de la basse mer*") to the furthest extent of the Territorial Sea situate all around and adjacent to the Bailiwick of Jersey (the "Sea Bed");

ITEM, all and any abandoned wreck and materials of whatsoever nature or kind they may be and wheresoever situate on or in the Territorial Sea at the date hereof;

ITEM, all that Foreshore ("*rivage de la mer*") situate all around and adjacent to the said Bailiwick of Jersey and being all those parts of the land rocks reefs islands islets and beaches which are found thereon and lying between the said Low Water Mark of Tide and the said High Water Mark of Full Spring Tide ("*le niveau du plein de Mars*") of the other hereditaments now given ceded and transferred wheresoever that may be found (the "Foreshore");

ITEM, all rocks reefs islands islets seawalls sea defences harbours moorings slipways jetties dykes promenades and generally all and any other structures and appurtenances of whatever nature or kind as may presently be found upon or be constructed on the Sea Bed and the Foreshore together with all and any land which may lie between any of the aforesaid sea walls and sea defences constructed or found on any part of the Foreshore and the said High Water Mark of Full Spring Tide;

PROVIDED ALWAYS AND FOR THE AVOIDANCE OF ANY DOUBT all that land rocks and reefs situate above the High Water Mark of Full Spring Tide ("*le niveau du plein de Mars*") such as may be found on the reefs and islets of "Les Ecréhous" situate in the Parish of Saint Martin and "Les Minquiers" situate in the Parish of Grouville are hereby expressly reserved unto Her Majesty.

IT BEING agreed and understood between Her Majesty and the Public:

1. THAT neither the whole nor any part of the Sea Bed forming part of the Territorial Sea shall ever be sold ceded or transferred in perpetuity without the prior consent of Her Majesty which consent shall be withheld or granted on such terms as Her Majesty may in Her absolute discretion determine PROVIDED ALWAYS that the grant of any lease by the Public of any part of the said Sea Bed for a term not to exceed 150 years shall not require the prior

consent of Her Majesty and shall not constitute any breach of this restriction. **IT BEING FURTHER AGREED AND UNDERSTOOD** that no contract of alienation in perpetuity of any part of the Sea Bed shall be passed before the Royal Court of Jersey save and except one which shall include as a contracting party Her Majesty to confirm and ratify the terms and conditions thereof.

2. **THAT** any right of access or of exploitation exercised as a matter of longstanding habitual and recognised custom by the general public of the Island or by any member thereof shall be and remain unaffected by this contract of gift cession and transfer.
3. **THAT** for the avoidance of doubt the Lease of the Foreshore entered into between Her Majesty and the Public and passed before the Royal Court on the 18<sup>th</sup> March 2005 is from the date hereof cancelled and of no effect but without prejudice to anything done thereunder and in accordance with the terms thereof and to the continuance in force of any concession assignment or other right or interest properly granted or ceded thereunder.
4. **THAT** the Public by these presents indemnifies and shall keep indemnified and hold harmless Her Majesty against all or any liabilities, claims, actions, demands, costs and expenses whatsoever in respect of the hereditaments hereby given ceded and transferred.

**THE WHOLE IN PERPETUITY.**

5. **IT BEING** further understood and agreed between the parties that the understandings and agreements herein contained bind Her Majesty solely as Sovereign in right of the Bailiwick of Jersey.

THE hereditaments were given ceded and transferred with all such other rights, appurtenances and dependencies as may attach thereto in the state in which they were at

the date hereof with all their apparent or hidden defects ("vices cachés") if any situate in the aforesaid Island and Bailiwick of Jersey.

THE Public being bound to conform to all the clauses conditions and restrictions to which Her Majesty was subject for and on account of the title rights and interest of Her Majesty now given ceded and transferred of which Her Majesty has been possessed from time immemorial and by sovereign right.

THE hereditaments were given ceded and transferred with immediate possession.

THE whole without guarantee of title on the part of Her Majesty or Her successors.

IT WAS AGREED between Her Majesty and the Public that all and any rates periodic payments and rental due in respect of the hereditaments now given ceded and transferred for the current year together with any Goods and Services Tax which may be due thereon shall be payable by the Public.

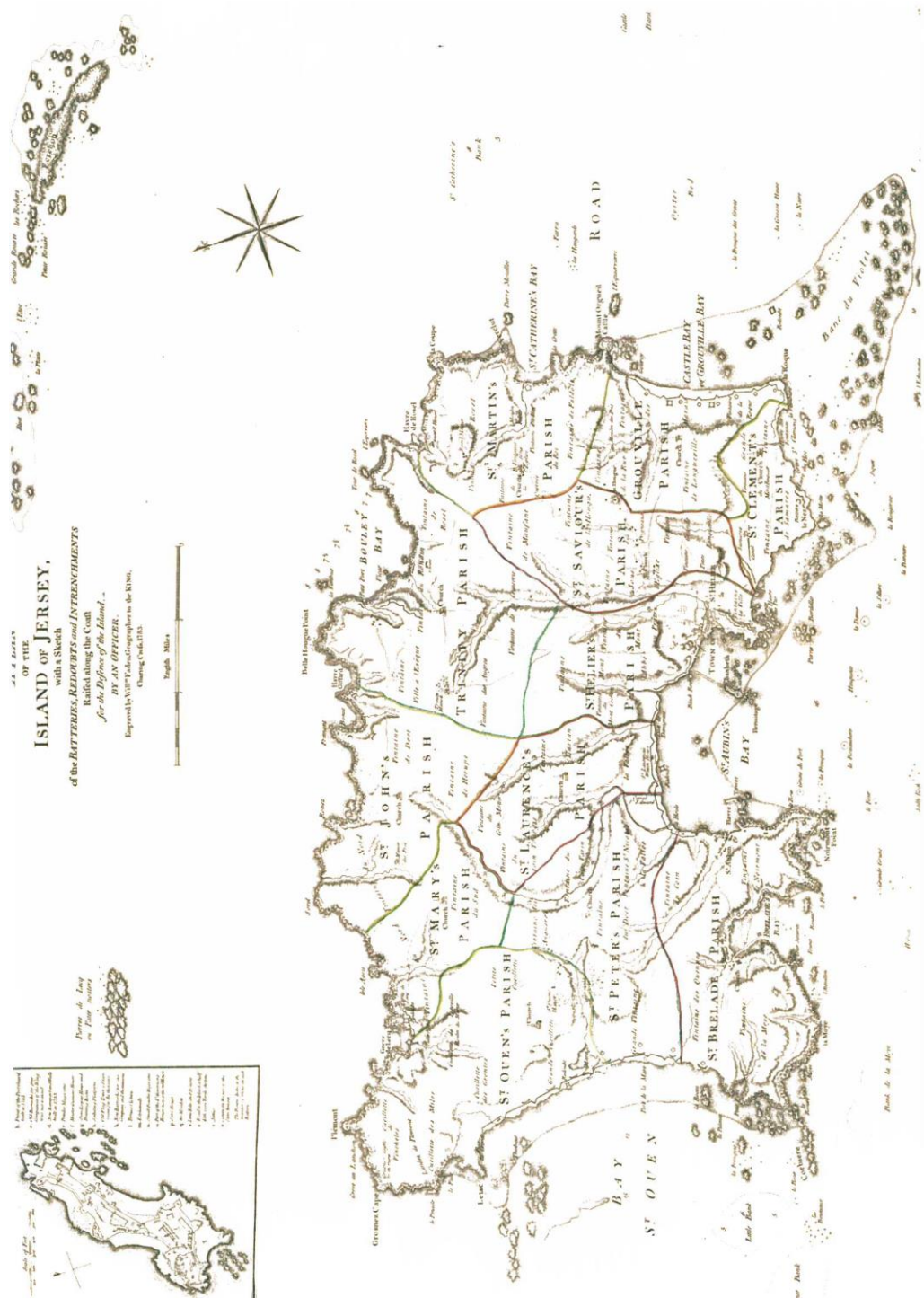
AND the parties swore that they would neither act nor cause anyone to act against this present contract on pain of perjury.

IN WITNESS whereof we have sealed these present letters with the Seal of the Royal Court; present hereto

LOD

Table 1351 Page 208

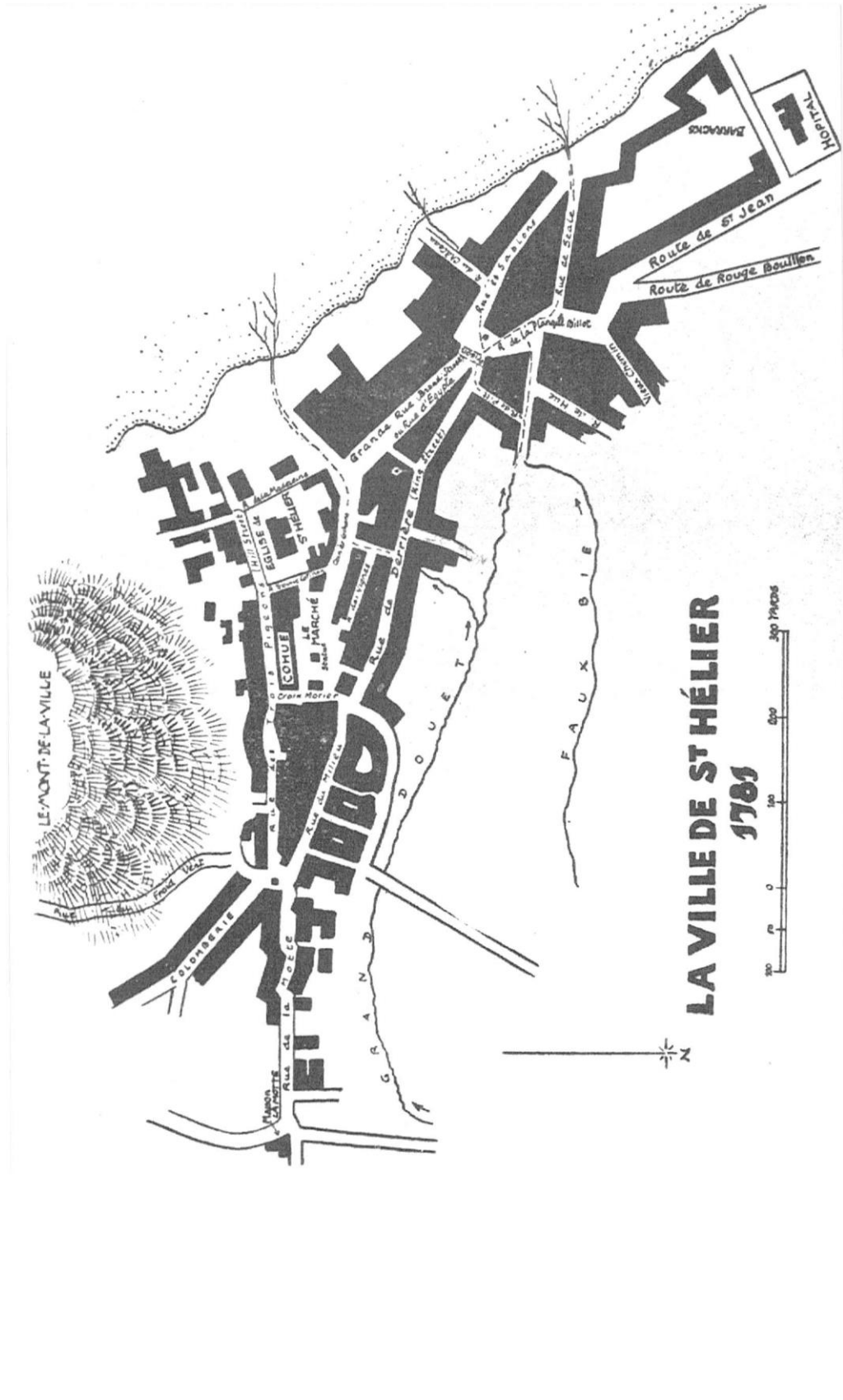
Historic photographs and maps







Details of Weighbridge reclamation



## Growth of the town

From theislandwiki



A row of early St Helier homes in Hue Street

undeniably the centre of island life - its capital, business centre, the location of its courts of justice and most government offices, and its major port.

