

Briefing Paper 1/2021 | February 2021

# Encroachments on the Foreshore: Revised Policy



## 1. The need for a revised foreshore policy

On 4th August 2020, the Deputy of Grouville lodged [Foreshore: Policy for Alleged Encroachment Payments \(P.101/2020\)](#) to address the issue of fines, or States compensation payments, being levied against certain property sellers for alleged encroachments on the foreshore. The proposition was subject to an [amendment](#) by the Minister for Infrastructure, and the States Assembly adopted the proposition as amended. In doing so, the Assembly agreed:

### Overview

This paper provides an overview of the amendments to "[Encroachments on the Foreshore: revised policy](#)" (P.111/2020) that are due to be debated by the States Assembly on 2nd March 2021. The appendices to this paper show how the revised foreshore policy will look, depending on which of the amendments is adopted

- (a) that no further land transactions should take place between the Public and third parties in respect of strips or parcels of reclaimed foreshore until a revised foreshore encroachment policy has been debated;
- (b) that such policy should be brought forward for debate by the Assembly by January 2021;

- (c) that upon a revised policy being agreed by the Assembly, the Minister for Infrastructure should re-consider Finding 8.15 of the [States of Jersey Complaints Board's report \(R.71/2018\)](#) in respect of refunding the difference (if any) between the considerations paid under the two respective land transactions and the considerations that would have been paid had the new policy been in place at the time; and
- (d) to request that the Department for Infrastructure publishes, by the end of Quarter 1 of 2021, a map of all public accesses, footpaths and rights of way to the foreshore.

## 2. Encroachments on the Foreshore: revised policy (P.111/2020)

In line with the States Assembly's agreement of P.101/2020, the Minister for Infrastructure brought forward [Encroachments on the Foreshore: revised policy \(P.111/2020\)](#) on 18th September 2020. The proposition was subject to a [review](#) by the Environment, Housing and Infrastructure Scrutiny Panel, which concluded that the proposed revised policy is "fundamentally flawed and lacking in essential detail". The Panel was therefore unable to support the adoption of the revised policy as presented in the main proposition.<sup>1</sup>

## 3. Encroachments on the Foreshore: revised policy (P.111/2020): Amendment

The Deputy of Grouville lodged an [Amendment to P.111/2020](#) on 31st December 2020, proposing the following changes to the revised Encroachments on the Foreshore policy:

- It requests the Minister for Infrastructure to provide a map, setting out the public boundary, as part of the encroachment policy document<sup>2</sup>;
- The Revised Policy would establish Historic and New / Recent Encroachments as being more or less than 10 years old, but does not specify a date from which the 10-year mark is to be determined. The Deputy's amendment proposes 12th June 2015 and the date before which encroachments should be considered as 'historic';
- The amendment would also make numerous deletions to the revised policy set out in P.111/2020, including the removal of paragraphs relating to 'Categories of foreshore encroachment', 'The principles of policies' and 'The Public's landside ownership of the foreshore'; and
- The Deputy's amendment proposes a new section under the heading 'Policies', which sets out an alternative way of identifying and dealing with both 'new / recent' and 'historic' encroachments:

"Encroachments occurring after the date upon which the States approved this policy document will be required to be removed and the foreshore restored to its prior state at the cost of the encroaching party.

Encroachments occurring prior to the date upon which the States approved this policy document, but after 12th June 2015, will be dealt with as follows –

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<sup>1</sup> [EHI Panel Review – Foreshore Encroachment Policy \(S.R.1/2021\)](#), p.44

<sup>2</sup> The Minister has lodged [an amendment to this part of the amendment](#) so that the requirement is to report to the relevant Scrutiny Panel on a map establishing the public boundary, rather than including it explicitly in the policy.

- (1) **Minor encroachments** will be permitted to remain subject to such reasonable conditions as the Minister may specify in a licence agreement.
- (2) **Interfering encroachments** will be required to be removed and the foreshore restored to its prior state at the cost of the encroaching party.
- (3) **Non-interfering encroachments**, which are not minor encroachments, may at the discretion of the Minister be permitted to remain subject to such reasonable conditions as he may specify in a licence agreement, including the payment of reasonable compensation.

