

3.0 POLICY, LEGAL AND ADMINISTRATIVE FRAMEWORK

3.1 Background

An Environmental Impact Assessment (EIA) is “a structured approach for obtaining and evaluating environmental information prior to its use in decision-making in the development process. This information consists, basically, of predictions of how the environment is expected to change if certain alternative actions are implemented and advice on how best to manage environmental changes if one alternative is selected and implemented” (Bisset, 1996).

The basis of EIAs has been summarised as follows⁴:

- ◆ Beyond preparation of technical reports, EIA is a means to a larger end - the protection and improvement of the environmental quality of life.
- ◆ It is a procedure to discover and evaluate the effects of activities on the environment - natural and social. It is not a single specific analytic method or technique, but uses many approaches as appropriate to the problem.
- ◆ It is not a science but uses many sciences in an integrated inter-disciplinary manner, evaluating relationships as they occur in the real world.
- ◆ It should not be treated as an appendage, or add-on, to a project, but regarded as an integral part of project planning. Its costs should be calculated as a part of adequate planning and not regarded as something extra.
- ◆ EIA does not ‘make’ decisions, but its findings should be considered in policy - and decision-making and should be reflected in final choices. Thus it should be part of decision-making processes.
- ◆ The findings of EIA should focus on the important or critical issues, explaining why they are important and estimating probabilities in language that affords a basis for policy decisions.

⁴ Wood, C., “Environmental Impact Assessment: A Comparative Review” p. 2. (from Caldwell, 1989, p.9)

3.2 Jamaican Environmental Requirements

EIAs are not only recommended in project design, but also required by Jamaican legislature. The following is a review of Jamaican environmental policy and law that are relevant to the RIU hotel design, construction and operation.

3.2.1 National Environment and Planning Agency (NEPA)

NEPA is the new Government Executive Agency and represents a recent merger of the Natural Resources Conservation Authority (NRCA), the Town Planning Department (TPD) and the Land Development and Utilisation Commission (LDUC).

Among the reasons for this merger was the streamlining of the planning application process in Jamaica. The Agency is moving towards one application to NEPA for new developments and new modifications that will review and approve environmental aspects as well as planning, building control and zoning considerations.

Town and Country Planning Authority (TCPA)

The Town and Planning Act, as amended (1987) establishes the Town and Country Planning Authority, which is responsible for land use zoning and planning regulations as described in their local Development Orders.

Negril/Green Island Development Order

The local planning authority in Negril is the Negril Green Island Area Local Planning Authority (NGIALPA). It's functions include (Source: Negril Environmental Protection Plan):

- ◆ granting permission to develop land (based on the Development Order, and subject to approval by TCPA), maintaining a public register on land development applications, and enforcing planning controls,
- ◆ making Tree Preservation Orders.

The RIU Group has obtained planning permission for this project from the Town Planning Department of the NEPA (Appendix 12). They confirm that the proposed footprint and plot area coverage are within the specified planning policy requirements.

The Development Order for Negril/Green Island requires the following directives:

- a height limit for buildings in the area of three (3) storeys
- maximum protection of the beach
- a plot ratio of between 60% - 75%

Continued proactive communication with the NGIALPA is recommended in order to keep them informed and in dialogue on the activity in their jurisdiction. This will also be the approach of the environmental consulting team in deliberating environmental aspects of the planning and approval process.

Natural Resources Conservation Authority (NRCA) Act

The NRCA Act is Jamaica's umbrella environmental law. The purpose of the Act is to provide for the management, conservation and protection of the natural resources of Jamaica.

The Act has established the Natural Resources Conservation Authority (NRCA), which has a number of powers including, inter alia:-

- ◆ issuing of permits to persons responsible for undertaking any construction, enterprise or development of a prescribed category in a prescribed area
- ◆ issuing licences for the discharge of trade or sewage effluent

- ◆ requesting an Environmental Impact Assessment (EIA) from an applicant for a permit or the person responsible for undertaking any construction, enterprise or development
- ◆ revocation or suspension of permits.

The Act also gave power of enforcement of the following environmental laws to the NRCA

(Source: Negril Environmental Protection Plan):

- ◆ The Beach Control Act
 - ⇒ Establishes Crown (Government) ownership and management responsibility for the foreshore, floor of the sea, and overlying water (regulates activities within 25 metres of the shoreline, including control over construction of sheds, and huts on beaches.)
 - ⇒ Prohibits commercial use of these areas without license from the NRCA,
 - ⇒ Directs NRCA control over activities including fishing, waste disposal, dredging, coral removal,
 - ⇒ Requires NRCA permit for any structure on or attachment to the foreshore, including seawalls, piers, jetties, mooring buoys, and artificial reefs,
 - ⇒ Requires NRCA approval of beach development plans (developments up to 1 mile inland), inspection of beaches to ensure adherence to safety and cleanliness standards.

