1. Who is this briefing note intended for?

This note is intended primarily for anyone involved in the Shoreline Management Plan process (SMP), including representatives of the Environment Agency and local authorities involved in coastal management and realignment and anyone else interested and involved in this subject area. It is not intended as a statement of The Crown Estate’s policy but as an aide memoire to boundary issues which arise.

2. The Crown Estate and the marine environment

Approximately half of the UK foreshore and around half of the tidal riverbeds are owned by the Crown and managed by The Crown Estate, in addition to virtually the entire UK seabed out to 12 nautical miles. The Crown Estate is governed by The Crown Estate Act 1961. The Crown Estate is a landowner and not a regulatory authority.

3. Legal and practical background:

- Foreshore has a legal definition which is the area between mean high water (MHW) and mean low water (MLW) (and MHW springs / MLW springs in Scotland) and as such it is effectively a moveable freehold, subject to the doctrine of accretion and diluvion (explained below).

- Diluvion is the gradual, imperceptible and natural erosion of land above MHW causing the land to become foreshore. The newly created foreshore becomes owned by the owner of the adjacent foreshore. Accretion is the opposite of this process whereby foreshore is subject to natural deposition of material which causes it to increase in height above MHW, rendering it non tidal. In such instances this former foreshore becomes owned by the owner of the adjoining land above MHW. A sudden or man-made change such as reclamation would not affect the ownership boundaries which would be treated as they were immediately before such construction occurred.

- Because so much of the coast has been affected by human intervention, e.g. seawalls, groynes, dredging etc., it is a moot point in many areas as to whether a natural line of MHW still exists in practice.

- There is a legal presumption† that the Crown owns all UK foreshore unless it can be shown that it has been the subject of a Crown grant or has been adversely possessed over a period of 60 years or more (burden of proof resting on the claimant).
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- Other owners of foreshore include, for example, the Duchies of Cornwall and Lancaster, Local Authorities, RSPB, National Trust, MoD and some is in the ownership of private individuals.

- All owners of foreshore are covered by the same moveable freehold legal rules, as are all owners of the adjoining land above the mean high water mark. There are a few fixed boundaries, as a result of ‘fixed boundary sales’ but they are rare.

- In some locations around the UK The Crown Estate also owns and manages agricultural property adjoining the coast.

4. **Context of shoreline management plans:**

- Coastal defence authorities cannot now carry out works without the aid of a shoreline management plan.

- Shoreline management plans tend to include some or all of these four main policies:
  
  I. Hold the line – *maintain or upgrade the level of protection provided by existing coastal defences.*
  
  II. Advance the line – *build new defences seaward of the existing defence line.*
  
  III. Managed realignment – *allow retreat of the shoreline inland, with management to control or limit that movement.*
  
  IV. No active intervention – *a decision not to invest in providing or maintaining defences.*

5. **The legal implications of shoreline planning:**

- Where realignment of the foreshore or bed has arisen by a sudden natural incursion of tidal water, or by artificial means, the title boundary remains where it would have been had a sudden natural incursion or artificial realignment not taken place.††

- The legal rules of a moveable freehold and changing shoreline would resume effect after the point of any deliberate inundation.

- This interpretation can work in either direction, for example coastal defences such as groynes may have caused a build up of the foreshore through deposits above the MHW leaving such land in the ownership of the Crown. Deliberate inundation would not necessarily mean the land becomes part of The Crown
Estate and there are instances where The Crown Estate has agreed boundaries prior to inundation in realignment schemes, for example at Abbots Hall and Wallasea Island, in Essex.

- In principle if coast protection works are removed or allowed to fall into disuse the realignment could be considered artificial. This would however also apply to the original construction of those works and therefore the removal of them simply returns foreshore to its natural state and the two artificial realignments would in effect be cancelling each other out.

- In practice, agreeing boundaries can be problematical given the difficulty in establishing the true natural tide marks and a pragmatic approach is required.

6. **The Crown Estate’s position:**

- The Crown Estate Act imposes a statutory obligation on The Crown Estate to maintain and enhance the value of the estate, but also to have regard to the requirements of good management.

- The Crown Estate would not seek to influence policy other than in its position as a landowner, landlord (i.e. with obligations to its tenants) and stakeholder.

- The Crown Estate would seek to ensure that those involved in SMPs and managed realignment projects are aware of the title / ownership issues in order that they can be dealt with at an early stage rather than potentially delaying projects whilst ownership discussions take place.

- Where a sale of foreshore or seabed is anticipated, unless the sale is for subsequent land reclamation, or for permanent barriers to the sea, e.g. for a new harbour wall then in our experience great care should be taken if this is considered as an opportunity to fix the boundaries of the sale – experience has proved that these can be difficult to interpret and problematic in later years both for foreshore and adjoining landowners, where these differ, due to the dynamic and unpredictable changes in the shoreline. This problem may be exacerbated by predictions of mean sea level rise and increased wave height.

- Where any coastal defences are to be built on the foreshore The Crown Estate should be contacted at the address below as its permission will be required if it manages that area of the foreshore.
7. Summary

The Crown Estate believes the default position of a moveable title should prevail; the concept of a moveable title whose boundary follows MHW, based on the doctrine of accretion and diluvion has stood the test of time in practical terms and legally, but there may be instances where it may endeavour to reach some form of agreement where significant changes occur.

† The Crown is the prima facie owner of foreshore, or land between mean high water and mean low water, by virtue of prerogative right. (Halsburys Laws Vol 12 (1), 1998 Reissue, para 242). The same applies to seabed, being land below mean low water.

†† Halsburys laws Vol 12 (1) 1998 paras 252, 258, 263-4

To contact The Crown Estate:

Telephone: +44 (0) 207 851 5080 (and ask for a member of the coastal team)
Telephone: +44 (0) 131 260 6070 (Scotland office)
Email: enquiries@thecrownestate.co.uk
Write to: The Crown Estate
Marine Department
16 New Burlington Place
London W1S 2HX

The Crown Estate's day to day regional management is carried out by managing agents, whose details can be found at:
http://www.thecrownestate.co.uk/agents/