



THE INTEGRITY COMMISSION
Special Report of Investigation

Concerning the Approval Process(es) Regarding the Granting of Licence(s)/Permit(s) for the Removal of Sand from a Beach in Negril by Yabyanas Limited c/o Karisma Hotels and Resort

Ministry of Transport and Mining

Mines and Geology Division

Table of Contents

| | |
|--|----|
| PREFACE | 2 |
| EXECUTIVE SUMMARY | 3 |
| Summary of Key Findings | 6 |
| TERMS OF REFERENCE | 11 |
| JURISDICTION | 12 |
| METHODOLOGY | 15 |
| DISCUSSION OF FINDINGS | 15 |
| Location of the Site from which the Sand was removed by Karisma Jamaica Hotel/ Yabyanas Limited | 16 |
| Permits and Planning Permissions Granted to Karisma Jamaica Hotel/ Yabyanas Limited for the Expansion of a Hotel in Negril | 17 |
| Planning Permissions Issued by the Town and Country Planning Authority..... | 17 |
| Permit Granted by the National Environment Planning Agency (NEPA) to Yabyanas Limited c/o Karisma Jamaica Hotel..... | 21 |
| NEPA’s Monitoring Activities and the Circumstances Surrounding the Issuance of a Cessation Order to Yabyanas Limited c/o Karisma Hotel and Resort in Relation to Sand Removal Activities..... | 45 |
| The Process to be Employed by the Mines and Geology Division for the Granting of a Quarry Licence | 60 |
| The Withdrawal of the Cessation Order to Prevent the Removal of Sand from the Karisma Hotel and Resort | 64 |

*Ministry of Water, Land, Environment
and Climate Change*

The Integrity Commission

February 2020

Ministry of Mining and Energy



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PREFACE

The Government of Jamaica in 2017 passed the Integrity Commission Act, 2017, which was brought into operation on February 22, 2018 by way of publication – the Jamaica Gazette of the Integrity Commission Act, 2017 (Appointed Day) Notice dated the 7th day of March 2018.

Pursuant to Sections 1 and 5 of the Integrity Commission Act (ICA), the functions of the Office of the Contractor General (OCG) has been fully subsumed into the Integrity Commission (IC). Sections 63(2)(b) of the ICA provides as follows:

“The Commission established under this Act may -...

(b) continue or do any act, thing or investigation which was pending before the appointed day.”



EXECUTIVE SUMMARY

On January 25, 2016, the Office of the Contractor General (OCG), acting on behalf of the Contractor General and pursuant to the then applicable Sections 15 (1) and 16 of the Contractor General Act (CGA), initiated an Investigation into the approval process(es) regarding the granting of Licence(s)/Permit(s) to Yabyanas Limited c/o Karisma Hotels and Resort, for the removal of Sand from a beach in Negril.

The decision to commence a formal Investigation into the subject matter was as a result of a media report dated January 13, 2016, published in the Gleaner which, *inter alia*, stated:

“The Negril Chamber of Commerce has expressed outrage at what it says appears to be shady sand mining activities connected to major hotel developments in Negril and elsewhere on the North Coast.

In a release this afternoon, the Chamber called for the National Environment and Planning Agency (NEPA), the Commissioner of Mines and the Jamaica Constabulary Force to explain in full the sand mining operations and to investigate the developments.

“It was brought to our attention by multiple persons that sand is being mined in the Negril area and moved by several trucks in the dead of night to a major hotel development in recent days. We are further told that the sand is stockpiled at the development in question for



movement to another property on the north coast,” a spokesperson for Chamber said today.

...”¹

The Gleaner in another newspaper article, dated January 14, 2016, and captioned “*Hotel accused of illegal sand mining defends itself*” reported, *inter alia*, as follows:

“The hotel accused of illegally mining and removing sand from Negril is defending itself saying it had been granted a licence to do so.

...

...the attorney for Karisma Hotels and Resorts in Negril, Christopher Honeywell, says there is no truth to suggestions of illegal sand mining.

He explains that white sand was discovered during excavation activities on the construction site of the property being built by his client in Negril.

The attorney says following the discovery an application was made to the Commissioner of Lands last December for a quarry licence.

¹ Gleaner newspaper article dated January 13, 2016, captioned “*Negril chamber demands probe into alleged sand mining for hotel development*”



According to him, the licence was received on December 24.

Honeywell says the sand, which is owned by the developer, is being transported to a property in Llandovery, St. Ann, which is also owned by Karisma.

He stresses that there is nothing untoward being undertaken in regard to the removing of the sand in Negril.

Meanwhile, Honeywell has confirmed that the police and personnel from NEPA turned up at the site yesterday and shut down construction.

The attorney says the action has left his client feeling wronged by agents of the state.

Meanwhile, the Commissioner of Mines, Clinton Thompson, confirmed that a legitimate quarry licence was granted to Karisma to remove the sand in Negril.

*Both men were speaking on Cliff Hughes Online on **Power 106FM.***



Attempts to reach NEPA for a comment were unsuccessful.”²

The aforementioned allegations raised several concerns for the OCG and its mandate to investigate the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences.

Representatives of the OCG visited the offices of the National Environment and Planning Agency (NEPA) and the Ministry of Science, Technology and Mining, Mines and Geology Division (MGD), on January 25, 2016, and retrieve certain documents and records, electronic and otherwise and associated correspondence, to inform its investigation on the referenced subject matter.

The Findings of the Investigation are premised primarily upon an analysis of documentary evidence obtained from, *inter alia*, representatives of the National Environment and Planning Agency (NEPA) and the Mines and Geology Division (MGD) as well as a review of “Policy SP M10” within the Town and Country Planning (Negril and Green Island Area) Provisional Development Order, 2013 and the Quarries Control Act.

Summary of Key Findings

1. Yabyanas Limited c/o Karisma Jamaica Hotel received permission from the Town and Country Planning Authority on October 24, 2014, for the construction of an administrative building and an additional one hundred and fifty two (152) rooms to an existing hotel at Norman Manley Boulevard, Negril, Hanover.
2. The National Environmental Planning Agency (NEPA) granted “Yabyanas limited c/o Karisma

² Gleaner newspaper article dated January 14, 2016, captioned “Hotel accused of illegal sand mining defends itself”



Jamaica Hotel a “*Permit to Undertake Enterprise, Construction or Development... [pursuant to Section 9(2)]” of the Natural Resources Conservation Authority Act*” dated October 27, 2014. The permit number was noted as 2014-10017-EP00081 and the application date was March 3, 2014.