Encroachments which have occurred prior to 12th June 2015 (**historic encroachments**) will be dealt with as follows –

- (1) **Minor encroachments** will be permitted to remain subject to such reasonable conditions as the Minister may specify in a licence agreement.
- (2) **Interfering encroachments** may be required to be removed and the encroaching party may be required, depending on the particular circumstances of the case (including the length of time that the encroachment has existed), to contribute appropriately to the cost of such removal.
- (3) **Non-interfering encroachments**, which are not minor encroachments, will be permitted to remain subject to such reasonable conditions as the minister may specify in a licence agreement.

Notwithstanding the above policies, if an encroachment at any time affects any duty of the Minister to repair or improve flood defences pursuant to the Drainage (Jersey) Law 2005, he may deal with the matter as he thinks fit.<sup>3</sup>

Whilst the EHI Scrutiny Panel was not able to fully consult on the Deputy of Grouville's amendment due to time constraints, the Panel supported the amendment in principle, stating in its report that "the Panel considers that the basis of the Deputy's amendment is in keeping with a number of the findings and recommendations made in this report."<sup>4</sup>

[Addendum 1](#) shows how the revised policy will look if the proposition is adopted as amended by the Deputy of Grouville.

#### 4. Encroachments on the Foreshore: revised policy (P.111/2020): Second Amendment

On 16th February 2021, the Minister for Infrastructure lodged his own [amendment](#) to the original proposition in response to the key findings and recommendations made by the EHI Scrutiny Panel in its review of P.111/2020. The Minister has proposed the following amendments to his original Encroachments on the Foreshore policy:

- With regards to resolving issues involving encroachments on the landside boundary of the foreshore, that "the Law Society of Jersey's Standard Seller Questionnaire (Jan 2019), in particular questions 3 and 19, may also lead to approaches being made to JPH by the Public's neighbours" and that "the age of an encroachment will be considered as one of the factors in its resolution";

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<sup>3</sup> [P.111/2020: Amendment – Deputy of Grouville](#)

<sup>4</sup> [EHI Panel Review – Foreshore Encroachment Policy \(S.R.1/2021\)](#), p.11

- With regards to new/recent encroachments, that Jersey Property Holdings will take action to “regularise” as well as resolve them; and
- That the following new section entitled “General” should be added to the end of the policy:

**“General**

In so far as it can be ascertained, the age of the encroachment prior to 2015 when the Crown transferred ownership of the foreshore to the Public of the Island) will be taken into account as a factor in how the encroachment will be considered and dealt with in relation to all types of encroachment. The longer that the encroachment has been in existence prior to 2015 the more favourably this will be taken into account towards the third party concerned.

Secondly, if the third party can provide evidence that the Crown in fact agreed to the encroachment this will be taken into account favourably in considering and dealing with the encroachment.”

The final part of the amendment requests that an appendix to the amendment (Appendix 1) be appended to the revised policy.<sup>5</sup> This Appendix establishes how Jersey Property Holdings will proceed in resolving encroachments on the foreshore with adjoining owners – including the manner in which JPH will enter into discussions with such owners – as well as the following:

- The procedure by which the upper limit of the foreshore/default boundary lines will be established;
- A detailed sliding scale to determine the reduction in the value of land subject to a transaction based on how long the encroachment has been in existence for;
- A procedure for resolving foreshore encroachments covering the following potential scenarios:
  - Cases where no encroachment is claimed but there is a lack of a ratified boundary between the foreshore and third-party property;
  - A claim of ownership by the Public over the land being disputed by an adjoining owner;
  - If an adjoining owner agrees to remove the encroachment;
  - If an adjoining owner agrees to a sale of the encroached land; and
  - Cases in which an adjoining owner may apply for a license for continued use of the encroached land.

[Addendum 2](#) shows how the revised policy will look if the proposition is adopted as amended by the Minister for Infrastructure.