Also,

- ◆ The Watersheds Protection Act
- ◆ The Wildlife Protection Act

3.2.2 NRCA's EIA Process

Under Section 9 of the NRCA Act, hotels of over 12 rooms such as the RIU complex will require a Permit for construction and may, under Section 10 of the Act, require an EIA. The EIA Process is described below:

- ◆ The NRCA permit procedure is initiated by the submission of the Project Information Form (PIF) (RIU's completed PIF Form as submitted is in Appendix 2) to the Authority. The PIF screening form is reviewed to determine whether and EIA is required and to begin determining areas of environmental significance, especially in waste discharge.

- ◆ Based on the review of the PIF, the NRCA advised RIU that an EIA would be required for their development. The consultant then liaises with the NRCA to determine the scope of the EIA through proposed Terms of Reference (TORs). The TORs are proposed by the consultant using NRCA guidelines and are approved by the NRCA. Appendix 3 gives the approved TORs for the RIU Hotel development.
- ◆ The EIA is then prepared by a multi-disciplinary team of professionals (see Appendix 4 for the team used in this assessment). The NRCA requires that the EIA include the following:
 - ◆ A description of the present environment, i.e. physical, biological and social environment. This includes, for example, consideration of economic situations, cultural heritage and ecological preservation.
 - ◆ A description of the significant impacts the environmental professionals expect the development to have on the environment, compared to the environment that would remain if there were no development. This will include indirect and cumulative impacts.
 - ◆ An analysis of alternatives that were considered in order to consider means of minimising or eliminating the impacts identified above.
 - ◆ An Environmental Management Plan, which includes a Monitoring & Hazard Management Plan and an Auditing schedule.
 - ◆ The NRCA guidance on EIAs states that this process “should involve some level of stakeholder consultation in either focus groups or using structured questionnaires.” A draft EIA is submitted to the developer to solicit the proponents’ input into the description of the project (to check for accuracy of statements, and to enter into realistic discussions on the analysis of alternatives, as well as to inform the proponents of any other relevant legislation with which they must comply).
 - ◆ Eight copies of the finalised draft are then submitted to NRCA, two to the client, and the consultant keeps one (11 in all are produced). The NRCA distributes these to various other public sector institutions who sit on the Technical Committee (e.g. WRA, ECD, JNHT etc.) for their comments. Typically this depends on the nature of the project.
 - ◆ As deemed necessary by the NRCA, Public Meetings are then held, following the deposition of the Draft EIA at Parish Libraries (by the NRCA). A verbatim report of the public meetings is required, as well as a summary report of the main stakeholder responses which emerged.
 - ◆ The comments of the NRCA, the other GOJ interests and the public are compiled and submitted in writing to the consultant not only for finalisation of the report but for incorporation into the development’s design.
 - ◆ The NRCA then reviews this report again, and if further clarifications are needed, these are again requested. Once the NRCA is satisfied, the EIA is submitted to the Technical Committee of the NRCA Board for final approval. If the EIA is not approved, the proponents may appeal to the Minister of Land and the Environment.

Public Participation in EIAs

There are usually two forms of public involvement in the environmental impact assessment (EIA) process. The first is direct involvement of the affected public or community in public consultations during EIA study. These consultations allow the developer to provide information to the public about the project and to determine what issues the public wishes to see addressed. The extent and results of these consultations are included in the documented EIA report.

The second level of involvement is at the discretion of the NRCA and takes place after the EIA report and addendum, if any, have been prepared after the applicant has provided the information needed for adequate review by NRCA and the public.

The RIU hotel development lies in the Negril Environmental Protection Area (EPA). The EPA is managed by the Negril Area Environmental Protection Trust (NEPT), a local community Environmental Non-Governmental Organisation (ENGO). The consultant has contacted the major environmental stakeholders in the development area including NGOs, Community Based Organisations (CBOs) and Academic Experts. Based on the questions and concerns raised in these discussions (addressed later), community interaction and transparency is a critical area of focus for the success of this development and the second level of involvement described above is possible. Please see Appendix 5 for the NRCA reference document entitled “Guidelines for Public Participation” in EIAs.