3. Special Condition No. 6 of the Permit issued to Yabyanas Limited c/o Karisma Jamaica Hotel to “Undertake Enterprise, Construction or Development in a Prescribed Area” states that the “*granting of [this] Environmental Permit does not relieve the Permittee from complying with any other statutory obligation or from applying for and obtaining any permission, certification, permit or licence required by law. These include but are not limited to Building Permission under the Building Acts and Planning Commission under the Town and Country Planning Act.*”
4. On December 10, 2015, Yabyanas Limited c/o Karisma Jamaica Hotel applied for a Quarry Licence (Ref No. 2110) from the Mines and Geology Division (MGD), to relocate excavated sand from Karisma Jamaica Hotel in Negril to Llandoverly in St. Ann. The application indicated that the material to be quarried was sand and that the reserve estimate was 40,000 m³, with a daily production estimate of 3,000 m³.
5. Section 2 of the Quarries Control Act states that a “*quarry means any place (not being a mine as defined in the Mining Act) where quarry material or quarry mineral has been removed or is being removed. Whether by excavation or otherwise, to supply material for construction purposes, other than dimension stones for the construction industry;*”
6. In two (2) separate email correspondences dated December 21, 2015, the Mines and Geology Division requested the NEPA’s and the NRCA’s recommendations regarding Yabyanas Limited c/o Karisma Jamaica Hotel request to remove the excavated sand to a property in Llandoverly, St Ann.



7. In two (2) separate email correspondences dated December 22, 2015, the National Works Agency (NWA) and the Water Resource Authority (WRA) indicated that they had no issue with the Quarry Licence being granted to Yabyanas Limited c/o Karisma Jamaica Hotel.
8. NEPA, by way of correspondence dated December 23, 2015, indicated that it had no objection to the request of Yabyanas to remove the sand quarried from the site, however, the Agency requested to be informed of the exact location, on the Llandoverly property, where the sand would be placed.
9. On December 24, 2015, Yabyanas Limited c/o Karisma Jamaica Hotel received a Quarry Licence (Ref No. 2110) from the Mines and Geology Division (MGD), to relocate excavated sand from Karisma Jamaica Hotel in Negril to Llandoverly in St. Ann. The Director of Investigation has seen no evidence to indicate that the requirements made by NEPA were complied with prior to the granting of the license.
10. In keeping with the provisions of the Special Condition No. 21 of Quarry Licence No. 2110, there is no evidence that Yabyanas Limited c/o Karisma Jamaica Hotel, the Licensee, possessed “...*a valid Environmental Permit issued by the Natural Resources Conservation Authority (NRCA) for the duration of this licence*” in respect of the “*Mining of Carbonate Sand at a section of Gibraltar, Rutland Point, Hanover*”, which would have been required for the relocation of the sand to another area.
11. The transportation of the excavated sand to another location was a breach of Policy SP M 10 of the Town and Country Planning (Negril and Green Island Area) Provisional Development Order, 2013.
12. A Monitoring Report prepared by Ms. Allison Pearce, Environmental Officer, NEPA, Negril, indicated that work was being carried out beyond 7:00 pm on January 12, 2016, which was in breach



of the provisions of the Permit³ issued to Yabyanas Limited c/o Karisma Jamaica Hotel.

13. Site Warning Notices were issued on January 11 and 12, 2016, to Yabyanas Limited c/o Karisma Jamaica Hotel, however, there were still reports of ongoing works beyond the permitted hours of 7:00 am to 6:00 pm on a weekday.
14. Section 13 (1) of the Natural Resources Conservation Authority (NRCA) Act, requires that an Enforcement Order must be enforced by the Police. The date of the Cessation Order was January 13, 2016.
15. On January 14, 2016, NEPA requested the assistance of the then Minister of Water, Land, Environment and Climate Change, in authorizing Superintendent Adrian Hamilton, Sub-officer in charge of the Negril Region, to use necessary force to gain compliance with the Order.
16. Policy SP M10 of the Town and Country Planning (Negril and Green Island Area) Provisional Development Order, 2013, states that *“the extraction of onshore coastal sand will not be permitted except under exceptional circumstances and sand extraction in such situations will be stringently controlled and removal confined to reuse in the area.”*
17. Section 8(3) of the Quarries Control Act, states that *“upon receipt of an application for a licence the Minister shall consult with the relevant authorities and shall, subject to the provisions of section 9, either grant or refuse the application and, in the event of refusal shall notify the applicant in writing of the grounds of refusal.”*
18. Section 8 (6) of the Quarries Control Act, defines local authority as *“... parishes of Kingston and St. Andrew, the Kingston and St. Andrew Corporation and, in relation to any other parish, the Parish*

³ Permit No.2014-10017-EP00081 which was granted by NEPA pursuant to an application made by Yabyanas Limited c/o Karisma Jamaica Hotel, dated March 3, 2014.



Council of that parish.”

19. There is no evidence to indicate that an Environmental Permit was received by Yabyanas Limited c/o Karisma Jamaica Hotel prior to the removal of the Cessation Order by then Minister of Water, Land, Environment and Climate Change.
20. A Gleaner article dated January 25, 2016, reported that the then Minister of Water, Land, Environment and Climate Change, advised that Policy SPM 10 of the Negril and Green Island Development Order, which specifically states that the sand is to be reused in the same area, did not apply in this instance.
21. Mr. Peter Knight, Chief Executive Officer, NEPA, advised the Director of Investigation on June 25, 2018, that NEPA was orally informed by the then Minister of Water, Land, Environment and Climate Change, Mr. Robert Pickersgill, that he would be withdrawing the Cessation Order, which was issued to Yabyanas Limited c/o Karisma Resort and Hotels.
22. Mr. Leighton Williams, Acting Commissioner of Mines, advised the Director of Investigation, on June 26, 2018, that the information contained in the Media Article dated January 25, 2016, pertaining to the withdrawal of the Cessation Order, by the then Minister of Water, Land, Environment and Climate Change, Mr. Robert Pickersgill, was in fact correct.



TERMS OF REFERENCE

The primary objectives of the Investigation relating to the approval process for the granting of Licence(s)/Permit(s) to Yabyanas Limited c/o Karisma Hotels and Resorts, for the removal of Sand from a beach in Negril is to determine the following:

1. The basis upon which Yabyanas Limited c/o Karisma Hotels and Resorts removed sand from a beach situated in Negril;
2. Whether Yabyanas Limited c/o Karisma Hotels and Resorts was granted a licence or permit to remove sand from a beach in Negril to another location on the North Coast; and
3. Whether the licence and/or permit which may have been granted to Karisma Hotels/ Yabyanas Limited was granted fairly and on merit and was devoid of irregularity and/or impropriety.

Specific Objectives:

1. To determine the particulars of the licence(s) which may have been granted to Yabyanas Limited c/o Karisma Hotels and Resorts, if any, for the removal of sand from a beach located in Negril;
2. To ascertain the process involved in the granting of licence(s) and permit(s) for the removal of the subject sand;
3. To ascertain the name(s) and title(s) of the officer(s), official(s), or any other person(s) who authorized the removal of the referenced sand;
4. To determine the implications, if any, arising from the removal of the subject sand; and
5. To ascertain the extent of the knowledge and involvement of specialist agencies as it regards the removal of sand from the referenced beach.



JURISDICTION

Section 2 of the then applicable CGA, provided, *inter alia*, as follows:

...