Today St Helier is



The Royal Square, originally Market Square, was always the centre of activities, even before the town began to grow

### Late 18th century development

But it was not always so. Indeed, although the Royal Court is believed always to have been situated on its present site, and the adjoining market square, now the Royal Square, was the main centre of commerce, St Helier only began to develop as a town in the late 18th century and this process accelerated as the island's population swelled in the first half of the 19th century.

St Helier's growth was certainly not achieved through any grand masterplan, and the island's government, the States, were the last to become involved, well into the 19th century. Earlier development was firstly solely in the hands of entrepreneurial landowners, many having bought up fiefs, and with them large expanses of meadow, dunes and marshland, at bargain prices, having identified their potential for development.

Some details of 18th century St Helier

### Official involvement

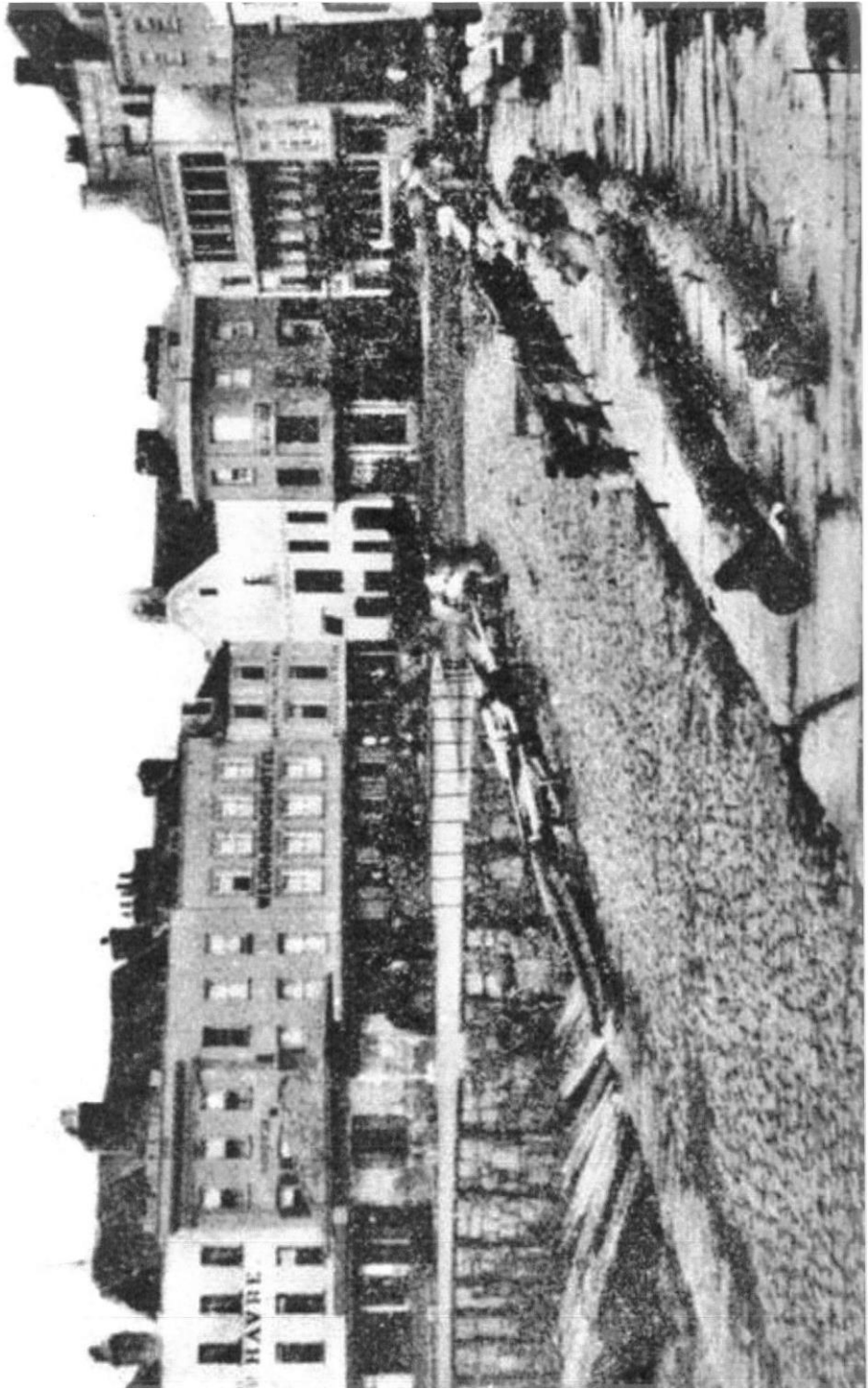
Gradually the Vingtaine de la Ville, which owned Mont de la Ville, where Fort Regent was built, and land stretching down into the embryo town, became involved, and eventually the parish authorities as a whole began to see the need to regulate the development of their town and particularly public spaces.

There are very few records which give an impression of what St Helier was like before the end of the 18th century. The sale and division of individual parcels of land can be traced through transactions in the Land Registry, but it is frequently unclear exactly where these properties were situated.

[https://www.theislandwiki.org/index.php/Growth\\_of\\_the\\_town](https://www.theislandwiki.org/index.php/Growth_of_the_town)

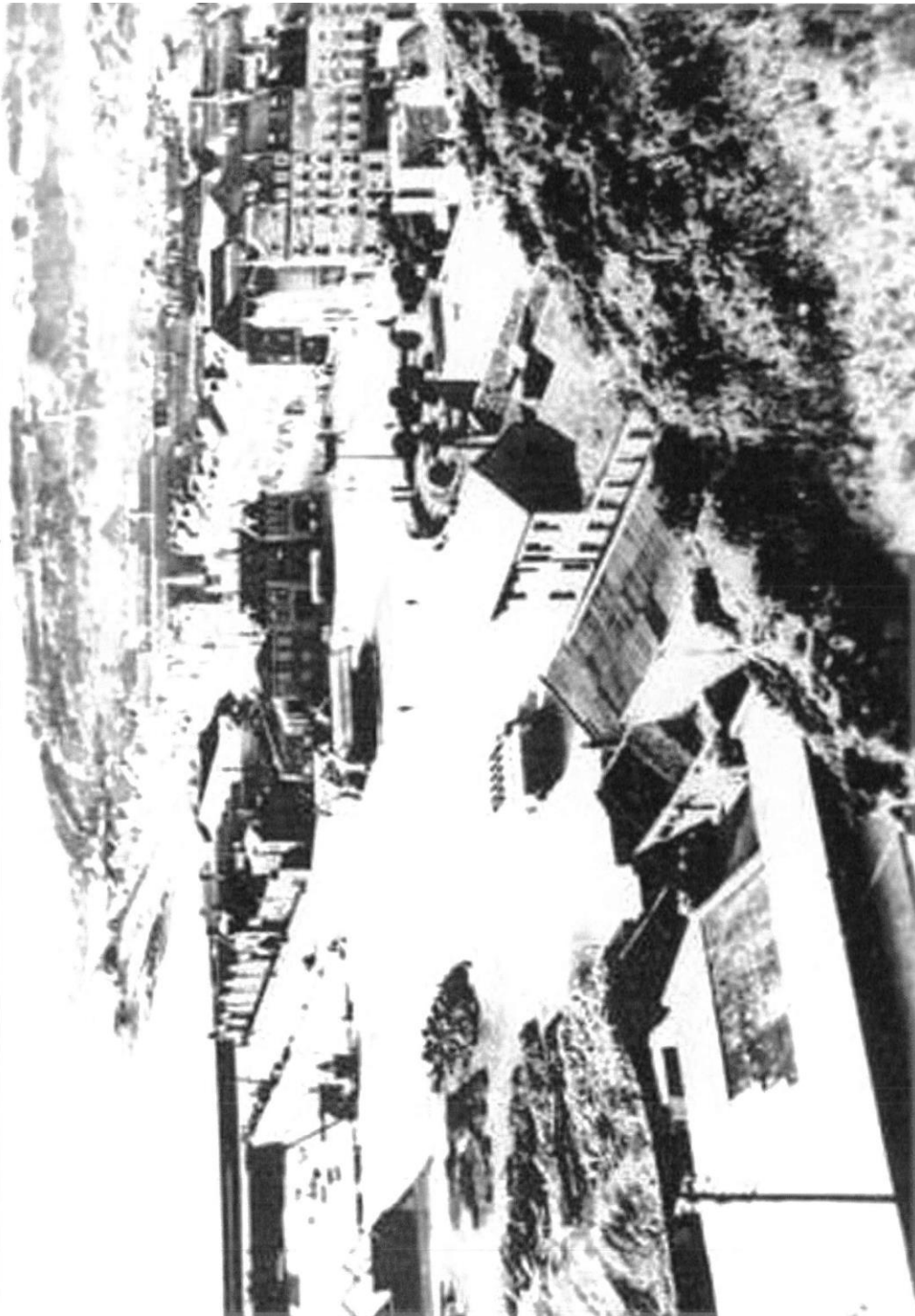
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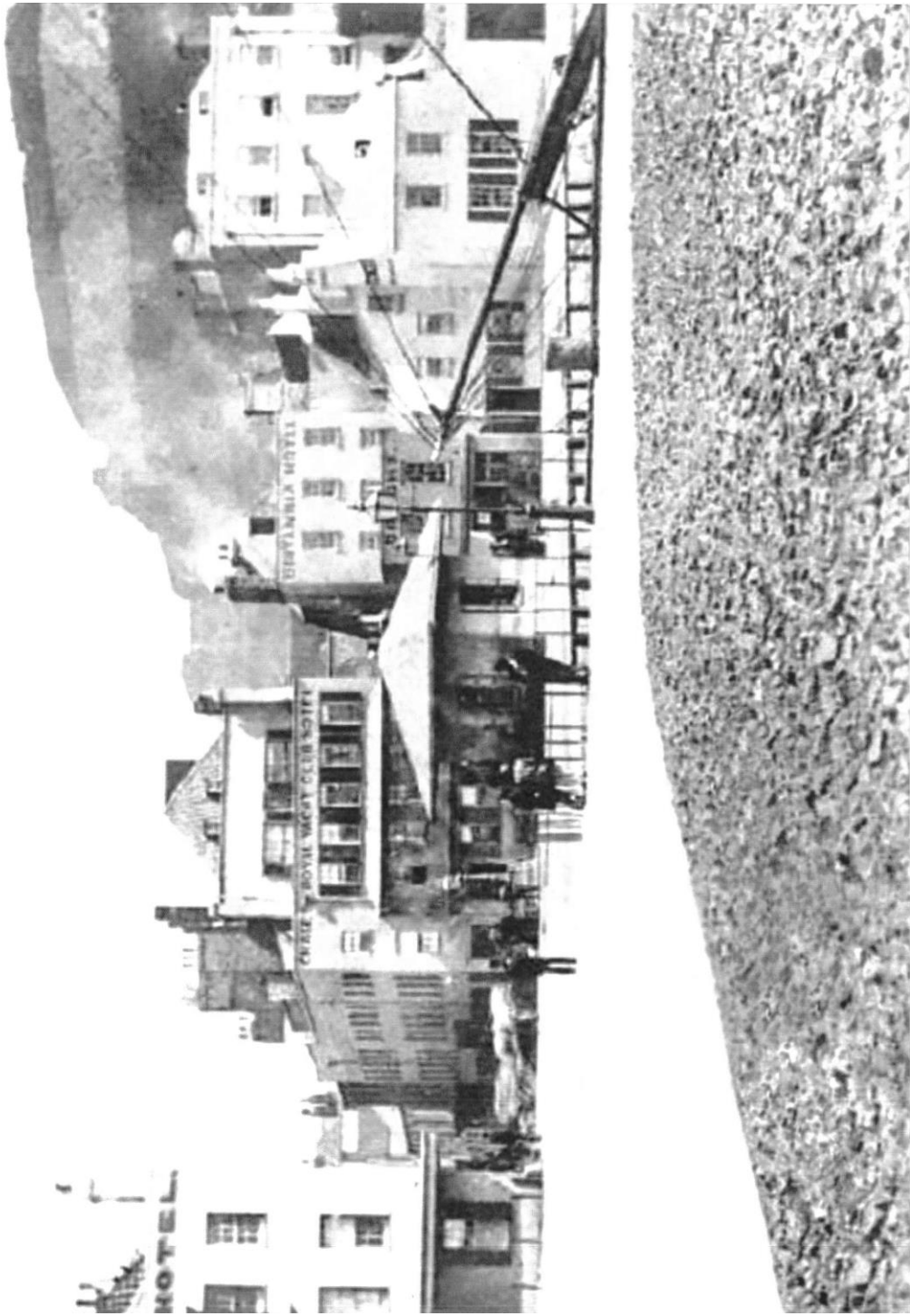


