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<sup>5</sup> [Encroachments on The Foreshore: Revised Policy \(P.111/2020\) – Second Amendment – lodged by the Minister for Infrastructure](#), p.3

## **Addendum 1**

### **Revised Policy for Encroachments on the Foreshore – proposed by the Deputy of Grouville**

#### **Purpose:**

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

#### **Definitions:**

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

- Consideration:** A monetary sum paid for land/property in a transaction, including for granting rights.
- Encroachment:** The unauthorised and unlawful entering upon the land, property, or the rights of another party including title encroachments.
- Flood defence:** A structure intended to provide defence to land against sea water or coastal erosion. Commonly referred to as a seawall or sea defence. Provisions are made for the designation of flood defences in the “*Drainage (Jersey) Law 2005*”.
- Foreshore:** The land surrounding Jersey, owned by the Public, as customarily described as lying between the “High Water Mark of full Spring Tide” and the “Lowest Mark of Tide”.
- GHE:** The Growth, Housing and Environment Department of the Government of Jersey.
- HWMoFST:** High Water Mark of full Spring Tide.
- Historic encroachments:** Encroachments which have existed prior to 12th June 2015.

Interfering encroachments:

Encroachments which:

- a. frustrate, obstruct or make harder the exercise of any of The Minister's/GHE's/JPH's duties, especially in respect of access for maintenance and repair of flood defences, and/or
- b. reduce any right of access or exercised right as a matter of longstanding habitual and recognised custom by the general Public, and/or
- c. have the potential to undermine or cause damage to a flood defence or pollute the foreshore
- d. affect the delivery of a service by the Government of Jersey.

JPH:

Jersey Property Holdings (part of GHE).

Licence agreement:

A conditional agreement giving permission to a third party to use, access or place something on an area of the foreshore.

LMoT:

Lowest Mark of Tide.

LOD

Law Officers' Department.

Minor encroachments:

Encroachments onto the foreshore which are of a trivial nature in scale, for example, an encroachment by a boundary fence or hedge of a few inches.

Non-interfering encroachments:

Encroachments which do not:

- a. frustrate, obstruct or make harder the exercise of any of The Minister's/GHE's/JPH's duties, especially in respect of access for maintenance and repair of flood defences, and/or
- b. reduce the general Public's access to, or over, the foreshore or any right of access or exercised right as a matter of longstanding habitual and recognised custom by the general Public, and/or
- c. have the potential to undermine or cause damage to a flood defence or pollute the foreshore
- d. affect the delivery of a service by the Government of Jersey.

Openings, gates, steps and stairs: Encroachments onto the foreshore comprising openings, gates, steps and/or stairs from a third-party property onto, or over an adjoining part of the foreshore.

Reclaimed foreshore: Areas of the foreshore which have been reclaimed, typically from the construction of a flood defence and the in-filling of the void behind the new wall to create a level area of land.

Surface water discharge pipes: Encroachments onto the foreshore comprising drainage pipes which discharge surface water from a third-party property either through or onto a flood defence or onto or over an adjoining part of the foreshore.

The Minister: The Minister for Infrastructure.

### **Prescription**

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

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

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

### **Planning Permission**

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

### **Policies:**

Encroachments occurring after the date upon which the States approved this policy

document will be required to be removed and the foreshore restored to its prior state at the cost of the encroaching party.

Encroachments occurring prior to the date upon which the States approved this policy document, but after 12th June 2015, will be dealt with as follows –

1. Minor encroachments will be permitted to remain subject to such reasonable conditions as the Minister may specify in a licence agreement.
2. Interfering encroachments will be required to be removed and the foreshore restored to its prior state at the cost of the encroaching party.
3. Non-interfering encroachments, which are not minor encroachments, may at the discretion of the Minister be permitted to remain subject to such reasonable conditions as he may specify in a licence agreement, including the payment of reasonable compensation.

Encroachments which have occurred prior to 12th June 2015 (historic encroachments) will be dealt with as follows –

1. Minor encroachments will be permitted to remain subject to such reasonable conditions as the Minister may specify in a licence agreement.
2. Interfering encroachments may be required to be removed and the encroaching party may be required, depending on the particular circumstances of the case (including the length of time that the encroachment has existed), to contribute appropriately to the cost of such removal.
3. Non-interfering encroachments, which are not minor encroachments, will be permitted to remain subject to such reasonable conditions as the minister may specify in a licence agreement.