“government contract” includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods and services;

“prescribed licence” means any licence, certificate, quota, permit or warrant issued or granted pursuant to any enactment or public body by an officer thereof;

“public body” means-

- (a) Ministry, department or agency of government;
- (b) A statutory body or authority;
- (c) Any company registered under the Companies Act, being a company in which the Government or an agency of Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of the company...”



Consequently, the remit to monitor and investigate the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences were further provided under Sections 4, 15 and 16 of the then CGA.

Section 4 (1) stated, *inter alia*, as follows:

“Subject to the provisions of this Act, it shall be the function of a Contractor-General, on behalf of Parliament –

- a. to monitor the award and the implementation of government contracts with a view to ensuring that --*
 - i. such contracts are awarded impartially and on merit;*
 - ii. the circumstances in which each contract is awarded or, as the case may be, terminated, do not involve impropriety or irregularity;*
 - iii. without prejudice to the functions of any public body in relation to any contract, the implementation of each such contract conforms to the terms thereof;*

...”

Section 15 (1) of the then CGA provided that:



“... a Contractor-General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters –

...

(f) the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences”.⁴

Section 16 of the then CGA provided that: “An investigation pursuant to section 15 may be undertaken by a Contractor-General on his own initiative or as a result of representations made to him, if in his opinion such investigation is warranted”.

⁴ The Contractor General Act



METHODOLOGY

The following approach was utilized in the conduct of the Investigation:

Unannounced Site Visits

On January 25, 2016, representatives of the then OCG visited the offices of the National Environment and Planning Agency (NEPA) and the Ministry of Science, Technology and Mining, Mines and Geology Division (MGD), to retrieve certain documents and records, electronic and otherwise and associated correspondence, to inform its investigation on the referenced subject matter.

The Findings of the Investigation are premised primarily upon an analysis of documentary evidence and the OCG Activity Report dated January 25, 2016, which details information obtained from representatives of the National Environment and Planning Agency (NEPA) and the Mines and Geology Division (MGD) as well as a review of “Policy SP M10” within the Town and Country Planning (Negril and Green Island Area) Provisional Development Order, 2013 and the Quarries Control Act.

Requisitions

A Requisition was dispatched by the Director of Investigation to the following public officers:

Mr. Leighton Williams, Commissioner of Mines (Acting), Mines and Geology Division; and

Mr. Peter Knight, Chief Executive Officer, National Environment and Planning Agency (NEPA)



DISCUSSION OF FINDINGS

Location of the Site from which the Sand was removed by Karisma Jamaica Hotel/ Yabyanas Limited

The property from which the sand was removed, and which forms the basis of the Investigation, is located along the Norman Manley Boulevard, Negril. Of note, this resort is a subsidiary of Karisma Jamaica Hotel/ Yabyanas Limited.



Permits and Planning Permissions Granted to Karisma Jamaica Hotel/ Yabyanas Limited for the Expansion of a Hotel in Negril

Planning Permissions Issued by the Town and Country Planning Authority

The OCG obtained a copy of a letter dated October 24, 2014 (Ref No. : 2014-09015-PB00006) which indicated that the Town and Country Planning Authority had granted Karisma Jamaica Hotel Planning Permission for the “...construction of one hundred and fifty two (152) rooms to existing hotel at Norman Manley Boulevard, Negril, Hanover.”

The referenced letter stated, *inter alia*, as follows:

“The Town and Country Planning Authority (TCPA) at its meeting held on 21 October 2014, granted permission for the captioned development, as illustrated on plans date stamped by the National Environment and Planning Agency 11 March 2014.

The proposal consists of: *The expansion of an existing hotel/resort development. The expansion is to include the erection of five (5) three-story buildings with a total of 152 guest rooms and restaurant and bar on the*



seaward side of the Norman Manley Boulevard at the registered Book of Title Volume 1361, Folio 33. The general parking area, a restaurant and utilities are to be erected on the landward side of Norman Manley Boulevard at the registered Book of Title Volume 1381, Folio 327. The development is to have a total floor area of 14,008 meters square on lot size of 20,632.447 square metres. The design includes swimming pools, restaurants and bar.

This approval is subject to following conditions:

...

4.i. **Spoils and debris shall be removed and disposed of at a site approved by the local planning authority or the relevant authority.**

ii. *There shall be no burning of waste on the site.*

Reason: *To ensure satisfactory standards of development.*



...

6. *Construction work time shall be confined to the hours of 7:00 am to 6:00 pm on weekdays and on 8:00 am to 6:00 pm Saturdays. No construction work is permitted on Sundays and on public holidays.*

Reason: In consideration of owner/occupiers of adjoining properties and patrons of the resort.

...

INFORMATIVE:

1. APPEAL

“If the applicant is aggrieved by the decision of the planning authority to refuse permission for the proposed development, or to grant permission subject to conditions, he may, by notice served within the one month of the receipt of this notice, appeal to the Minister in accordance with Section 13 of the Town and Country Planning Law, 1957. The Minister has power to allow a longer period for the giving of a Notice of Appeal and he may exercise his power in cases where he is satisfied that the applicant has deferred the giving of notice because negotiations with the planning authority in regard to, the proposed development are in progress. The Minister is not, however, required to entertain such



an appeal if it appears to him that the planning permission for the proposed development could not have been granted otherwise than subject to the conditions imposed by them, having regard to the provision of Section 11 of the Law and of the development Order and to any directions given in Order.

In certain circumstances provided in Section 17 of the Town and Country Planning Law, 1957, a claim may be made against the Town and Country Planning Authority for compensation where permission is refused or granted subject to conditions by the Minister on appeal” Third Schedule Part II of the Town and Country Planning (Negril and Green Island) Provisional Development Order, 2013.

2. This approval does not relieve the applicant from applying for other statutory obligations, permissions, certifications, permits and licenses. These include, but are not exclusive to, Advertisement Consent and Modification/Discharge of Restrictive Covenants.”⁵

(DI Emphasis)

It was observed that another letter of even date with reference number 2014-09015-PB00004 from the

⁵ Letter dated October 24, 2014 (Ref No. :2014-09015-PB00006) to Karisma Jamaica Hotel from the Town and Country Planning Authority.



Town and Country Planning Authority also confirmed the approval which was granted to Yabyanas Limited c/o Karisma Jamaica Hotel.

Permit Granted by the National Environment Planning Agency (NEPA) to Yabyanas Limited c/o Karisma Jamaica Hotel

It is necessary to note that subsequent to the granting of the abovementioned planning permissions by the Town and Country Planning Authority, NEPA, on October 27, 2014, granted Yabyanas Limited c/o Karisma Jamaica Hotel a “*Permit to Undertake Enterprise, Construction or Development... [pursuant to Section 9(2)]*” of the Natural Resources Conservation Authority Act.”⁶

The permit to undertake Enterprise, Construction or Development, was signed by Mr. Peter Knight, CEO, NEPA and Thamani Smith, on the behalf of the Natural Resources Conservation Authority. **The permit bears the number 2014-10017-EP00081 with an application date of March 3, 2014, however, no issue date was detailed on the permit.**

The following conditions, *inter alia*, were outlined on the referenced permit:

“General Conditions:

...