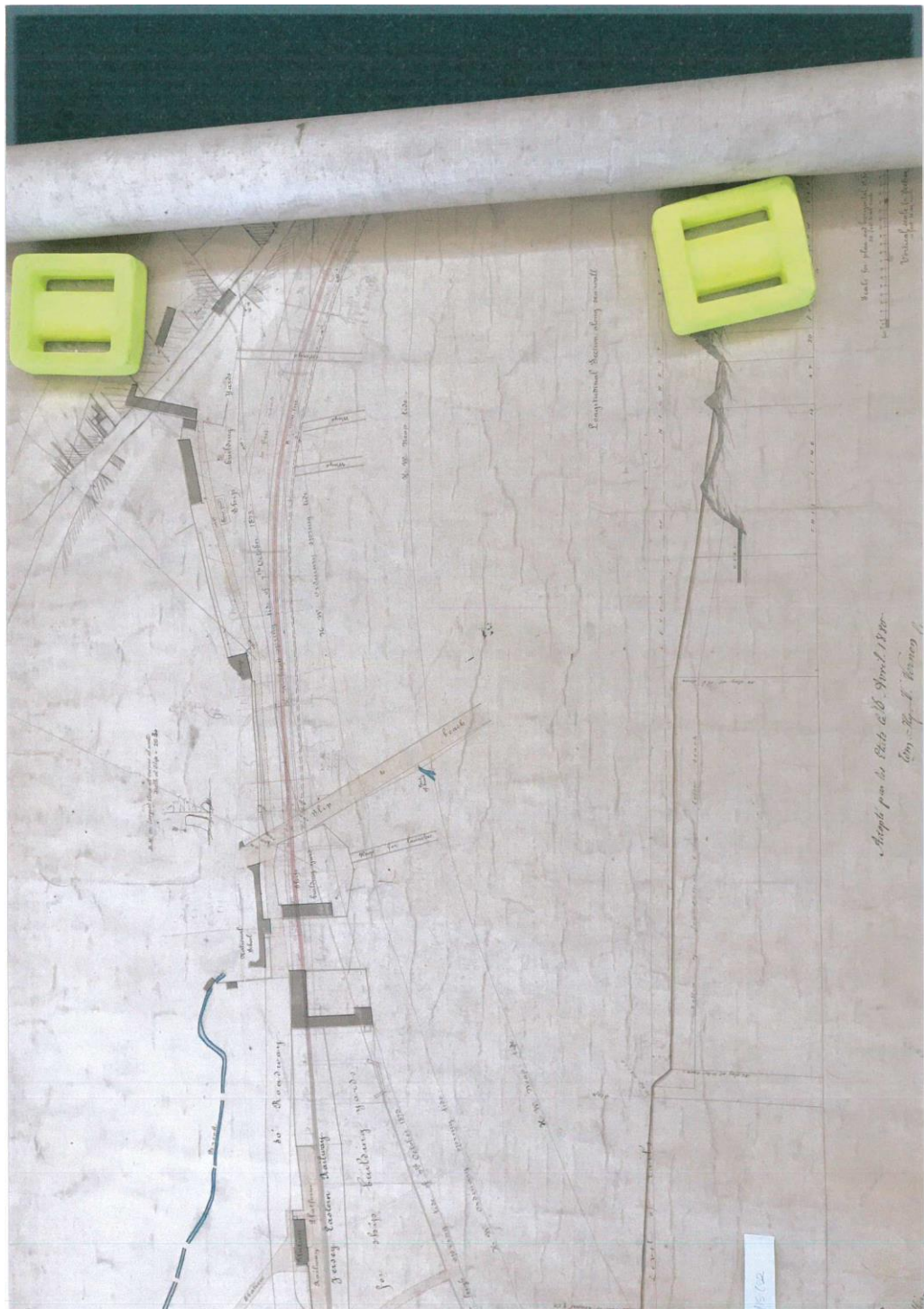


Details of Gorey reclamation

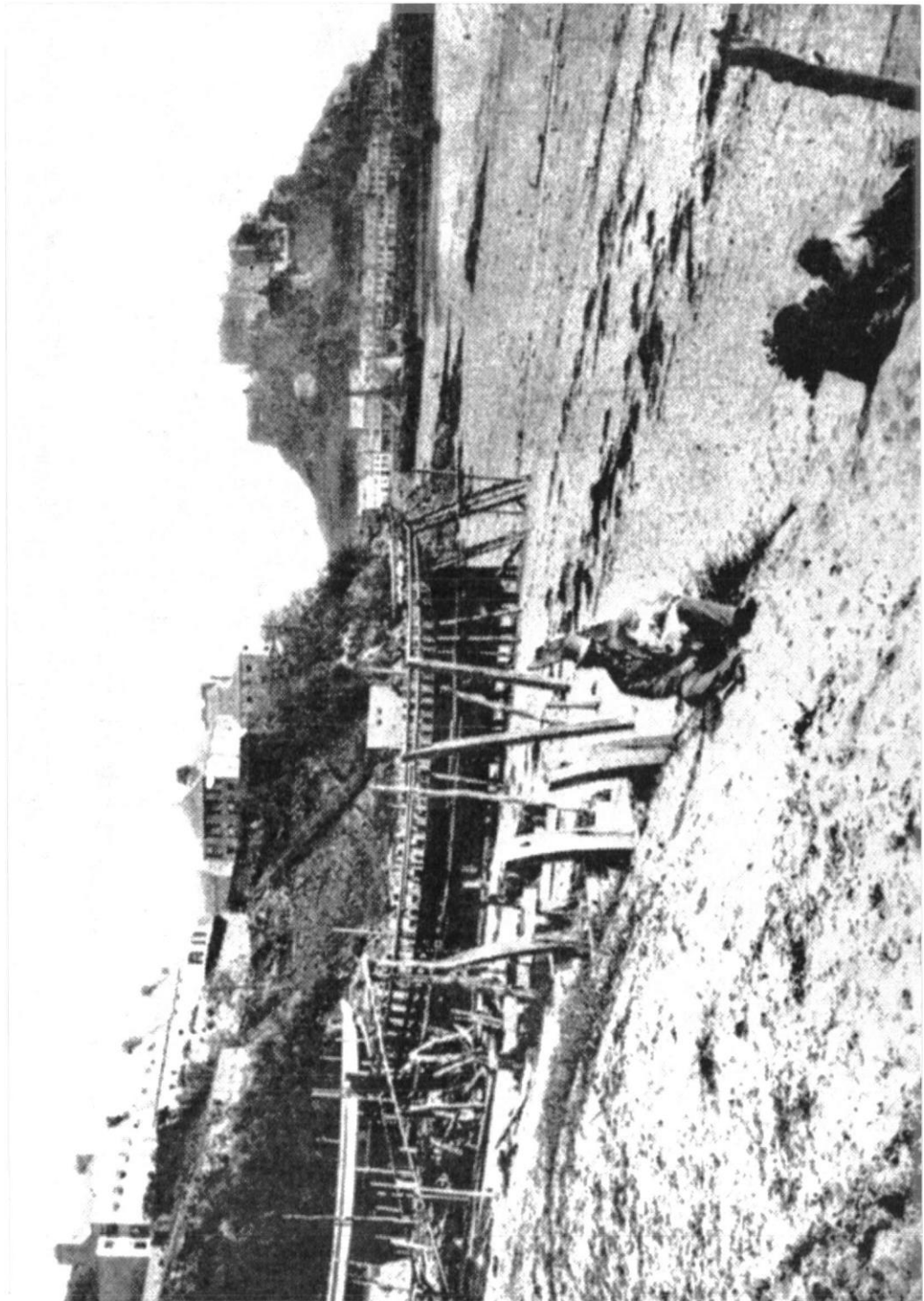


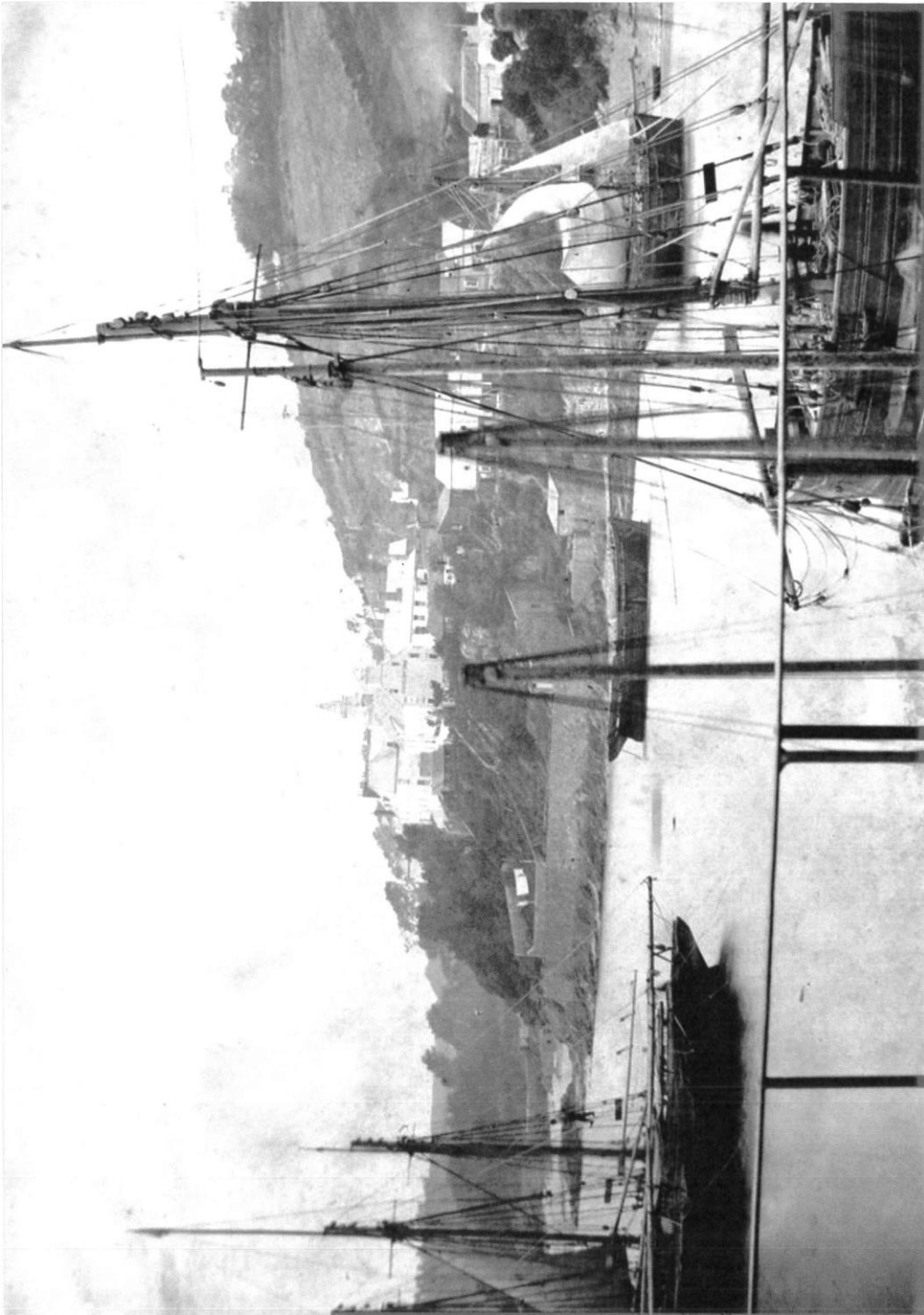






















