

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.