Notwithstanding the above policies, if an encroachment at any time affects any duty of the Minister to repair or improve flood defences pursuant to the Drainage (Jersey) Law 2005, he may deal with the matter as he thinks fit.

End of policy document.



## Addendum 2

### Revised Policy for Encroachments on the Foreshore – proposed by the Minister for Infrastructure

#### Purpose:

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

#### Definitions:

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

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

Historic encroachments:	Encroachments which have existed for more than ten years.
Interfering encroachments:	Encroachments which: <ul style="list-style-type: none"> <li>a. frustrate, obstruct or make harder the exercise of any of The Minister's/GHE's/JPH's duties, especially in respect of access for maintenance and repair of flood defences, and/or</li> <li>b. reduce any right of access or exercised right as a matter of longstanding habitual and recognised custom by the general Public, and/or</li> <li>c. have the potential to undermine or cause damage to a flood defence or pollute the foreshore</li> <li>d. affect the delivery of a service by the Government of Jersey.</li> </ul>
JPH:	Jersey Property Holdings (part of GHE).
Licence agreement:	A conditional agreement giving permission to a third party to use, access or place something on an area of the foreshore.
LMoT:	Lowest Mark of Tide.
LOD	Law Officers' Department.
Minor encroachments:	Encroachments onto the foreshore which are of a trivial nature in scale, for example, an encroachment by a boundary fence or hedge of a few inches.
New/recent encroachments:	Encroachments which have existed for less than ten years.

Non-interfering encroachments:

Encroachments which do not:

- a. frustrate, obstruct or make harder the exercise of any of The Minister's/GHE's/JPH's duties, especially in respect of access for maintenance and repair of flood defences, and/or
- b. reduce the general Public's access to, or over, the foreshore or any right of access or exercised right as a matter of longstanding habitual and recognised custom by the general Public, and/or
- c. have the potential to undermine or cause damage to a flood defence or pollute the foreshore
- d. affect the delivery of a service by the Government of Jersey

Openings, gates, steps and stairs: Encroachments onto the foreshore comprising openings, gates, steps and/or stairs from a third-party property onto, or over an adjoining part of the foreshore.

Reclaimed foreshore: Areas of the foreshore which have been reclaimed, typically from the construction of a flood defence and the in-filling of the void behind the new wall to create a level area of land.

Surface water discharge pipes: Encroachments onto the foreshore comprising drainage pipes which discharge surface water from a third-party property either through or onto a flood defence or onto or over an adjoining part of the foreshore.

The Minister: The Minister for Infrastructure.

Title encroachments: An encroachment on the foreshore, including onto a seawall, which is claimed/recorded in a property's title contract, but where the Crown or the Public has not been party to the contract to agree the terms.

### **Categories of foreshore encroachment:**

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

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

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

- I. Interfering encroachments

## II. Non-interfering encroachments.

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

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

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

### **Preamble:**

### **The principles of the policies:**

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

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

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

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

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

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

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

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

The extent of the Foreshore is customarily described in Jersey as all that land lying between "*le plein de Mars*" (the High Water Mark of full Spring Tide or, more

correctly, the mark which the tide reaches during the highest tide in the month of March) and “*le niveau de basse mer*” (or the lowest mark of tide, often referred to as the *datum* level). The landside extent is highly relevant to this policy document as it is the line between the Public’s foreshore and adjoining private properties.

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

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

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

## **Prescription**

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

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

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

## **Planning Permission**

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

## **Jersey Property Holdings**

JPH was established by the States Assembly in 2005 under the framework of a Proposition<sup>6</sup> concerning the management of the Public property portfolio. The

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<sup>6</sup> Policy and Resources Committee proposition lodged 03.05.05 “States of Jersey Property Holdings: Establishment

proposition set-out the aims of the organisation, which including realising the value of Public land and property. JPH replaced “Property Services”<sup>7</sup> which itself was established in 1991 – again with a remit including the principle of realising best value for Public land.