15. Any member of the Authority or an authorized officer of the said Authority may at any reasonable time, make such periodical inspections and investigations in respect of the activities that are herein permitted for the purpose of ascertaining whether the terms and conditions of this permit are being observed or not and

⁶ Permit dated October 27, 2014 with an application date of March 3, 2014, from NEPA to Yabyanas Limited c/o Karisma Jamaica Hotel.



the Permittee shall allow such authorized officer to do such inspections.

...

Specific Conditions

...

“APPLICATION REQUIRED

6. *The Permittee shall apply to the Authority for an Environmental Permit pursuant to sections 9 of the Natural Resources Conservation Authority Act for any subsequent development on the property in accordance with the Natural Resource Conservation (Permits and Licences) Regulations 1996.*

7. *The Permittee shall apply for a licence under the Beach Control Act for any use of or encroachment on adjacent foreshore or the floor of the sea.*

8. *The granting of this Environmental Permit does not relieve the Permittee from complying with any other statutory obligation or from applying for and obtaining any permission, certification, permit or licence required by law. These include but are not limited to Building Permission under the Building Act and Planning Permission under the Town and Country Planning Act.*

...



SOLID WASTE MANAGEMENT

16. The Permittee or its agents and subcontractors shall design a Waste Management Plan which must be submitted to the Agency within thirty (30) days of the date of the Permit and approved in writing by the Agency prior to the start of construction. The Plan shall include but not be limited to:

- *The designation of appropriate waste storage areas*
- *Waste collection and removal schedule*
- *System for the supervision and monitoring of the waste*
- *Measures implemented to minimize and reduce the quantities of solid waste*

17. The Permittee shall ensure that all solid waste generated during site preparation, construction and operational phases of the development is disposed of at a municipal dumpsite with the approval of the National Solid Waste Management Authority (NSWMA). A copy of the approval shall be submitted to the Agency prior to the commencement of development.

...

LANDSCAPING AND IRRIGATION

46. The Permittee shall submit a Landscape and Irrigation



Plan to the Agency within thirty (30) days of the date of this permit.

47. The Permittee shall ensure that no development activities, including site clearance, should be undertaken prior to the written approval of the landscape and irrigation plan by the Agency.

...

PROTECTION OF MARINE ENVIRONMENT

55. There shall be no beach or foreshore development or recreational usage without prior approval from the Authority.

56. The Permittee shall ensure that the coastline is bermed to reduce the impact of the runoff on the marine environment.

57. The Permittee shall monitor areas of exposed soil during periods of heavy rain fall throughout the construction phase in a bid to reduce the impact of soil erosion and run off into the marine environment.

58. The Permittee shall erect and maintain continuous turbidity barriers (silt curtains) around the coastline of



the development site, under the supervision of the Agency, to restrict and control the movement of and prevent the escape of sediments generated by the construction works into the adjacent marine environment, before the commencement of the construction works.

59. *The Permittee shall notify the Agency, in writing, of the date of the erection of turbidity barriers referred to in Specific Condition #58, at least 2 weeks prior to the date of the installation.*

60. *In the event that the turbidity barriers outlined in Specific Condition #58 are damaged, destroyed or otherwise rendered ineffective by waves, currents and/or other meteorological events, the works must be suspended until the necessary repairs are carried out and the disturbance has passed.*

61. *The Permittee shall install a series of settling ponds or sediments baffles, under the supervision of the Agency, to reduce the sediment loading to the marine environment that will occur via storm water generated by the development during the construction phase.*

62. *The Permittee shall notify the Agency, in writing, of the*



installation of the settling ponds or sediments baffles, referred to in Specific Condition #61, at least 2 weeks prior to the date of the installation.

63. *The Permittee shall provide educational materials for guests and hotels staff of sensitize them on the importance of coral reefs to the environment.*
64. *The Permittee or its agents shall ensure that there is absolutely no cutting, or removal of any seagrass as a result of, or in conjunction with, the activities permitted by the document without the express approval of the Authority in writing.*
65. *The Permittee shall development and implement measures to be approved by the Agency and the National Works Agency to prevent gully erosion and/or sheet erosion and any subsequent sediment transport to the marine environment.”⁷*

Based upon the foregoing, Yabyanas Limited c/o Karisma Hotel received Planning Permissions and a Permit from the NEPA, to Undertake Enterprise, Construction or Development for the construction of the hotel.

The Planning Permission from the NEPA specifically outlined that spoils and debris shall be removed

⁷ Permit to Undertake Enterprise, Construction or Development in a Prescribed Area [Pursuant to Section 9(2)].



and disposed of at a site approved by the local planning authority or the relevant authority. Further, construction work time was confined to the hours of 7:00 a.m. to 6:00 p.m. on weekdays and on 8:00 a.m. to 6:00 p.m. on Saturdays.

It must also be highlighted that the Permit to Undertake Enterprise, Construction or Development in a Prescribed Area, states that the “granting of [the] Environmental Permit does not relieve the Permittee from complying with any other statutory obligation or from applying for and obtaining any permission, certification, permit or licence required by law. These include but are not limited to Building Permission under the Building Act and Planning Permission under the Town and Country Planning Act.”(DI Emphasis)

Mr. Peter Knight, CEO, NEPA, also advised the DI that “*an Environmental Permit to mine sand is separate from the Environmental Permit granted to Yabyanas Limited to construct and operate a hotel.*”⁸

Quarrying Licence Granted to Karisma Jamaica Hotel c/o Yabyanas Limited

Karisma Jamaica Hotel c/o Yabyanas Limited applied for, and received a Quarrying Licence to relocate sand to a site location in Llandoverly, St. Ann. Based upon information gleaned from the Quarry Licence, Yabyanas Limited applied for the referenced Licence on December 10, 2015 and was granted same on December 24, 2015. The material which was to be removed included stockpiled Carbonate Sand from lands situated along a section of Gibraltar at Rutland Pen, in the parish of Hanover. With regard to the stockpiled Carbonate Sand to be quarried, the application form, stated, *inter alia*, as follows:

⁸ Mr. Peter Knight’s, October 22, 2019, response to the Integrity Commission’s requisition dated October 11, 2019, response 2



“MATERIAL

a) *TYPE OF MATERIAL TO BE QUARRIED*

SAND

b) *RESERVES ESTIMATE (TONNE/M³)*

40,000 Cubic metres

c) *ESTIMATE OF DAILY PRODUCTION (TONNE/M³)*

3000 cubic metres”⁹

In addition to the application, Mr. Christopher O. Honeywell, Attorney-at-Law, representing Yabyanas Limited, addressed a letter dated December 21, 2015, to the then Minister of Science, Technology, Energy and Mining, Hon. Phillip Paulwell, which stated, *inter alia*, as follows:

“RE: Karisma Hotel Group – Application for Quarry

Licence

Please find attached a description of [the] scope of work submitted with the Application. As stated in the description, the decision to use the total replacement method of soils stabilization was strongly influenced by extremely compressed construction time frame so as to meet the 2016 winter season.