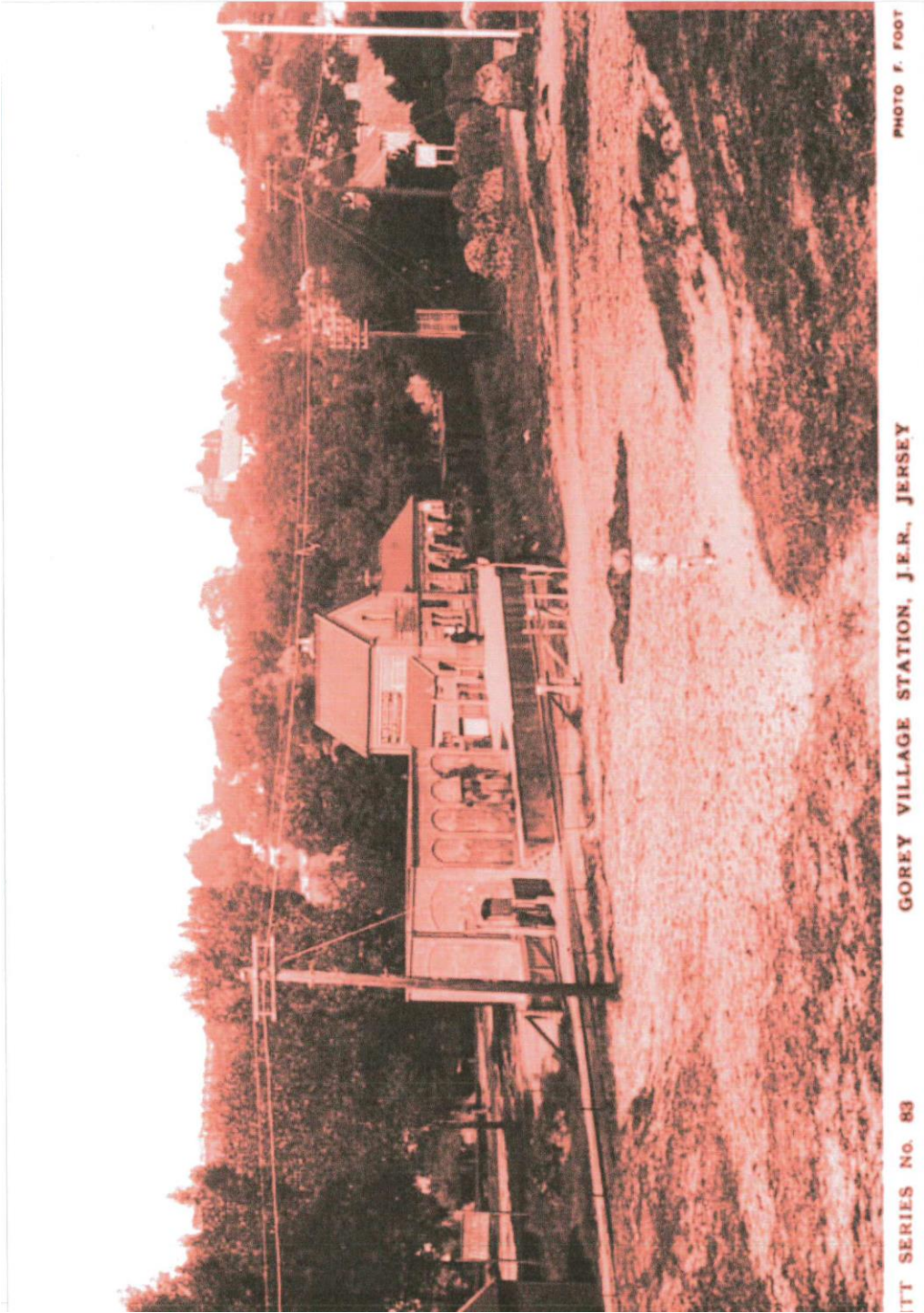
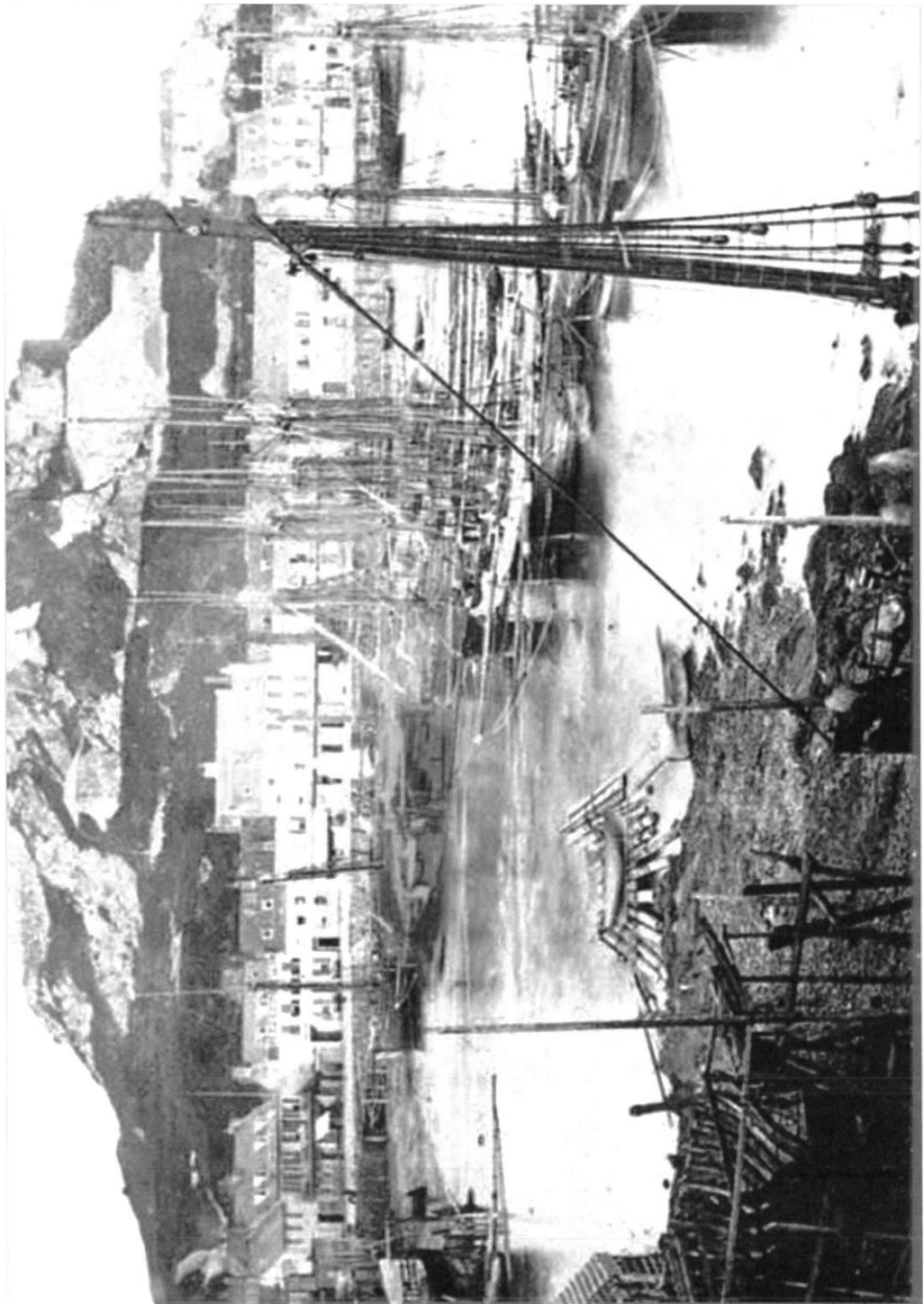
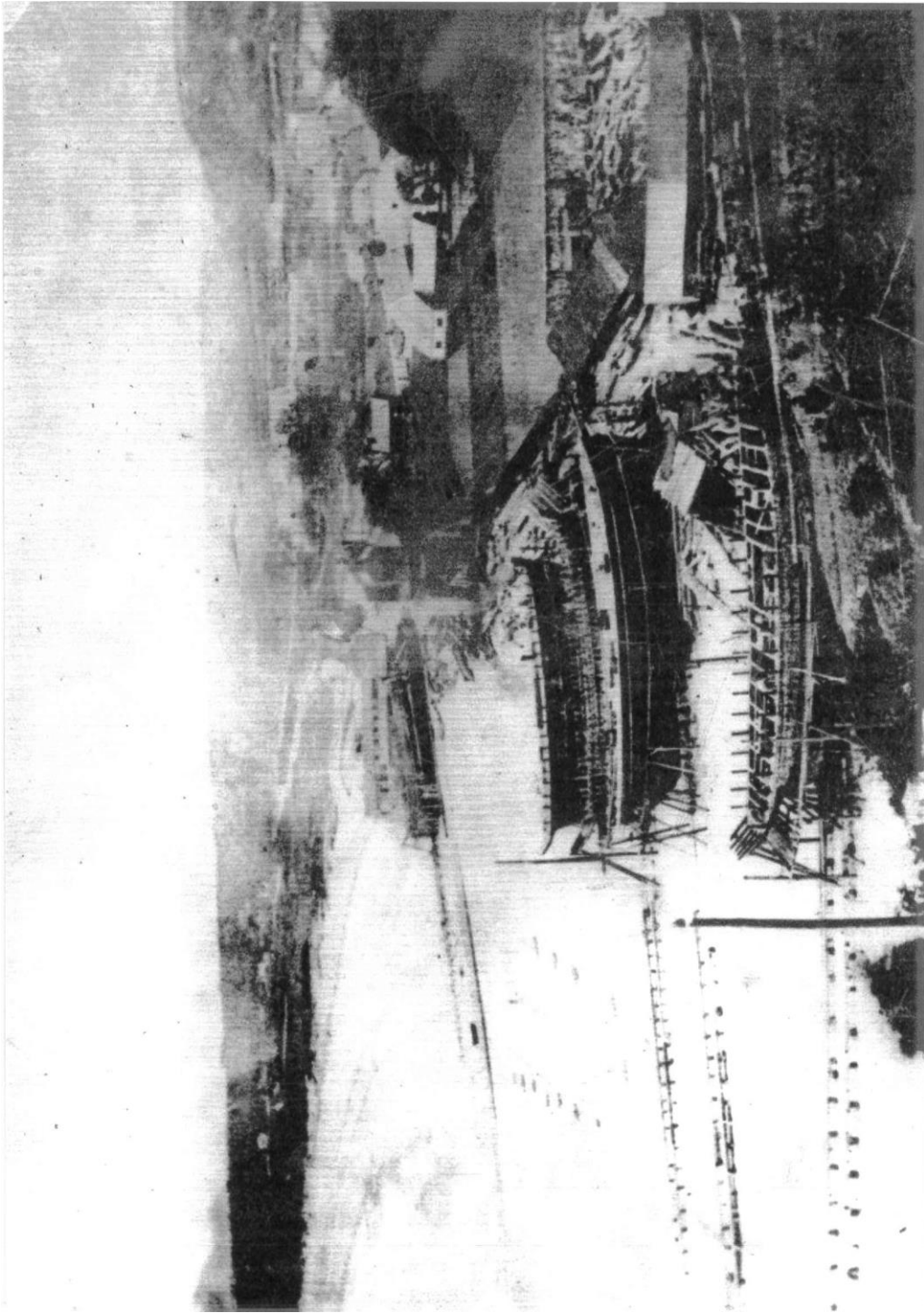