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

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

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

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

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

## **Policies:**

### **1. Landside boundary of the foreshore**

- a. A proactive approach will be taken by JPH to use the information held on the upper limit of the foreshore towards private properties and the recommended ‘default boundary lines’, to resolve foreshore encroachments and to ratify boundaries with adjoining properties. This is to include JPH communicating with such private owners the information held on the upper limit of the foreshore, and the recommended ‘default boundary lines’.
- b. The Law Society of Jersey’s Standard Seller Questionnaire (Jan 2019), in particular questions 3 and 19, may also lead to approaches being made to JPH by the Public’s neighbours.
- c. The age of an encroachment will be considered as one of the factors in its resolution.

### **2. New/recent encroachments**

- a. A proactive approach will be taken by JPH to identify **new/recent encroachments** and to take action to resolve or regularise them with the respective third parties.

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<sup>7</sup> Established as the Property Management Office under P.43/1991

- b. New encroachments occurring after the date of this Policy document will be required to be removed and the foreshore restored to its prior state at the cost of the third party. This position applies irrespective of the sub-category **interfering encroachments** or **non-interfering encroachments** or the sub-sub-category **openings, gates, steps and stairs**.
- c. There is a presumption that **new/recent encroachments** in the sub-category **interfering encroachments** will be required to be removed and the foreshore restored to its prior state at the cost of the third party. This also applies to the sub-sub-categories **openings, gates, steps and stairs**, and **surface water discharge pipes**.
- d. However, in certain cases, the Minister may decide to allow **new/recent encroachments** to remain – primarily those in the sub-category **non-interfering encroachments**.
- e. Policy 2.d. is subject to:
  - i. a sale or lease of the encroached land taking place from the Public to the third party – as approved by the Minister;
  - ii. the sale or lease of the encroached land being for a fair and proper price, and the Public's costs also being met by the third party;
  - iii. the sale or lease of the encroached land being subject to the 'default boundary line' being ratified; and
  - iv. where applicable, the sale or lease of the encroached land being subject to reasonable provisions for the Public to retain necessary access onto the sold/let land for future essential maintenance of a sea defence or for future essential improvement of a sea defence, including heightening.
- f. Policy 2.d. may also be subject to, in the case of the sub-sub-categories **openings, gates, steps and stairs** and **surface water discharge pipes**:
  - i. a licence agreement covering the use of the openings, gates, steps and/or stairs and surface water discharge pipes between the Public and the third party, subject to terms to be decided by the Minister;
  - ii. however, where any part of an opening, gate, step or stair or discharge pipe is deemed to comprise an interfering encroachment and having an impact on the current or future function or integrity of a sea defence, then any necessary modifications to restore the sea defence will be required.

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

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

- a. A proactive approach will also be taken by JPH to identify, record and monitor changes to **historic encroachments**.
- b. A proactive approach will be taken by JPH to notify third party owners with **historic encroachments** of the upper limit of the foreshore and the default boundary line.
- c. Changes to **historic encroachments** made after the date of this Policy document will be deemed to recategorize them as **new/recent encroachments**, with the relevant policies for that category then being applicable.
- d. A proactive approach will be taken by JPH to engage with third party owners with **historic encroachments** to resolve their encroachments, either by:
  - i. restoring the foreshore to its prior state on terms to be agreed between the parties.
  - ii. a sale or lease of the encroached land taking place from the Public to the third party, subject to a fair and proper price being paid for the land, but subject to a reduction in the price to reflect the period for which the **historic encroachment** has existed.

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

### 4. **Minor encroachments.**

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

### 5. **General**

In so far as it can be ascertained, the age of the encroachment prior to 2015 when the Crown transferred ownership of the foreshore to the Public of the Island) will be taken into account as a factor in how the encroachment will be considered and dealt with in relation to all types of encroachment. The longer that the encroachment has been in existence prior to 2015 the more favourably this will be taken into account towards the third party concerned.

Secondly, if the third party can provide evidence that the Crown in fact agreed to the encroachment this will be taken into account favourably in considering and dealing with the encroachment.