At the start of the excavation, the consultants who are involved in both the Negril project and the Llandoverly 4800 rooms Development, determined that the sand

⁹ Application Form for Quarry Licence dated December 10, 2015



would be suitable for the new beach to be established at Llandoverly.

The opportunity to use the sand excavated at the Llandoverly site, will prevent the importation of sand to carry out beach nourishment there.

Please be aware that had the opportunity to use the sand at Llandoverly not occurred, then the excavated material (over 40,000 cubic metres) would have had to be dumped.

Our client is now facing a crisis, as work at the site in Negril is on the verge of suspension, until the sand is relocated to Llandoverly. This suspension of work will certainly delay the projected winter season opening date for the Hotel.

We are seeking your urgent intervention so as to prevent this crisis.”¹⁰ (DI Emphasis)

Further, the referenced letter from Mr. Honeywell was accompanied by a copy of the scope of works, which was prepared by ASCO Project Consultants Limited, Engineers, Project Managers, and Development Consultants. The scope of work document which bore no date stated, *inter alia*, the

¹⁰ Letter dated December 21, 2015 to the Hon. Phillip Paulwell, from Mr. Christopher O. Honeywell, Attorney At Law, copied to Mr. Carl Thomas, Chairman, Mining & Geology and Mr. Clinton Thompson, Commissioner of Mines.



following:

“PROJECT SCOPE

Karisma Mahogany, Negril, is being developed by Yabyanas Limited which is a subsidiary of the Karisma Group.

The project involved the construction of a 148 rooms hotel in 9 blocks of two and three story buildings with support buildings and entertainment facilities on land registered at Vol.1361 Fol.33 & Vol.1381 Fol. 327. Construction of this started approximately 10 days ago with two meetings which was held on site with representatives of NEPA carrying out their inspection to ensure full compliance with the conditions contained in the Environmental Permit # 2014 -10017-EP00081.

Based on the soils test report provided by Jentech Engineering, there were three options available for treating with the soil conditions:

- 1. Concrete or steel piles- The fact that the construction is in within 10 metres of the existing Poincana Hotel which is owned by Karisma, eliminated this option as this could damage the existing foundation plus create significant*



noise nuisance.

2. *Gravel piles – The delay that would result given that an overseas gravel piles would have to be engaged, eliminated this option.*
3. *100% soil replacement –this option proved to be the most practical given the time constraint and reduced inconvenience to guest presently staying at the Poinciana, even though more costly.*

*Given the decision to use a total soil replacement method, all materials to a depth averaging 3.7 metres are being excavated and replaced with 0.5 kg boulders to a depth of minimum 1 metre then crushed limestone to a depth of 0.5metere with a final layer of marl to a minimum depth of 1.5 metre. **At the point of excavation, it was recognized there was a substantial deposit of sand below surface coverage of vegetation.***

The material being excavated is approximately 45,000 cubic metres, the majority being sand (75%) with peat and clay in pockets. The peat and clay are being disposed of at the public dump and the sand stockpiled for removal.

Karisma Group is also now in an advanced state of



planning for 4800 resort development in Llandoverly [sic] St. Ann. This development will be situated on parcels registered at Vol. 1443 Fol. 779, Vol. 1174 Fol.784, and Vol. 1174 Vol.785. The design of the beach to serve this resort is now being done with the intention to apply for a beach licence by January 2016. Given that the sand being excavated at the site in Negril is suitable for use in the beach nourishment at Llandoverly, it will be transported and stored on site for this purpose. It must be noted that almost all sand presently being used for beach works in Jamaica is imported.

This application is being made based on the requirements of the newly amended Quarries Control (Amendment) Act 2015. It must be stressed that the activity involved is not a classical quarrying activity. It is only the foundation excavation for the new construction. The recognition and intention to use the excavated quarry material (sand) is merely opportunistic. The material will simply be carted away to, and stockpiled at the related site in Llandoverly, Saint Ann for use in the near future. It will be secured at the site and Karisma guarantees that none of the material will be traded or otherwise sold to third parties.”¹¹

¹¹ Scope of work document, prepared by ASCO Project Consultants Limited, Engineers, Project Managers, Development Consultants.



In relation to the application for the Quarry Licence for Yabyanas Limited c/o Karisma Hotel and Resort, Mr. Clinton Thompson, Commissioner of Mines requested the recommendation of the National Works Agency (NWA), National Environment and Planning Agency (NEPA) and the Water Resource Authority (WRA). This was evidenced by email correspondence with the abovementioned state authorities.

The Commission reviewed an email correspondence which was dated December 21, 2015, that was addressed by Mr. Clinton Thompson, to Mr. Peter Knight, under the subject “*Karisma Hotel Group _ Yabyanas Limited, Application for Quarry Licence*” stated, *inter alia*, the following:

“Dear Mr. Knight,

As indicated in our earlier conversation, Yabyanas Limited (Karisma Group of Hotels) was granted permission to construct the Karisma Mahogany, Negril, a 148 rooms property at Rutland Pen, Hanover. As you are aware, the company was granted a Permit No. 2014 -10017-EP00081 on October 27, 2014.

Karisma has indicated that its desirous of carting away the material / sand that has been excavated in the site preparation exercise for storage at their property in Llandovery, St. Ann (please see attached letter). This is in order to create space for the construction of the other buildings at the said site. Please note, the company has



indicated that there will be no commercial disposal of the material that will be stockpiled at the site in St. Ann.

The Mines and Geology Division is requesting from the National Environment and Planning Agency its recommendation and any conditions that your Agency would deem necessary in support of [sic] this removal exercise.

*Regards”.*¹²

In response to the abovementioned email, Mr. Peter Knight, by way of an email dated December 23, 2015, stated as follows:

“ ...
The NEPA has no objection to the request by Yabyanas Limited to remove the sand quarried from the site the buildings for Karisma[sic] Mahogonay Hotel are to be built. The Agency however must be advised on the exact location on the Llandoverly property where the sand is to be placed...¹³ (DI Emphasis)

The following email correspondences are also being highlighted:

¹² Email correspondence from Mr. Clinton Thompson, Mines and Geology Division, to Mr. Peter Knight NEPA, dated December 21, 2015, under the captioned subject “*Karisma Hotel Group _ Yabyanas Limited, Application for Quarry Licence*”.

¹³ Email correspondence from Mr. Peter Knight to Mr. Clinton Thompson, dated December 23, 2015.



“... ”

From: “Clinton Thompson” <cthompson@mgd.gov.jm>

To: commander @cwjamaica.com

Sent: Monday, December 21, 2015 5:47:05 PM

Subject: [Application] to Transport Sand

Dear Basil,

Yabyanas Limited (Karisma Group of Hotels) was granted permission to construct the Karisma Mahogany, Negril, a 148 rooms property at Rutland Pen, Hanover. As you are aware, the company was granted as a permit No. 2014 -10017-EP00081 on October 27, 2014 by NRCA/NEPA.