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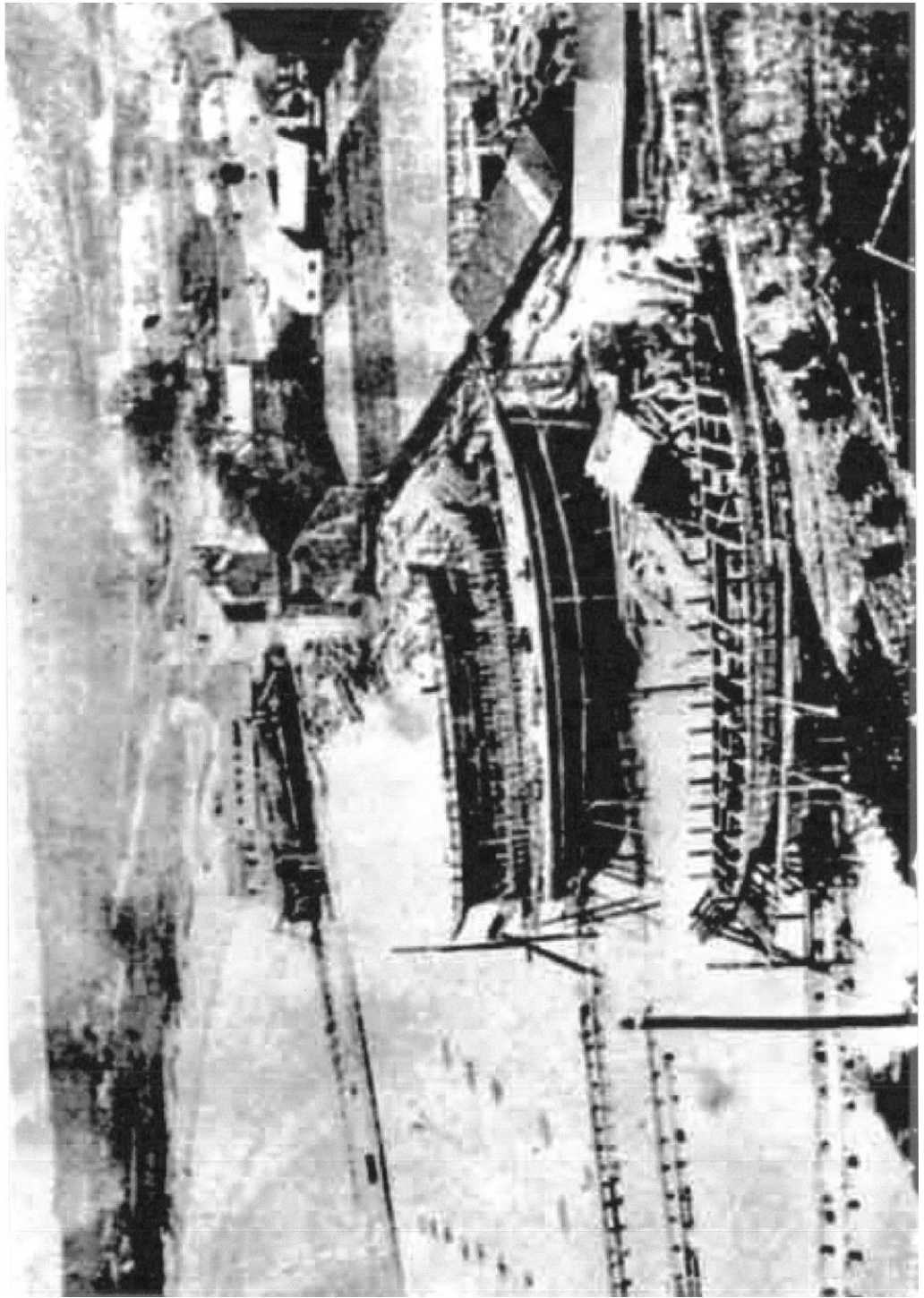
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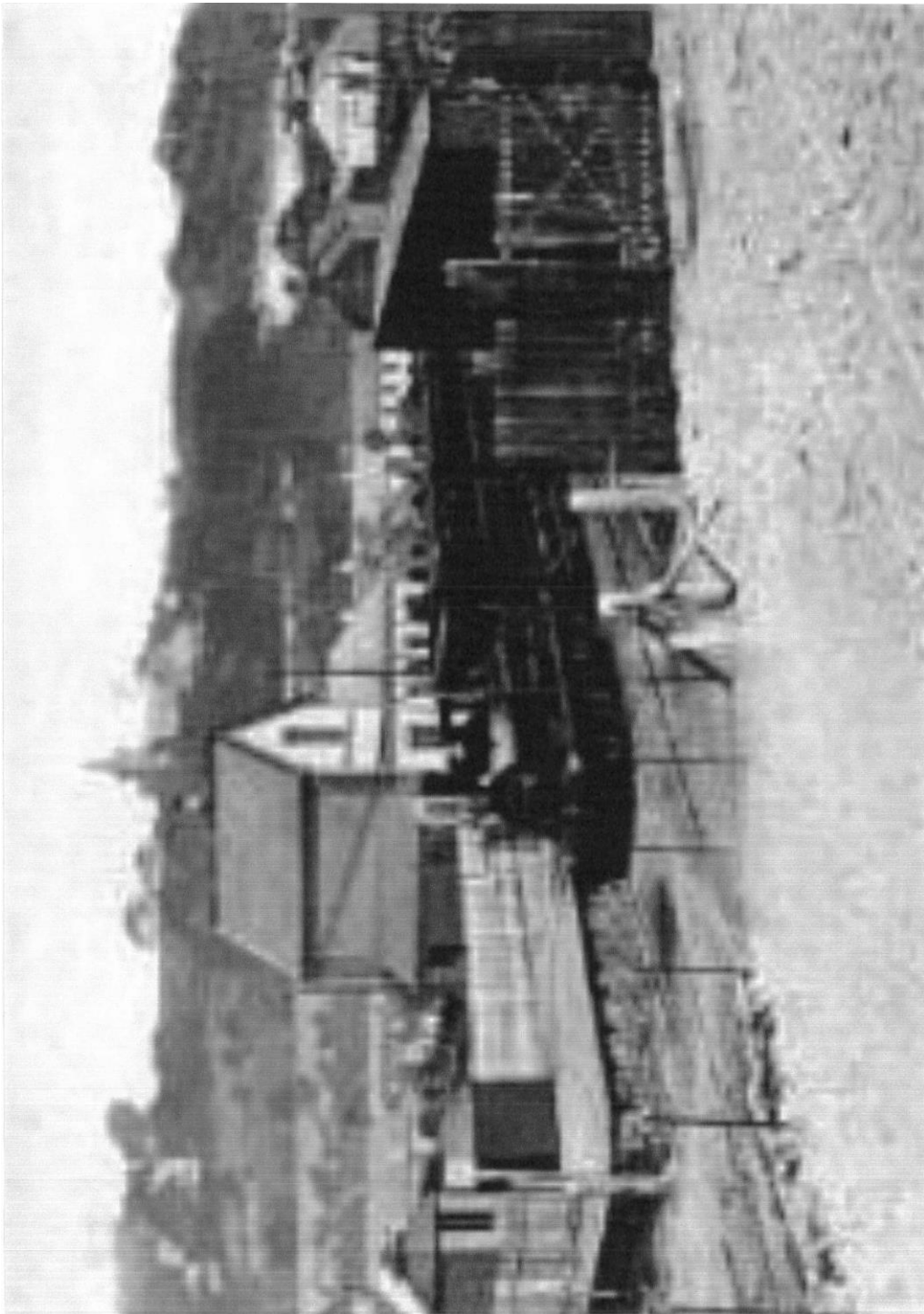
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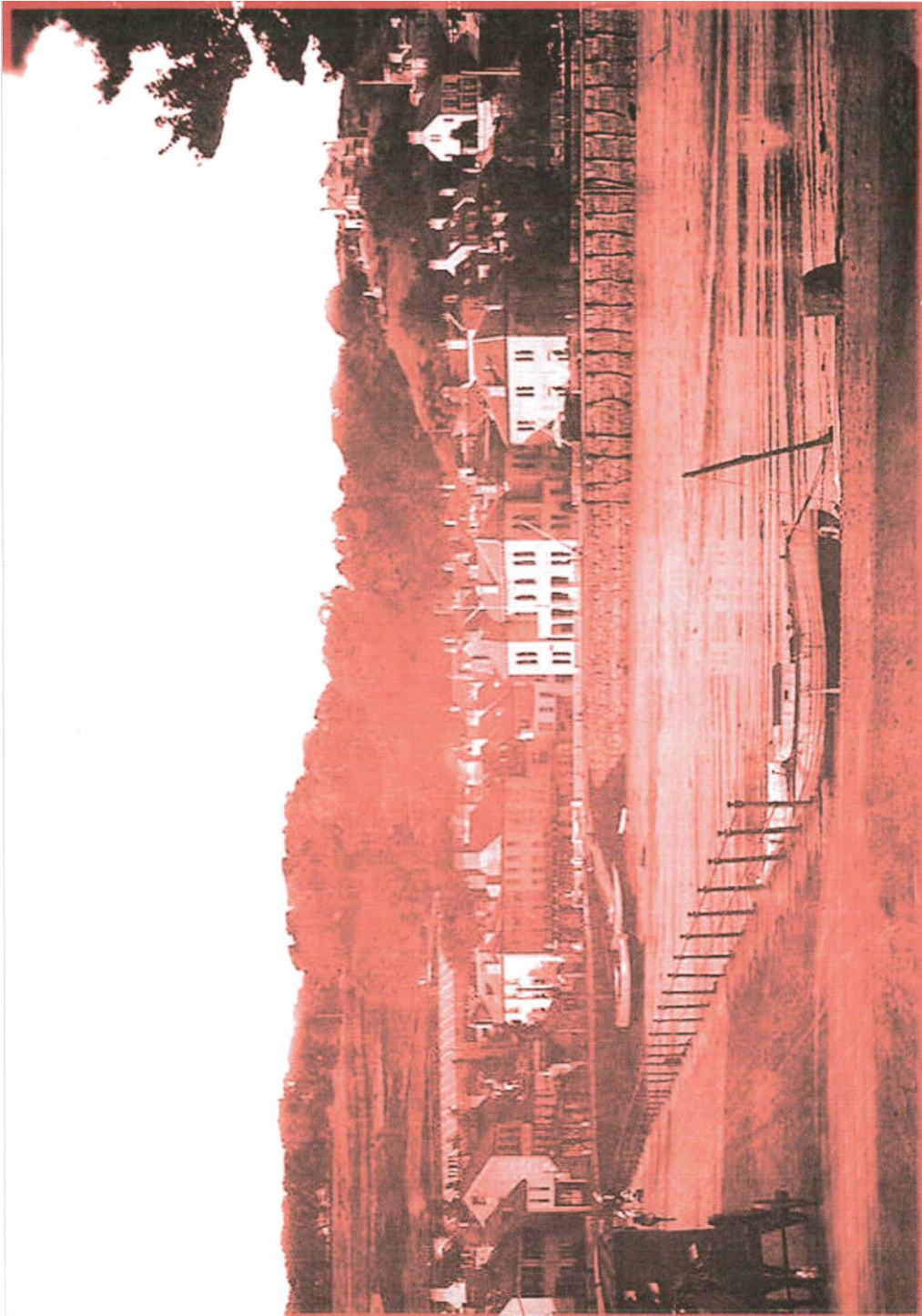


