



JAMAICA ENVIRONMENT TRUST (JET) BRIEF

THE RISKS OF OVERWATER HOTEL ROOMS FOR JAMAICA

Background and Policy framework

Prior to 2016, the Natural Resources Conservation Authority (NRCA) had granted two beach licenses for overwater rooms in Jamaica. One was at Bush Cay/Oyster Bay in roughly 2005, part of a large hotel development by Excellence Resorts, but the rooms were never built as the development never went ahead. The second was granted to Sandals Royal Caribbean in St. James in roughly 2010 and amended in April 2015 for five overwater rooms. JET understands that a decision was then taken by the NRCA Board that no other overwater rooms would be allowed until a policy framework had been developed. Apparently, some work was done on a policy, but this was then changed to Guidelines and no public consultation was ever done. JET cannot trace receiving a copy of these Guidelines.

No Environmental Impact Assessment (EIA) was done for the five rooms requested by Sandals Royal Caribbean. An EIA was done for the Excellence Resort development at Bush Cay/Oyster Bay, which included 164 overwater rooms. JET did a review of the EIA at the time and was not in favour of overwater rooms for reasons stated below:

“The EIA lacked a thorough assessment of how the proposed development would impact coral reefs, sea grass beds, and mangroves. The proposed development had the potential to both directly and indirectly damage coral reefs, sea grass beds and mangroves. The housing structures and the boardwalk will block sunlight, which prevents photosynthesis for both sea grass and coral reef species. Both sea grasses and corals need sunlight to survive, so permanent shading is likely to kill them.”

The indirect impacts were equally serious. *The EIA warned: “Erosion and terrestrial run-off during the construction and operational phases of the development will cause serious degradation of the seagrass meadows and coral recruitment areas. This is particularly true because of the shallow nature of the back reef area. Storm water run-off can also become deleterious by introducing nutrients, sediments and toxic substances (especially petroleum based) to the marine environment. It must be noted that a significant deposition of sand is occurring on the western tip of the area extending around to the fringe mangroves. Any increase in sediments could have serious consequences for the mangrove root community.”*

Unfortunately, the EIA warned but did not assess or propose mitigation of these multiple impacts. For instance, how would increased turbidity levels during the construction phase impact coral reefs? How would decreased sunlight and increased pollutant levels during the operational phase impact sea grass beds? What measures would be taken to ensure that the structures were not built directly over these critically important marine communities, or that shore-based erosion is properly controlled? The

proponents could locate the rooms specifically to cause minimal damage and there are measures available to control erosion. But these mitigation efforts were not discussed in the Excellence Resorts EIA.

The construction of cottages within the shallow back reef environment as proposed by the developer posed potential problems. The EIA stated: *"Firstly, during the construction phase of the development, the shallow and sensitive nature of this area predisposes it to degradation. Sea grasses and coral recruits do not do well in areas that have high sedimentation rates. The use of heavy equipment could be problematic. The use of pilings to support these structures would mean the interruption of the current flows now occurring. Changing flow characteristics could lead to loss of beach sand due to erosion and absence of natural replenishment. Scouring would also occur around the foot of the pilings. The structures themselves would also create an additional problem of shading. Seagrasses and corals are photosynthetic and do not occur where sunlight is not optimal."*

The EIA did not go further to recommend how these problems could be avoided.

This particular development was never completed so, to date, those overwater rooms have not been built.

Sandals Royal Caribbean, Mahoe Bay, St. James

In 2016, Sandals Royal Caribbean requested an additional 12 rooms, making a total of 17 overwater rooms at its Mahoe Bay property in St. James. The website of the National Environment and Planning Agency (NEPA) contained this record of the decision at the 10 June 2016 meeting of the Board of the Natural Resources Conservation Authority (NRCA):

"Application Number 2009-08017-BL00040 AMENDMENT of Special Beach Licence under the Beach Control Act, 1956 for placement, construction and maintenance of three hundred and forty (340) pylons supporting seventeen (17) overwater structures and a boardwalk by Sandals Royal Caribbean Limited (SRCL) at Kokomo Island, Mahoe Bay, St. James

Meeting of 10 June 2016

Board Decision - Amendment to Special Beach Licence granted with stipulated conditions and subject to the following:

- *Include condition which requires the replanting of seagrass at another location should the initial replanting exercise be unsuccessful*
- *Public consultation/sensitization/presentation should be done."*

On Sunday, 17 July, 2016 JET saw an advertisement for a public consultation on this GRANTED amendment to an existing Beach License to take place on 3 August 2016 in Montego Bay.

JET does not support the holding of public consultations after decisions have been taken and we have been to court twice on this matter.

Holding a public consultation meeting after a decision has been taken

The judgment of Sykes, J in the Pear Tree Bottom judicial review case in 2006 quoted the Sedley definition: *"It is common ground that, whether or not consultation of interested parties and the public is*

*a legal requirement, if it is embarked upon **it must be carried out properly**. To be proper, consultation must be undertaken at a time when proposals are still at a **formative stage**; it must include **sufficient reasons** for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; **adequate time** must be given for this purpose; and the **product of consultation must be conscientiously taken into account** when the ultimate decision is taken: R v Brent London Borough Council, Ex p Gunning (1985) 84 LGR 168. 39.”*

In the judicial review case filed by JET in 2011 on the Palisadoes Shoreline Rehabilitation Works, Straw, J found that NEPA had breached the legal standard for consultation and breached the legitimate expectation that all environmental information relating to the development of the Palisadoes Works would be disclosed to the public and JET **before approval was granted**.

In July 2016, JET registered its strong objection to this breach of legally established requirements for public consultation and requested that the NRCA Board immediately rescind this approval given. We recommended that the public meeting should go ahead as scheduled and the NRCA Board should allow its decision on this matter to be guided by what is learned at the public meeting. There was no response.