Karisma has indicated that its desirous of carting away the material /sand that has been excavated in the site preparation exercise for storage at their property in Llandovery, St. Ann (please see letter attached). This is in order to create space for the construction of the other buildings at the said site. Please note, the company has indicated that there will be no commercial disposal of the material that will be stockpiled at the site in St. Ann.

The Mines and Geology Division is requesting from the



National Environment and Planning Agency its recommendation and any conditions that your Agency would deem necessary in support of this exercise.

Regards”¹⁴

In response to the abovementioned email, Mr. Basil Fernandez (commander@cwjamaica.com) advised, *inter alia*, as follows:

“ ...

The WRA has no hydrological reason for objecting to the transfer of the excavated material from Negril to Llandoverly in St Ann for use in future construction. The location of the site for stockpiling must be well drained, the sand will not be eroded into any gully or nearby water body and must be covered to prevent dust transport and be a nuisance to existing housing development at Llandoverly.

NEPA and MGD will of course set standard for the transportation of the excavated material.

Basil Fernandez.”¹⁵ (DI Emphasis)

¹⁴ Email correspondence from Mr. Clinton Thompson to Mr. Basil Fernandez, dated December 21, 2015.

¹⁵ Email correspondence from Mr. Basil Fernandez to Mr. Clinton Thompson, dated December 22, 2015.



Having regard to the ‘No Objection’ request which was sought by the MGD, the Director of Investigation highlights hereunder, the following email correspondence which was dated December 21, 2015:

“ ...

*Subject: Fwd: Karisma Hotel Group_Yabyanas Limited,
Application for Quarry Licence*

Roger,

*Please see the attached along with email thread.
Grateful for any recommendation that the NWA may
have concerning this removal exercise... ”¹⁶*

Mr. Roger Smith, NWA, in his response, dated December 22, 2015, which was copied to representatives of the NWA and the MGD responded as follows:

“ ...

*Subject Fwd: Karisma Hotel Group _Yabyanas Limited,
Application for Quarry Licence*

Clinton,

NWA would have no objection to the granting of a permit to allow the free movement of the excavated material (sand) from the Karisma Negril site to its proposed Llandeway (sic) St. Ann site.

¹⁶ Email correspondence from Mr. Clinton Thompson to Mr. Roger Smith, dated December 21, 2015.



This no objection is given, provided that the transfer does not contravene any conditions of a permit from Mines and Geology.

Our own standard conditions would require the trucks transporting the material to be covered minimizing spillage on the road way.... and adherence to the legal load limits for the various class of trucks which may be employed to the transport the excavated material between the two sites. ”¹⁷ (DI Emphasis)

Mr. Norman Biggs, a representative from the NWA, in his response dated December 22, 2015, in an email to which he was copied, stated, *inter alia*, the following:

“Good afternoon all,
Did Karisma received [sic] an environmental permit? I cannot recall us reviewing an environmental permit.
Norman L. Biggs”

In a subsequent email correspondence, which was dated December 23, 2015, Mr. Roger Smith, provided an update of the status of the referenced application for a Quarry Licence. The response was directed to the attention of Norman Biggs, Roger Smith, Patrick Rose and Krystal Lyn, representatives of the NWA and Mr. Clinton Thompson, Commissioner of Mines, MGD. With regard to the details of his response, Mr. Roger Smith indicated, *inter alia*, as follows:

¹⁷ Email correspondence from Mr. Roger Smith to Mr. Clinton Thompson, dated December 22, 2015.



“Biggs

That aspect is being dealt with by NEPA. The commissioner of Mines is in contact with them on this application, which is being considered as a site clearance, under the Quarry License application protocol (Act).”

As it relates to the Quarrying Licence (Ref No. 2110), which was obtained by Yabyanas Limited c/o Karisma Hotel and Resort, from the Mines and Geology Division, the Director of Investigation’s review indicated the following key terms and conditions:

*“THIS LICENCE is granted to **Yabyanas Limited** of 1 Seaview Avenue, Suite No. 16, Kingston 10, for the removal of stockpiled **Carbonate Sand** from lands situated along a section of Gibraltar at Rutland Pen, in the parish of Hanover, as these lands are described in the schedule attached hereto, for a period of **Sixty (60) days** from the date hereof, subject to the provisions of the *Quarries Control Act, 1983*, and of the Regulations made thereunder, which are now in force or which may come into force during the continuance of this LICENCE and subject to the following special operating conditions.*



SPECIAL CONDITIONS

- 1. The licensee shall forward to the Commissioner of Mines, a report in the form specified within five (5) days of the end of each month along with a quarry tax of 3.5 percent (or whatever rate is in force from time to time) of the value of quarry material or quarry mineral sold or otherwise disposed of.*
- 2. This quarry licence may be suspended or revoked by the Minister where he is satisfied that, having regard to any circumstances arising subsequent to the issue of this license, the operation is against the interest of public safety, public order or public health.*
- 3. The operation may be suspended whenever it is deemed necessary by the Mines and Geology Division.*
- 4. The licensee shall sensitize adjacent property owners of the proposed operations.*
- 5. The licensee shall employ flagmen at both locations to direct the entry of heavy trucks onto the roadways.*



6. *All operations shall be conducted in accordance with the Development Plan, approved by the National Environment and Planning Agency (NEPA).*
7. **All carbonate sand previously extracted and stockpiled by Yabyanas Limited shall be transported to the designated site at Llandovery, St. Ann.**
8. **The volume of material to be removed shall be limited to that indicated in the Volumetric Survey submitted to the Commissioner of Mines.**
9. *There shall be no disturbance of any vegetation along the shoreline.*
10. *The licensee shall maintain legible signs along the main road, on both the right and left hand lanes, within fifty (50) meters of the entrance and exit of site, indicating the entry of heavy truck onto the roadway.*
11. *Daily records of volume of material won shall be kept for inspection by personnel from the Mines and Geology Division.*
12. ***Haulage trucks shall be loaded so as to conform to the specifications of the Road Traffic Act.***



13. *Haulage trucks shall be suitably covered, equipped with functional tailgates properly loaded to prevent spillage of the carbonate sand onto roadways.*
14. ***There shall be no removal of carbonate sand except the material that was previously extracted and stockpiled.***
15. *The licensee shall not impede any natural or man-made channels that transmit storm water to the sea.*
16. *Haul roads ingressing and egressing the site shall be sprinkled as often as is necessary to mitigate dust pollution*
17. *Noise and dust levels shall be kept within acceptable limits.*
18. *Mechanical equipment shall be operated so as to prevent pollution of the sea through emission of oil or grease.*
19. *The carbonate sand transported to the property at Llandoverly, St Ann shall be stock piled in a manner that will result in minimum impact on any flora and*



Fauna.