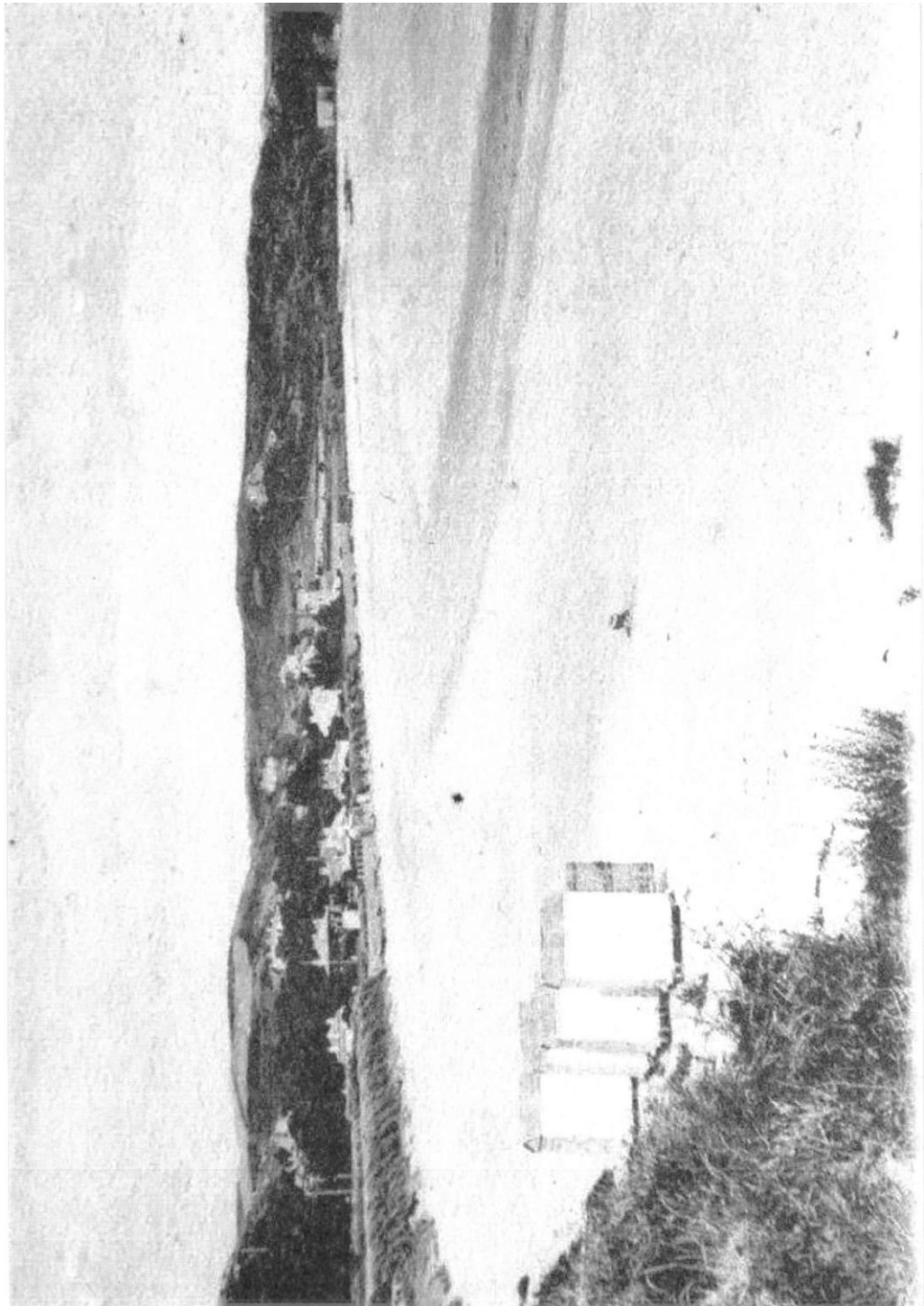












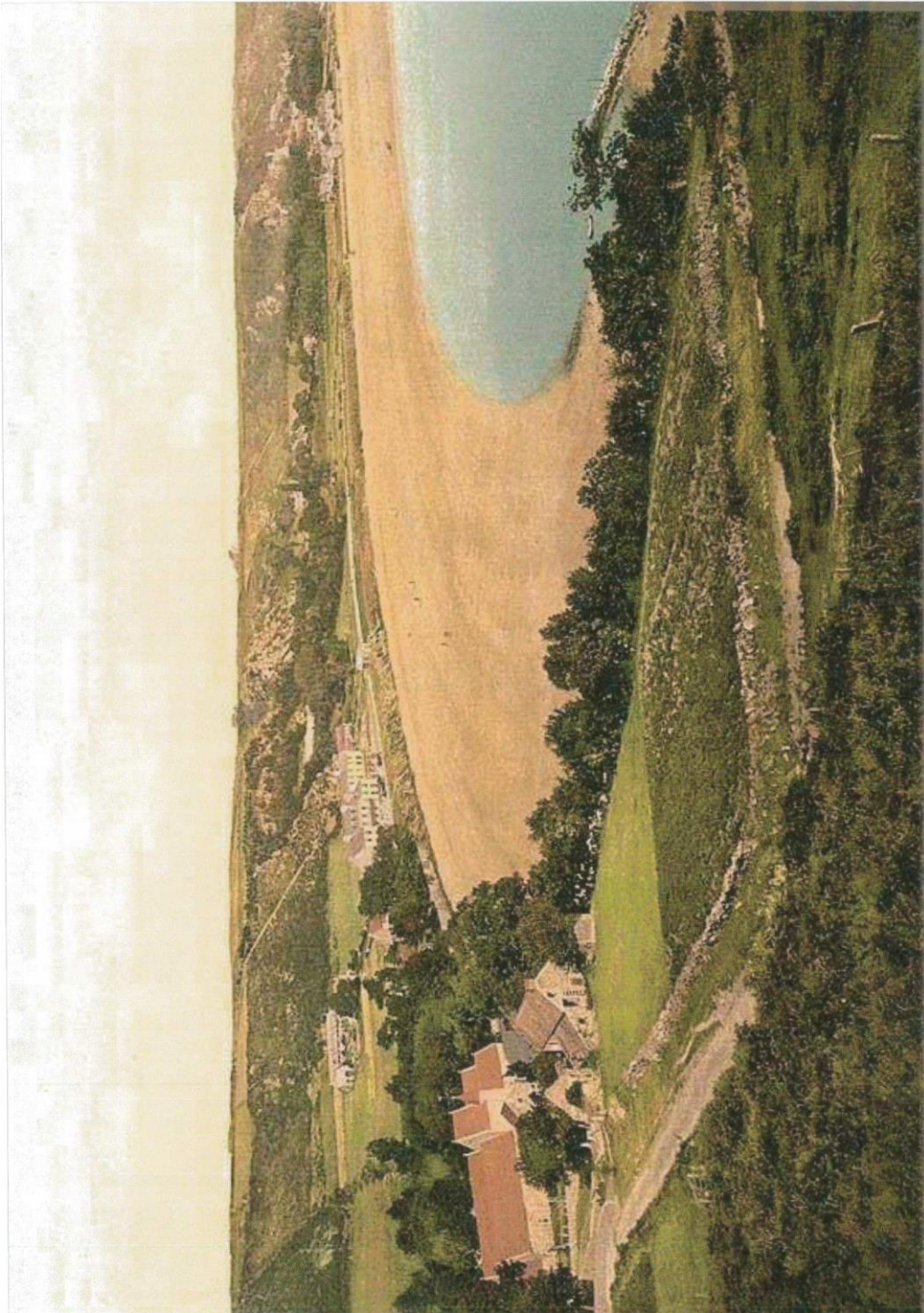


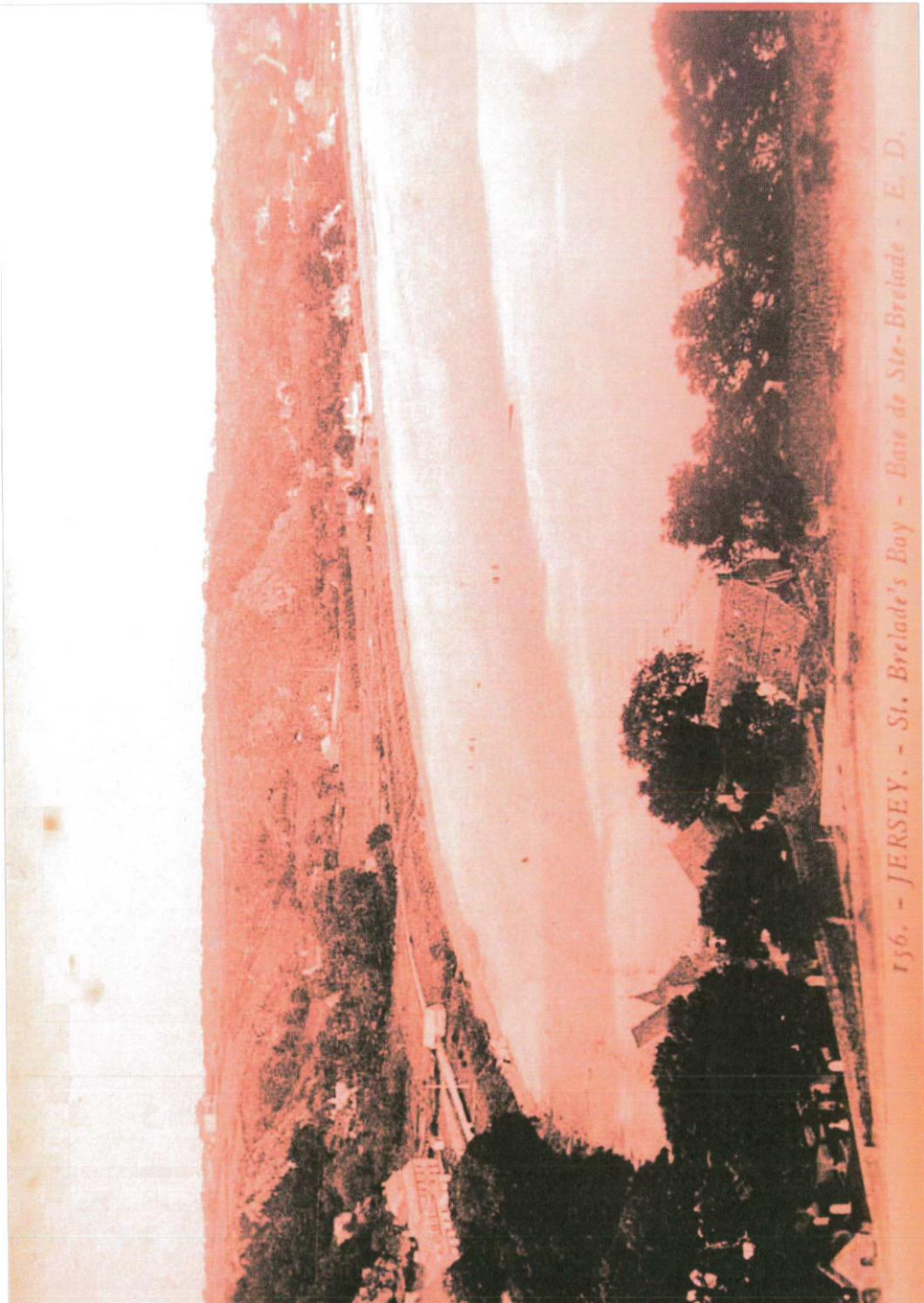


Details of St. Brelade sand dunes



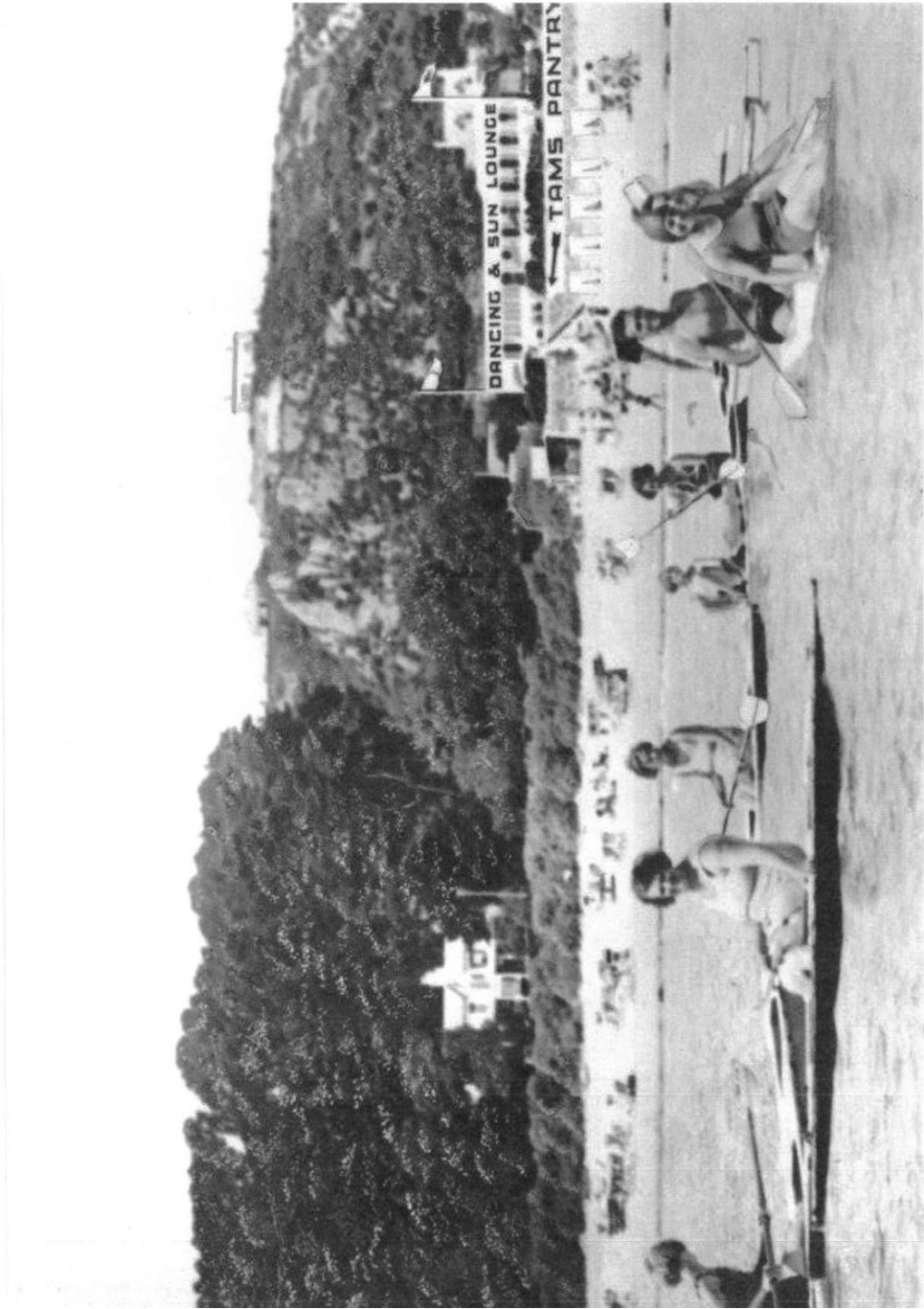


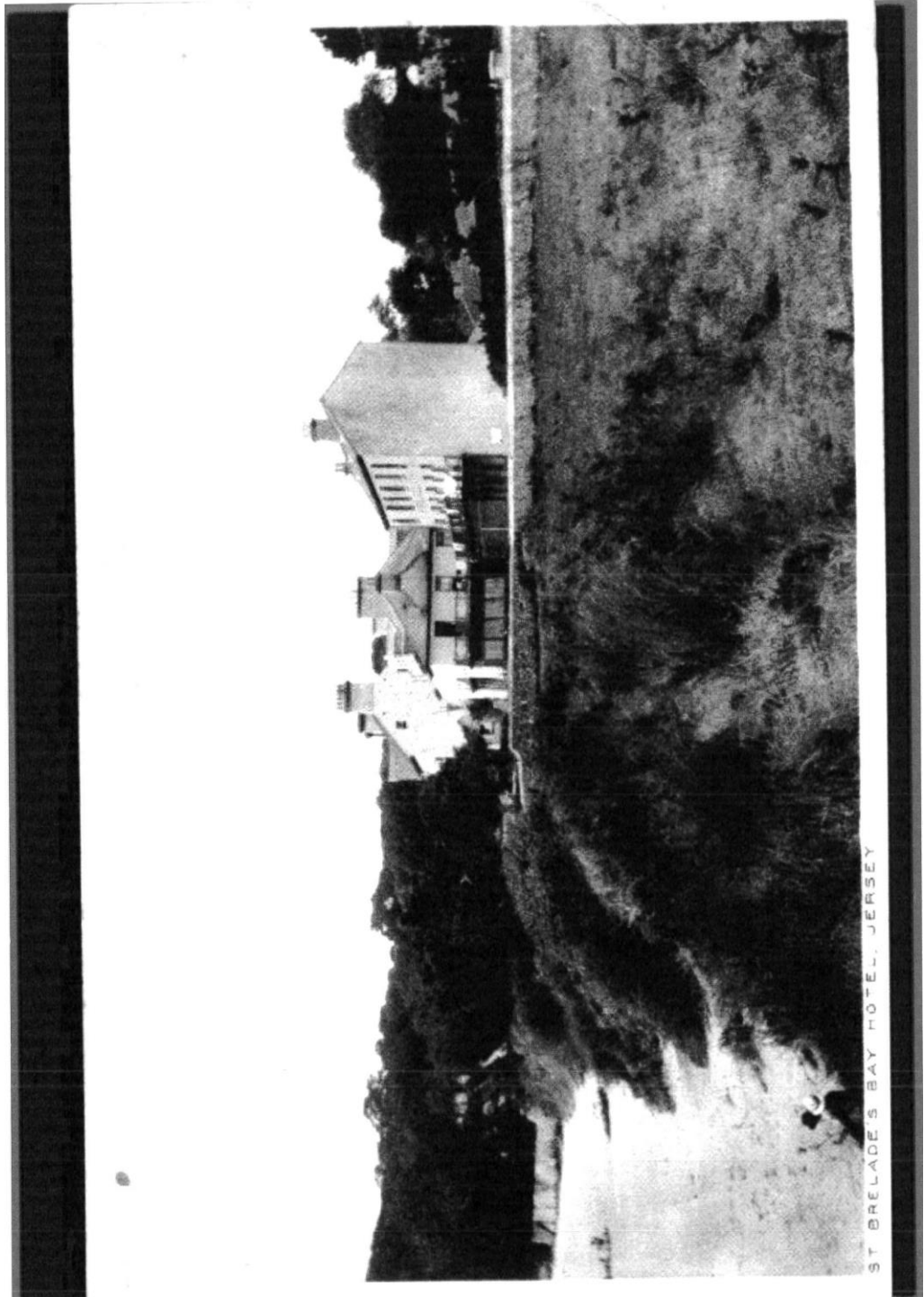




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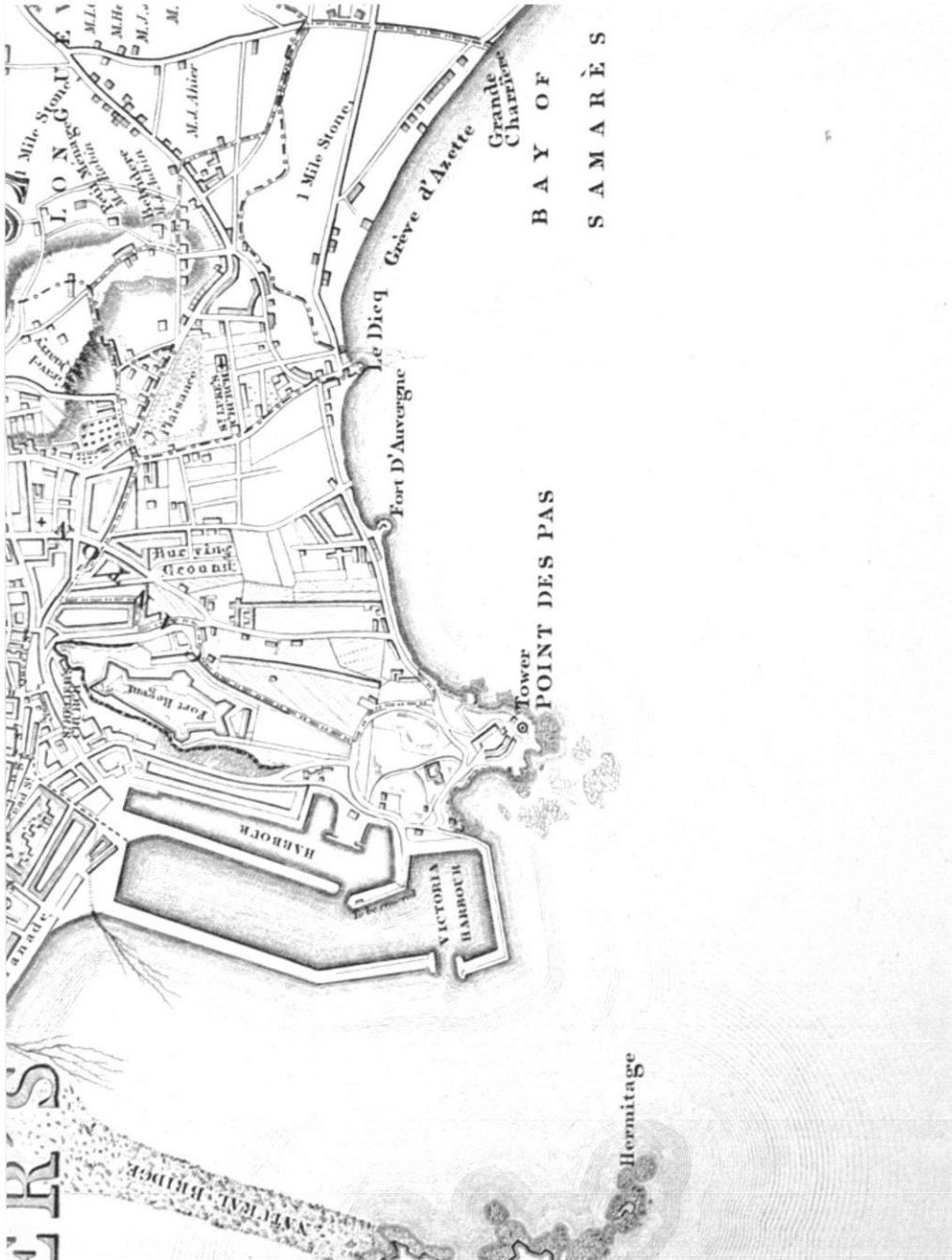






ST. BRELADE'S BAY HOTEL, JERSEY

Details of Havre des Pas reclamation



## Land reclamation around Jersey's coast

From theislandwiki

This article is under construction. It will appear on our What's New? page once it is complete

Land reclamation was largely driven in the 19th century by the need to allow roads and railway tracks to be constructed in St Aubin's Bay on the south coast and at Gorey; and by the need to create a harbour on St Helier's coastline.

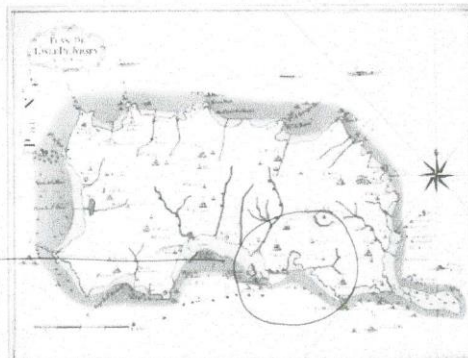
In the 20th century the creation of large tracts of land, further expanding the seaward boundaries of St Helier, was driven more by the need to create areas in which the rubble generated by property development throughout the island could be deposited.

