



**Department for Infrastructure**  
*Jersey Property Holdings*

**Policy: Encroachments on the Foreshore**

**December 2017**

**Purpose:**

The purpose of this document is to set out the policy of JPH - as approved by the Minister - in respect of dealing with encroachments on the Foreshore and the possible courses of action that the department will follow when encroachments are brought to its attention.

**Definitions:**

- Consideration: A financial value given to land/property in connection with a proposed transaction.
- Dfl: Department for Infrastructure.
- Encroachment: Unauthorised and unlawful entering upon the land, property, or the rights of another party.
- Foreshore: The land surrounding Jersey, as customarily described as lying between the “high water mark of full Spring tide” and the “lowest mark of tide”.
- JPH: Jersey Property Holdings (part of Dfl).
- Reclaimed  
Foreshore: Areas of the Foreshore which have been subject to development to potentially enhance the use of the land, ie, the construction of a sea defence, and in-filling the void behind the wall to create a level area of land.
- Flood defence: A structure intended to provide defence of land against sea water or coastal erosion. Commonly referred to as a seawall.
- The Minister: The Minister for Infrastructure.

**Preamble:**

Land transactions in respect of the Foreshore and other Public land are made in the name of “The Public of the Island of Jersey”, being a conveyancing term to describe land held by the States of Jersey.

The States Assembly is the elected body through which decisions are made that relate to the Public's land. Standing Order 168<sup>1</sup> 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 and the recommendation is accepted by the Minister.

JPH was established in 2005 to manage the States' property portfolio, and is now part of Dfl.

This policy concerning encroachments on the Foreshore is intended to complement and supplement JPH's 2006 valuation policy "Statement on Land Valuation" as approved under MD-PH-2006-0094.

The Minister, through Dfl 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"<sup>2</sup> 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. An exception to this, but which was not an encroachment, was reclaimed Foreshore behind the Pontac to La Rocque seawall built in the early 1970s. In connection with that new wall, the States decided, in 1971, to acquire the necessary Foreshore from the Crown, and to gift the reclaimed Foreshore behind the new wall to the respective house owners as extended garden areas.

Neither the land transaction with the Crown, nor any subsequent transactions with the householders took place at the time. However the view taken was that the decision of the States and subject correspondence with the householders made it difficult to do anything other than completing the transactions on the terms intended in 1971. As such, in 2009, JPH sought Ministerial approval<sup>3</sup> to complete the transaction with the Crown and with the householders, and a significant number have since been completed. JPH considers that the 1971 decision of the States did not create a precedent affecting the outcome of encroachments on the Foreshore or other negotiated sales of the Foreshore.

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<sup>1</sup> Standing Orders of the States of Jersey in pursuance of Article 48 of the States of Jersey Law 2005

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

<sup>3</sup> MD-PH-2009-0044

Subject to the above-mentioned primary considerations, JPH/the Minister will address Foreshore encroachments as and when they come to the attention of the department. The purpose of this document is to set out what JPH's approach will be.

**Policy:**

1. There are three principal categories of encroachment on the Foreshore and bases for resolving them:
  - a. **Minor Encroachments.** JPH may decide to leave such encroachments in abeyance. Refer to policy 4 below.
  - b. **Material Encroachments.** Refer to policy 5 below.
  - c. **Negotiable Encroachments.** Refer to policy 6 below.
2. There is a general presumption:
  - a. against parts of the Foreshore being annexed and incorporated by adjacent private landholdings
  - b. that access by the general public to the Island's beaches, promenades, footpaths and coastline will, wherever possible, be preserved and enhanced when considering requests from landowners to ratify existing or potential encroachments
  - c. that the Foreshore is an amenity to be enjoyed, where possible, by the public in general
  - d. that the Public's property rights in respect of the Foreshore, including areas of reclaimed Public land behind sea defences, will be protected
  - e. that public access is not to be rendered more difficult or even made impossible by the actions of third party landowners
3. A proactive approach is to be taken to dealing with and resolving encroachments on the Foreshore, to include:
  - a. identifying existing and new encroachments
  - b. identifying possible future encroachments via new planning applications, and
  - c. monitoring such other means as may bring an alleged encroachment to the JPH's attention.

4. Where encroachments onto the Foreshore occur which are of a trivial nature in scale<sup>4</sup>, JPH may decide to allow the status quo to continue. However, landowners may nevertheless consider it prudent to agree a ratification of the position by passing a contract with the Public in the Royal Court to that effect. In such circumstances, the costs of so doing will be borne by the landowner.
5. Any new or recent encroachment on the Foreshore or adjoining Public land which:
  - a. frustrates, obstructs or makes harder the exercise of any of The Minister's/Dfl's/JPH's powers and functions, especially in respect of access for maintenance and repair of flood defences
  - b. compromises the Public's access to the Foreshore or any right of access or exercised right as a matter of longstanding habitual and recognised custom by the general public
  - c. affects the delivery of a service by the States of Jersey

shall, apart from exceptional circumstances, be subject to action to cause the Public's land to be restored to its state prior to the encroachment taking place, and for all costs in doing so to be recovered from the encroaching party.

6. Where encroachments onto the Foreshore occur which do not interfere with the Public's access to the Foreshore and/or affect the delivery of a service by the States, Dfl will either require:
  - a. the removal of the encroachment
  - b. the encroachment to remain, subject to a transaction with the encroaching party to include the receipt of a fair and proper consideration, and any additional costs to future public works that the presence of the encroachment may cause, plus reimbursement of all surveying and legal costs incurred and payment of any relevant taxes such as GST
  - c. the encroachment to remain, but subject to a licence or lease of the encroached land to the encroaching party at a fair and proper consideration

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<sup>4</sup> For example an encroachment by a boundary fence or hedge of a few inches

7. In respect of policy 6.b. above, where a decision is made to seek to transact with the encroaching party, the consideration should be 'fair and proper' and not less than the best that can reasonably be obtained. This must be ascertained on a case by case basis, having due regard to specific factors and details of the encroachment.
8. Where an encroachment has existed for at least ten years, whether or not planning permission has been obtained, and whosever caused by (that is to say either the current or a former owner), JPH may propose a settlement option, ie, policy 6 - rather than removal. In assessing a fair and proper price for the land in such 'historic encroachment' situations, JPH may also have regard to any circumstances which appear relevant to it concerning the particular encroachment in question, including the period of existence of the encroachment.

End of policy