20. *There shall be no clearance of vegetation at the storage site without prior approval of the relevant authorities.*

21. **The Licensee shall possess a valid Environmental Permit issued by the Natural Resources Conservation Authority (NRCA) for the duration of this licence.**

22. **The Licensee shall adhere to all the conditions of the Environment Permit issued by the Natural Resource Conservation Authority (NCRA).**

23. *A copy of the licence shall be prominently displayed on the site for the duration of the operation.*

The above twenty-three conditions shall be binding on Yabyanas Limited, the holder of the Quarry Licence QL 2110.

Dated this 24th day of December 2015...¹⁸

(DI Emphasis)

¹⁸ Quarrying Licence (Ref No. 2110), which was obtained by Yabyanas Limited c/o Karisma Hotel and Resort.



The referenced Quarry Licence was signed by the then Minister of Science, Technology, Energy and Mining, Mr. Phillip Paulwell, and the registration date was stamped as December 24, 2015.

With regard to NEPA's 'No Objection' to the removal of the quarried sand by Yabyanas Limited as communicated in their email correspondence dated December 23, 2015, the Director of Investigation notes that NEPA was to be advised of "*the exact location on the Llandoverly property where the sand is to be placed*"¹⁹. However, the Commission was not provided with any documentation regarding this matter. It is also noted that the matter was referred to Ms. Andrea Donaldson, Manager, Eco Systems and Miguel Nelson, Marine Scientist, NEPA, by Mr. Peter Knight.²⁰

Mr. Knight also stated that he communicated Ms. Donaldson's response to the MGD, with the expectation of further communication from the MGD on the matter. However, without any further communication with NEPA, the MGD granted the Quarry Licence to Yabyanas Limited, which was subsequently signed by the portfolio Minister²¹.

Further, Mr. Knight indicated that he was of the view that there was a misunderstanding of the meaning of the term 'No Objection', as NEPA is not the approval granting agency and in matters such as these, research would need to be done and a recommendation made²².

During the course of a meeting held on January 25, 2016, involving OCG officers and Mr. Clinton Thompson, Commissioner of Mines and Geology, Mr. Thompson indicated that this activity [the relocation of sand excavated during construction activity] was not a normal occurrence and, therefore, a mining licence would not have been necessary or applicable. The MGD having been approached by the Yabyanas Limited c/o Karisma Hotel and Resort, to offer guidance on the transportation of the

¹⁹ Email correspondence from Mr. Peter Knight to Mr. Clinton Thompson, dated December 23, 2015.

²⁰ OCG Activity Report dated January 25, 2016 from Mr. Peter Knight to representatives of the OCG.

²¹ Ibid.

²² Ibid.



sand to its other property, Mines and Geology Division consulted with other agencies including NEPA, the Police Department and the National Works Agency. He also indicated that NEPA's "No Objection" was obtained, but subsequently, a Cease and Desist order was issued.²³

Based on the foregoing, NEPA and the Mines and Geology Division gave similar accounts of the circumstances which led to the removal of sand. As highlighted in the OCG Activity Report dated January 25, 2016, which outlined the proceedings of a meeting held between OCG representatives and NEPA, Mr. Knight stated that, "...without any further communication with NEPA, the MGD went ahead and prepared the Quarry Licence and had its portfolio Minister sign said Licence."²⁴

The Director of Investigation also highlights that the Quarry Licence issued to Yabyanas Limited specifically stated that "***The Licensee shall possess a valid Environmental Permit issued by the Natural Resources Conservation Authority (NRCA) for the duration of this licence.***"²⁵

In this regard, Yabyanas Limited was required to be in possession of an Environmental Permit along with the Quarry Licence, prior to the commencement of quarrying activities.

NEPA's Monitoring Activities and the Circumstances Surrounding the Issuance of a Cessation Order to Yabyanas Limited c/o Karisma Hotel and Resort in Relation to Sand Removal Activities.

Based upon a review of a document entitled "*National Environment and Planning Agency Enforcement Branch Post Planning/Permit/License Monitoring*", which was submitted to the OCG by NEPA, it was found that the Agency monitored the activities executed at the hotel construction site. The referenced document which outlined that site inspections occurred on January 7 and 11, 2016, and was prepared by Ms. Allison Pearce, Environmental Officer, NEPA, Negril, indicated, *inter*

²³ OCG Activity Report dated January 25, 2016 regarding a meeting held with the Mines and Geology Division

²⁴ OCG Activity Report dated January 25, 2016.

²⁵ Quarry Licence No. 2110 granted to Yabyanas Limited on December 24, 2015.



alia, the following:

“Present were Jose Aranda –Project Manager-Yabyanas; Mr. Chadwick Lawrence-Site Engineer-ASCO Project Consultants Limited and Mr. Sanjay Sterling – Enforcement Officer, NEPA, Negril.

Description of Permitted Activity

This Permit is for the expansion of an existing hotel /resort development. The expansion consists of the erection of five (5) three-story buildings with a total of 152 guest rooms and restaurant and bar on the seaward side of the Norman Manley Boulevard (Volume 1361 Folio 33). The general parking area, a restaurant and utilities are to be erected on the landward side of the Norman Manley Boulevard at land registered in the Register Book of Titles Volume 1381 Folio 327. The development has a total floor area of 14,008 meters square on a lot size of 20,632.447 square meters. The design includes swimming pools, restaurants and bars.

Compliance Table:

| <i>No</i> | <i>Specific Condition</i> | <i>Level of Compliance</i> | <i>Comments/Action</i> |
|------------------|----------------------------------|-----------------------------------|-------------------------------|
| | ... | | |



| | | | |
|----|--|---------|---|
| | | | |
| 4 | <i>The Permittee shall apply to Authority for an Environment Permit pursuant to sections [sic] 9 of the Natural Resources Conservation Authority Act for any subsequent development on the property in accordance with the Natural Resources Conservation (Permits and Licences) Regulations 1996.</i> | NC | <i>An Environmental Permit was not applied for for mining of sand from the property.</i> |
| 6 | <i>The granting of this Environmental Permit does not relieve the Permittee from complying with any other statutory obligation or from applying for and obtaining any permission, certification, permit or licence required by law. These include but are not limited to Building Permission under the Building Act and Planning Permission under the Town and Country Planning Act.</i> | Partial | <i>The Permittee had applied to the Local Authorities as well as for a licence from the MGD. However, an Environmental Permit from the Authority was not obtained for the mining of sand from the site.</i> |
| 28 | <i>The Permittee shall ensure that work is carried out between the</i> | NC | <i>Work was observed being carried out beyond 7:00 pm on the evening</i> |



| | | |
|---|--|-------------------------------------|
| <p><i>hours of 7:00 a.m. and 6:00 p.m. from Mondays to Fridays and 8:00 a.m. and 6:00 p.m. on Saturdays. No construction work is permitted on Sundays and on public holidays.</i></p> | | <p><i>of 12 January 2016...</i></p> |
|---|--|-------------------------------------|

The Monitoring Report also outlined the following:

Mining of Carbonate Sand

- *The excavated material appears to be of a mixture of carbonate sand and degraded peat.*
- *Some of the Carbonate Sand and was observed being removed from the site using trucks.*
- ***A Quarry Licence was granted for the removal of Carbonate Sand by Mines and Geology. However, an Environment Permit was not issued.*** (DI Emphasis)
- *Subsequently to the site inspections carried out, the work was observed being carried out after 7:00 p.m. at the site. The work included the loading of Carbonate Sand onto trucks. The trucks were observed leaving in a*



northerly direction.