End of policy document



## APPENDIX

### PROCEDURES IN CONNECTION WITH THE POLICY

#### 1. Upper limit of the foreshore/default boundary lines

As contained in the policy:

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

Procedurally, it is intended that JPH will contact every property owner whose property has been included in the research, in order to explain the findings.

That is considered to be the fairest approach to such owners, in order to give them time to consider the information, and to submit any counter-information which they may wish to submit.

Work is currently in hand to convert the research information onto a plan or map format. Following JPH making contact with all owners, it is intended that arrangements will be made for the plan(s) or map to be made accessible in accordance with Data Protection (Jersey) Law 2018 principles.

#### 2. Sliding Scale

In cases of **Historic Encroachments**, the value of land, where subject to a transaction, should be reduced to reflect the period of existence of the encroachment:

<b>Age of Encroachment consideration payable</b>	<b>2017 – Reduction in</b>	<b>2021 – Reduction in consideration payable</b>
Up to 5 years	No reduction	No reduction
Over 5 years to up to 10 years	10% reduction	20% reduction
Over 10 years to up to 15 years	15% reduction	25% reduction
Over 15 years to up to 20 years	20% reduction	30% reduction
Over 20 years to up to 25 years	25% reduction	35% reduction
Over 25 years to up to 30 years	30% reduction	40% reduction
Over 30 years to up to 35 years	35% reduction	50% reduction
Over 35 years to up to 40 years	40% reduction	60% reduction
Over 40 years	50% reduction	

### 3. Procedure for foreshore encroachments

I JPH will contact in writing every property owner whose property borders the foreshore and has been included in the LOD research, in order to explain the findings.

II This will include:

- a. The opinion of the line reached by the upper limit of the foreshore at that property, and thus the Public's claim to ownership of the foreshore.
- b. The basis of the claim.
- c. The default boundary line at that location.
- d. A description of what encroachment, if any, exists on the Public land at that property.
- e. The option for resolution of the encroachment, or options if there are more than one.

III. JPH will invite every owner to consider the content of the communication, and to seek their own advice as required.

IV. JPH will request that every owner responds in writing to the communication within two months, but will also arrange Officer meetings beforehand if requested, for discussion purposes.

V. Depending on which resolution option is favoured and agreed between JPH and the adjoining owner, the following steps will be taken:

#### **a. Agreed boundary where there is [neither] the sale [nor material loss] of public land.**

i. In cases where no encroachment is claimed, but there is a lack of a contractually defined boundary between the foreshore and the third-party property, it will be recommended that a boundary ratification contract is passed by the parties before Royal Court.

ii. Unless otherwise agreed, this will be based upon the default boundary line

#### **b. Dispute.**

i. If the adjoining owner disputes the Public's claim to ownership of the land, then the two parties will seek to agree a route to resolution. Ultimately this may lead to the dispute being referred to an independent expert third-party for an opinion.

#### **c. Removal of the encroachment.**

i. A timetable will be agreed with the adjoining owner for the removal of the encroachment, and the role which JPH will take in that.

#### **d. Sale of the encroached land.**

i. JPH will commission an independent valuation of the land.

ii. The adjoining owner will be at liberty to commission their own valuation.

iii. JPH and the adjoining owner will seek to agree a figure for the value of the land.

**iv.** Failure to agree a figure may lead to the dispute being referred to an independent expert third-party for an opinion.

**v.** When a value for the land is agreed, or settled by an agreed or an accepted form of dispute resolution, JPH will arrange for Ministerial approval to be sought, to allow for a land transaction to complete before Royal Court.

**e. Licence for continued use of the land.**

**i.** This applies to encroachment cases where the adjoining owner may not have the means or desire to acquire the Public land which has been encroached upon, and JPH may agree that it is not essential for the land to be restored.

**ii.** In such cases, the option of a licence for continued use of the land may be exercised.

**iii.** The licence will be personal to the party involved, and the expectation is that at the point of future sale of the property, the ownership of the encroached land would be contractually resolved, or the land restored to public amenity.”