### On the coast



### Land reclamation around Jersey's coastline

The shape of the island of Jersey has changed significantly over the centuries as successive reclamation schemes have extended the coastline. Although this process has been most evident in and around the area which is now St Helier Harbour, land has been reclaimed at Gorey, in the north-east, Samares in the south-east, St Aubin, and along several stretches of coast where the construction of seawalls created a division between beach and sand dunes

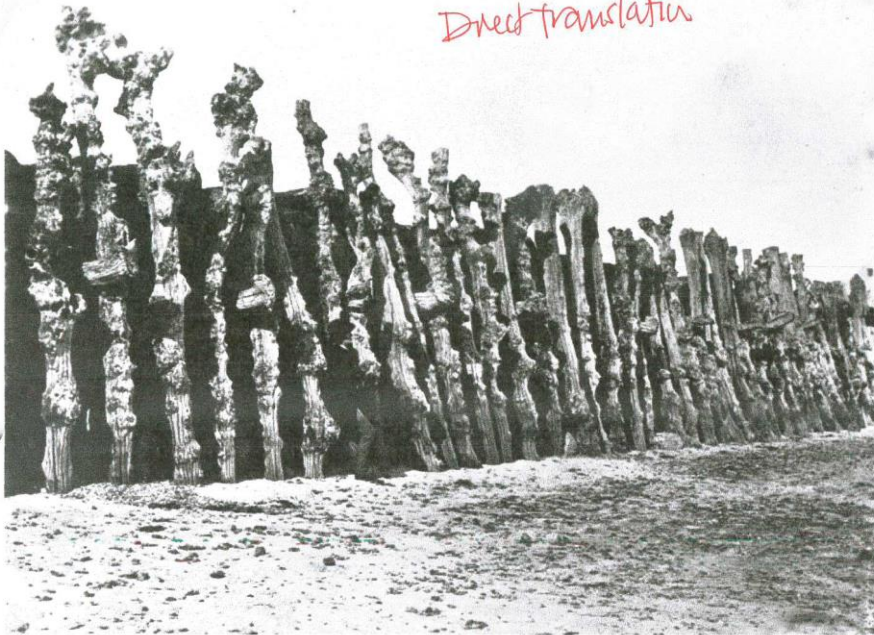


A map of Jersey produced by a Mr Tibbles, in about 1778, shows that Jersey's coastline was more ragged, particularly on either side of St Helier's Mont de la Ville before seawalls were built and land reclaimed behind

*Georgebur  
marsh Inlet.*



Samaries "Salt marsh"  
Direct translation



The Dicq, photographed by Victor Hugo or his son in 1853. The structure stopped the sea encroaching on low-lying land in St Clement before more substantial sea walls were built

It was even earlier that a large expanse of what is now part of the parish of St Clement was reclaimed from the sea with the construction of a dyke, or *dicq*, just around the corner from Havre des Pas. Early maps of the island all show a substantial inlet towards Samaries Manor, which was surrounded by marshy land which flooded at high tide. It is well documented that the Seigneur was forced to travel part of the way by boat when he ventured into St Helier for sittings of the Royal Court.

History is vague on when, exactly, the Dicq was constructed, but it appears that it was intended to undo the damage wrought by earlier storms, rather than create a new expanse of land. One report we have found suggests that large floods in 1688, 1796 and 1812 led to the coast road at Le Hocq being swept away by the sea and necessitated the coast road being rebuilt further inland.

However, a study of maps of the 19th century suggest that the work was undertaken between 1775 and 1785. The accuracy of some of these maps is questionable, many seemingly copied from earlier versions, but successive maps produced by Herman Moll in the 1730s, Thomas Osborne in 1748, the Cassini family in the 1750s, Francis Grose in 1772 and Tibbles in 1775, show a substantial inlet between the St Clement Coast and Samaries Manor, whereas on a map produced in 1785 by an unknown Army officer, the inlet has disappeared and the coast is largely straight from Havre des Pas east.

The Dicq was a fairly basic structure, with a rock bank held in place by tree trunks, as evidenced by the first available photograph, taken either by French refugee Victor Hugo, or his son Charles, in 1853.  
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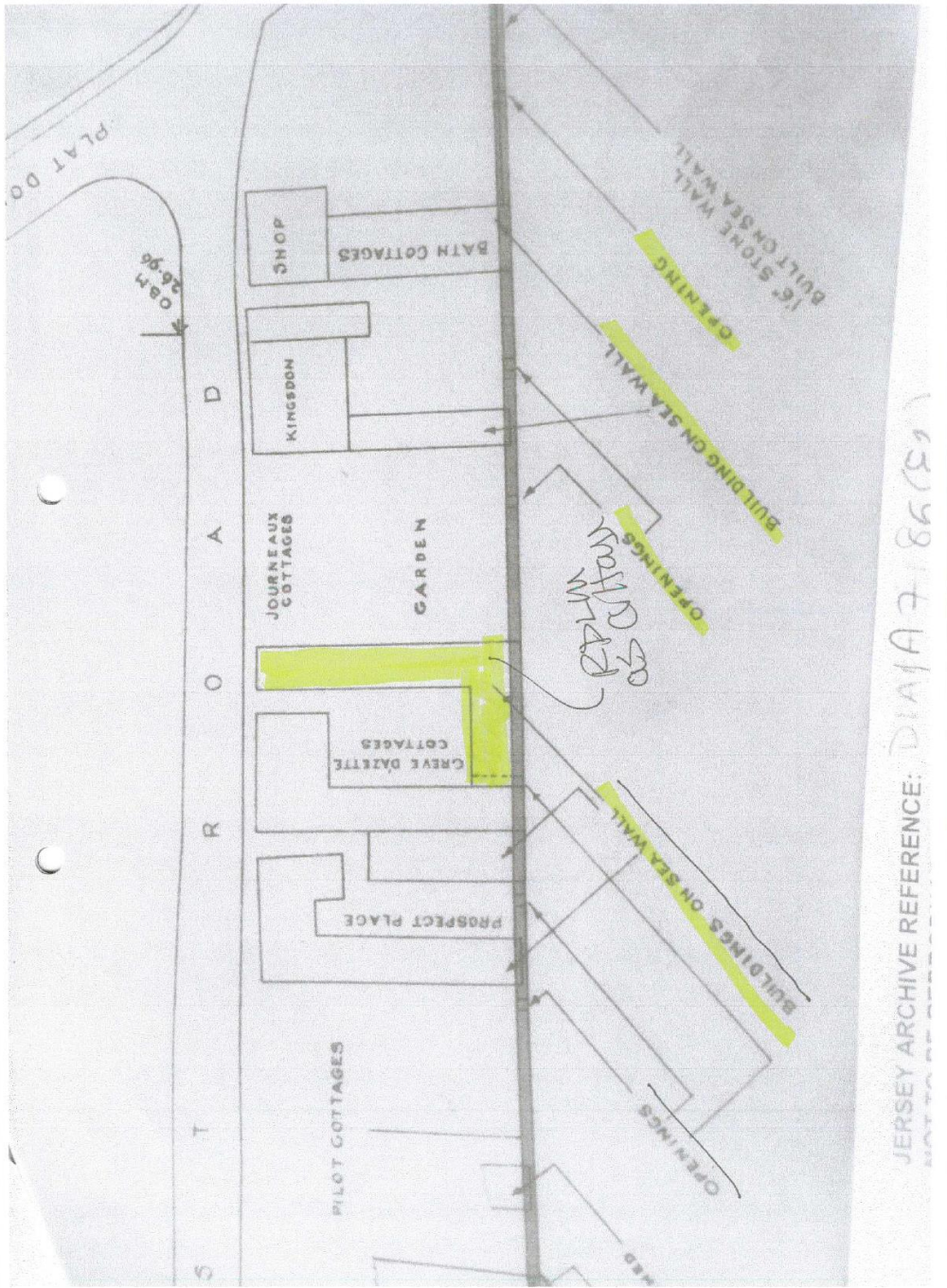
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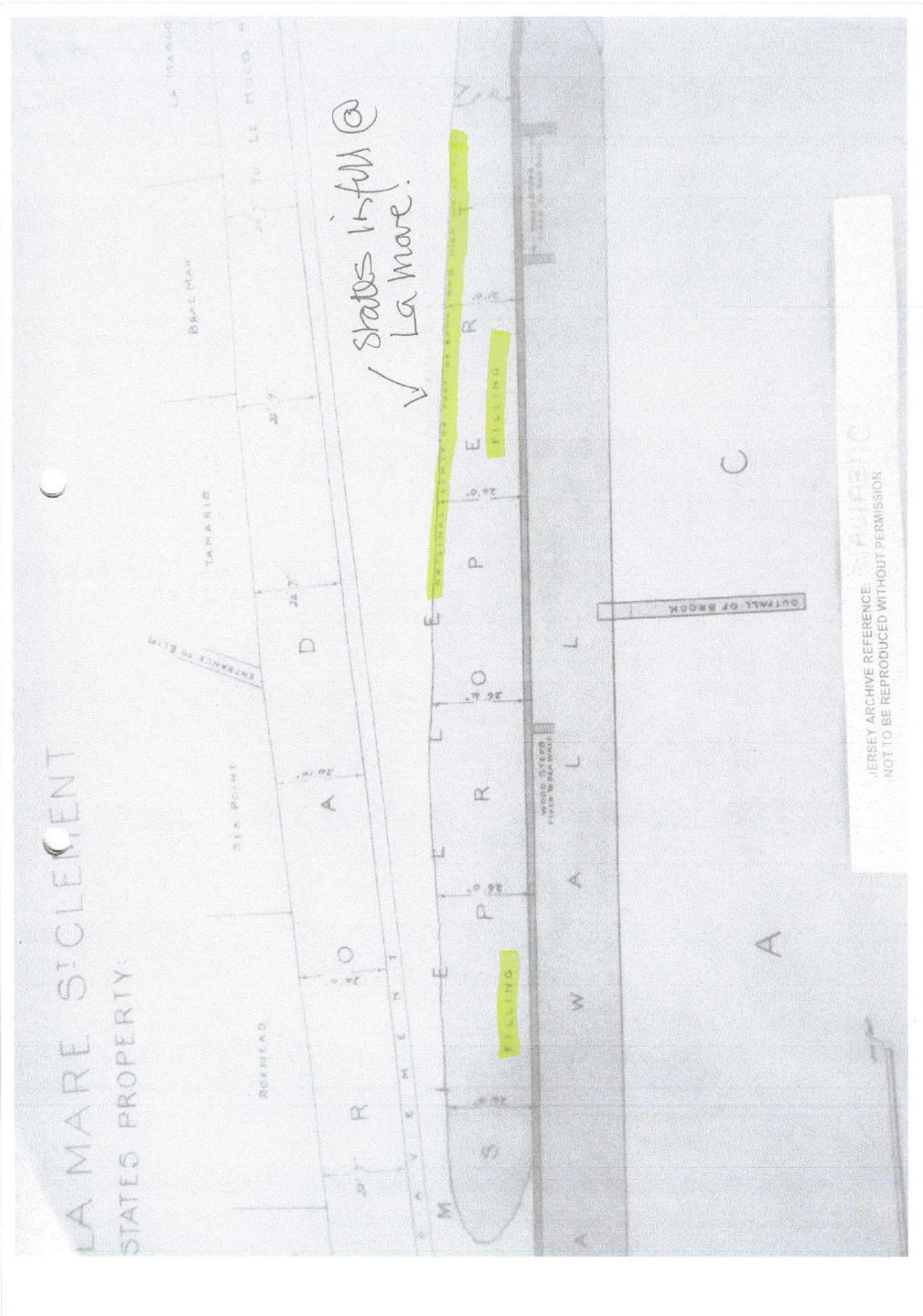
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