3.2.3 Parks and Protected Areas Policy

(Reference: NRCA Green Paper on a system of National Parks and Protected Areas)

According to the NRCA, a protected area is “an area of land or water that is managed for the protection and maintenance of its ecological systems, biodiversity and/or specific natural, cultural or aesthetic resources.”

A variety of organisations manage Jamaica's several existing types of protected areas. Areas authorised in the Natural Resource Conservation Authority Act of 1991. The national system also encompasses areas established under other legislation and will continue to do so. The NRCA has responsibility under the Wild Life Protection Act, the Watersheds Protection Act and the Beach Control Act for certain protected areas, including game sanctuaries and game reserves. Management authority for other areas is conferred on the responsible agency by its establishing legislation, such as the Fishing Industry Act (1975), the Forest Act (1937), and the Jamaica National Heritage Trust Act (1985).

The RIU development falls within one of the six types of protected areas, an Environmental Protection Area. “Environmental Protection Areas (EPAs) will typically be large areas of mixed and complex ownership and use with interlinked ecological systems. To achieve environmental protection, they require coordinated management of the whole area by a variety of means, including use of Prescribed Area regulations. Unlike the other categories, Environmental Protection Areas are not exclusive and may contain other types of protected areas such as fish sanctuaries, game or nature reserves. Primary uses and management authority will vary by zones that may be set forth in an environmental policy framework or determined later in a management plan. As a basic assessment of protection needs, an environmental policy framework for an EPA will often serve as a feasibility study area for or precursor to special protected area designations.”

In Jamaica, environmental non-government organisations play a key role in the management of protected areas. NEPT, an umbrella ENGO representing most of the smaller NGOs and CBOs in Negril, lobbied for and helped to develop the management and operations plans for the Negril Marine Park in association with its partner, the Negril Coral Reef Preservation Society (NCRPS).

NEPT will conduct natural resources and socio-economic studies of the Negril Great Morass and the Forests in the Fish River and Negril Hills as well as the neighbouring communities. These

studies will feed into the development of a plan for managing the resources through a variety of strategies likely to include a protected area.

Another component of protected area management is to raise awareness of the need for protecting ecosystems.

3.2.4 Negril Environmental Protection Plan (EPP)

The Negril EPA was declared in November 1997. The aim of this protected area is to promote sustainable development. It is therefore significant that the EPA overlaps with the proposed Development Order area under the Town and Country Planning Act. NEPT worked closely with the two most relevant government agencies – the NRCA and the NGIALPA to develop an EPP to guide environmental activities within the EPA.

Part of EPA management is to coordinate environmental activities between the various groups in the area by sitting on or leading committees. These include the Norman Manley Sea Park Management Committee, Greening Negril Steering Committee, NGIALPA Board, Environmental Legislation Enforcement Committee and the Resort Board. In addition, NEPT reminds other organisations of the role that they should be playing in the management of the EPA.

The EPP lists the following as issues that will be relevant in the proposed development:

- ◆ Encroachment on verges
- ◆ Use of sea for garbage disposal
- ◆ No public access to beaches for fishing and swimming
- ◆ Encroachment on foreshore
- ◆ Sewage disposal – inadequate facilities for residents and boats

- ◆ Inadequate enforcement of environmental laws
- ◆ Fisheries depleted
- ◆ Large hotels not conforming to zoning regulations
- ◆ Inadequate enforcement of litter laws
- ◆ Beach development has nearly caused huge crab population to vanish
- ◆ Improper drainage infrastructure
- ◆ Cutting of “Standing Woods” forests for charcoal kilns

The EPP defines 19 goals for the EPA. Those relevant to the RIU development include:

“Maintain fishing as a viable commercial activity and continued source of local employment.” (Goal 1) One of the measures proposed to achieve this is the establishment of a Fish Sanctuary that was proposed for what is now part of the RIU site.

- ◆ “Guide growth of the tourism industry in a manner which maintains Negril’s unique natural beauty, and is within the capability of the area’s ecosystems to support.” (Goal 4)
- ◆ “Provide proper treatment and disposal of all human wastes and waste water throughout the watershed, keeping nutrients out of the marine environment.” (Goal 5)
- ◆ “Secure public access and ownership of key beach front and shoreline lands.” (Goal 11). The EPA includes the proposed designation of a Negril Marine Park.

3.2.5 *Jamaica Hotel and Tourist Association and Tourism Product Company*

The Jamaica Hotel and Tourist Association (JHTA) grants licenses for all hotels in Jamaica. Among the licensing criteria are Environmental Guidelines for various aspects of the tourism development, including Watersport and Hotel Operations. Enforcement of licensing requirements is the responsibility of the Tourism Product Development Company (TPDCo).