The record of approval was removed from NEPA’s website, the public meeting was held, JET did not attend, and the 12 overwater rooms were constructed at Mahoe Bay.

Sandals South Coast Jamaica Hotel, Whitehouse, Westmoreland

On 17 May 2017, JET received an e-mail invitation from Sandals South Coast to attend a public meeting (called a “sensitization meeting”) on 29 May 2017 to discuss the construction of 12 overwater rooms and 623 feet of boardwalk at their hotel at Whitehouse in Westmoreland. JET responded to Sandals, copying NEPA, asking why there had been no EIA. We were directed to a Technical Report on line. JET e-mailed Sandals and NEPA again briefly outlining the risks of overwater rooms. CEO, Diana McCaulay, then had two telephone conversations on May 19 and 20 with Dexter Cummings of Sandals, during which Mr. Cummings sought Ms. McCaulay’s help to ensure these rooms did not harm the marine environment via various mitigation measures. Ms. McCaulay was reluctant, but agreed to meet with Mr. Cummings during the week of 22 May.

Before that meeting could occur, however, Ms. McCaulay saw internet images of the construction of the overwater rooms and boardwalk at Sandals South Coast, which were well underway. One of the captions on the photographs said that the construction was in week eight. **So again, despite the court cases, and JET’s many objections to the practice of holding public consultations AFTER construction has started, NEPA has once more allowed this approach.**

JET has also asked whether this construction in the sea has the required Environmental Permit and Beach License, but we have not received a reply. Unofficial sources suggest that these permits and licenses have not been issued, but that some form of informal permission was given to start “minimal work” on the site. In the event that the required permits and licenses have not been issued, the construction is essentially illegal.

ENVIRONMENTAL RISKS

Overwater rooms – construction phase

- Adverse impacts by construction equipment on beaches, dunes, beach vegetation

- siltation in the marine environment as a result of dredging and/or the driving of piles to support the rooms
- damage to the marine environment from installation of pipelines to remove waste water and bring fresh water to the rooms
- damage to the marine environment from poorly controlled solid and construction waste
- removal of coral reefs and/or seagrasses to construct the rooms
- shading of reefs or seagrass beds by the rooms, resulting in thinning of seagrasses or die off of both seagrasses and coral reefs and the communities of invertebrates, fishes, turtles, and mammals that these structures support
- Disruption of ocean currents, sand transport and deposition

Overwater rooms - operational phase

- Artificial aggregation of marine organisms to the structure created by rooms
- Disruption of migration routes and feeding/behavior by marine organisms
- Attraction of birds to lights, disrupting feeding and roosting behaviour
- Potential impacts of sewage spills in the marine environment in storm conditions
- Potential impacts of destroyed rooms due to hurricanes and storms
- Potential for solid waste (trash) and food waste to blow/fall off the decks and into the marine environment, where it may be ingested and cause harm to marine species

Overwater rooms in bad weather

- Overwater rooms work best in very sheltered areas (lagoons in coral atolls, for example) with naturally restricted access by sea and sand bottoms.
- Overwater rooms on the north coast will be affected by high seas several times per tourist season by northers or tropical weather systems. Guests will have to navigate boardwalks to land in potentially dangerous conditions.

Secondary risks:

- Removal/degradation of reefs and seagrasses leading to reduced sand budgets and beach erosion nearby or remotely, reduced habitats, reduced protection from storms.
- Permission granted for one set of overwater rooms will be used a precedent for many other overwater rooms

Security risks:

- Fishers and other kinds of vendors may well approach the overwater rooms to sell fish or other goods, which guests will find disturbing or even threatening. The response to this may be sea patrols restricting the rights of other Jamaicans to use the sea for passage, leading to further conflicts between residents and visitors.
- Providing security for these rooms may result in the same sense of exclusion for regular users of the sea

Other issues:

- **Assessment of carrying capacity:** Before overwater rooms are approved anywhere else, the carrying capacity and suitability of the areas where they might be located needs to be properly assessed. In the Montego Bay case, NEPA had already permitted seagrass removal for the RIU Mahoe Bay Hotel – how much more seagrass removal is acceptable in that location? Will the work on this new set of overwater rooms affect the seagrass replanting already done, which is at a vulnerable stage?
- **Ecological survey:** Before overwater rooms are approved anywhere else, a thorough ecological survey of terrestrial and marine species and habitats (dunes, seagrass beds, seafloor, mangroves, reefs) must be conducted. In the event that any of these habitats are likely to be affected, an EIA must be done and the required environmental permitting undertaken.
- **Monitoring:** NEPA typically requires monitoring during the construction period but not afterwards. The impacts of any constructed overwater rooms on water quality, biodiversity health, beach erosion and the stability and integrity of any area of coastline needs to be diligently monitored for at least five years post construction.
- **Cumulative impacts:** Now that permits have been issued for three sets of overwater rooms, how many will be allowed and where? Will this usher in a situation where much of the Jamaican coastline is occupied by these rooms, reducing the area of inshore coastal waters available for recreation by Jamaicans? In JET’s experience, every permit issued is used to justify subsequent permits.
- **Privatization of the water column:** The security risks described above could well lead to a policy decision to allow hoteliers to own the water column for an area around their overwater rooms, in order to control who can approach these rooms by sea. This is a radical departure from the current legal framework, where the sea is for the purpose of passage and enjoyment for all, while only the foreshore is vested in the Crown. The GOJ should consult with the people of Jamaica before such a radical departure from existing practice is forced upon us all by the existence of overwater rooms.

*Jamaica Environment Trust
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