- *Approximately ten (10) trucks were observed park outside the gate, some already loaded with sand and other awaiting to be loaded with sand.*²⁶

Based on the information contained in an OCG Activity Report dated January 25, 2016, it was indicated that “*sometime on or around January 11 or 12, 2016, a NEPA staff member who is located in the Negril area, reported that sand removal activity or some activity was taking place in Negril. NEPA then advised that no activity should be taking place, as it was awaiting further communication from MGD.*”²⁷

Notwithstanding the issuance of a Site Warning Notice, which was issued to Yabyanas Limited c/o Karisma Jamaica Ltd. on January 12, 2016, as a result of the mining of sand without an environmental permit, there were still reports of such activity taking place. After the first warning was issued, NEPA was informed that the removal had continued. In the foregoing regard, and in keeping with Section 13 (1) of the Natural Resources Conservation Authority (NRCA) Act, which requires that enforcement be executed by the Police, NEPA sought the assistance of Mr. Robert Pickersgill, MP, former Minister of Water, Land, Environment & Climate Change, in the enforcement of a Cessation Order dated January 13, 2016.

Mr. Knight provided the OCG with documentation which sought to substantiate the actions taken by NEPA, in respect of the following breaches which were observed as it regards the operations of the proprietors of Yabyanas Limited c/o Karisma Jamaica Ltd.:

²⁶ NEPA Enforcement Branch Post Planning/Permit /License Monitoring Report.

²⁷ OCG Activity Report dated January 25, 2016.



1. A Site Warning Notice “No 09851” was issued to Yabyanas Limited c/o Karisma Jamaica Ltd. on January 11, 2016. The stipulated breach was not stated.
2. A Site Warning Notice “No 09852” was issued to Yabyanas Limited c/o Karisma Jamaica Ltd on January 12, 2016. The stipulated breach was in relation to the mining of sand without an environmental permit.
3. A Site Warning Notice “No 09853” was issued to Yabyanas Limited c/o Karisma Jamaica Ltd on January 12, 2016. The stipulated breach was not stated.
4. Cessation Order dated January 13, 2016 , was issued, and stated, *inter alia*, as follows:

*“THE NATURAL RESOURCES CONSERVATION
AUTHORITY ACT*

*The Natural Resources Conservation (Permits and
Licences) Regulations, 1996*

CESSATION ORDER

Pursuant to Section 13(1)

***WHEREAS** you are undertaking an activity in respect of
which a permit is required in accordance with the
Natural Resources Conservation Authority Act, namely:*

***Mining of Carbonate Sand at a section of Gibraltar,
Rutland Point, Hanover***



AND WHEREAS you have failed to obtain the required permit.

The Natural Resources Conservation Authority hereby orders that upon the effective date of this Notice you immediately cease the activity specified herein. Failure to cease the activity forthwith constitutes a breach of the Natural Resources Conservation Authority Act, and you may be liable to prosecution without further notice to you.

Dated this 13th day of January, 2016

The effective date of this Notice is the 13th day of January 2016.”²⁸

The order was signed by Mr. Peter Knight for Natural Resources Conservation Authority and was served by one, Dean Bennett, on January 13, 2016, at 3:58 p.m.

5. A Memorandum which bore the Ref# 2015- 09017-EP00112 was addressed to Ms. Morjorn Wallock, Director, Legal Services and Enforcement Division, by Mr. Richard Nelson, Manager, Enforcement Branch dated January 13 2016, under the caption “*Re Cessation Orders for Yanyanas Limited*”.

²⁸ Cessation Order dated January 13, 2016 to Yabyanas Limited



The Memorandum stated as follows:

“ ...

A site visit was conducted on 11 January 2015 where it was revealed that carbonate sand excavated from the foundation of a proposed/approved hotel development was being taking [sic] from the site and brought to Llandoverly, St. Ann. Further investigation also revealed that Mines and Geology had granted a Quarry Licence for the removal of the Carbonate Sand on 24 December 2015. Based on administrative checks made, it was revealed that Yabaynas Limited did not received [sic] any approval from the Agency to carry out Mining of Carbonate Sand. Thus, a Site Warning Notice served instructing them to cease all activities associated with the Prescribed Category “Mining of Mineral”.

At approximately 7:15 p.m. the said day several trucks were noted at the site being loaded with carbonate sand. The Project Manager was instructed to cease all activities immediately and to unload the trucks that were already filled with the Carbonate Sand. Same was not adhered to, hence it is hereby recommended that a



*Cessation Order be served on Yabyanas Limited.*²⁹

6. Letter dated January 14, 2016 from Mr. Peter Knight, Chief Executive Officer/Government Town Planner, to Mr. Robert Pickersgill, MP, then Minister of Water, Land Environment and Climate Change and copied to Mr. John Junor, Chairman, Natural Resources Conservation Authority, under the caption “*Re Enforcement of Cessation Order- Yabyanas Limited*”.

The referenced letter stated, *inter alia*, the following:

“The National Environment & Planning Agency (NEPA) is desirous of ensuring compliance with the Cessation Order (Copy hereto attached) that was served on Yabyanas Limited on 13 January 2016 to prevent the removal of sand at Rutland Point without an environmental permit.

Pursuant to section 13 (1) of the Natural Resources Conservation Authority (NRCA) Act, the Natural Resources Conservation Authority (NRCA) may issue a written order (Cessation Order) to any person directing them to cease certain activities (operating without a permit or licence and providing an Environmental Impact Assessment).

²⁹ Memorandum from Mr. Richard Nelson, Manager, Enforcement Branch to Ms. Morjorn Wallock, Director, Legal Services and Enforcement Division, dated January 13, 2016.



If the party to whom the Cessation Order is issued fails to comply, the NRCA Act provides that the Honourable Minister may take steps he deems appropriate to ensure the cessation of the activity. As provided in section 13(3), the Minister may authorize a member of the Jamaica Constabulary Force (JCF) to use the necessary force required to gain compliance with an Order.

Given the circumstances currently unfolding in Negril, Westmoreland, the Agency deems it prudent to seek your direction to have the Jamaica Constabulary Force assist in ensuring compliance with the said Cessation Order.

As such, the assistance of the Honourable Minister is being sought by way of a letter of authorization to Superintendent Adrian Hamilton, Sub-officer in charge of the Negril Region to use the necessary force to gain compliance with the Order. We have hereto attached a copy of the Letter of Authorization for your consideration and signature.”³⁰

7. Letter dated January 14, 2016, from Minister Robert Pickersgill, MP, the then Minister of Water, Land, Environment and Climate Change to Superintendent Adrian Hamilton, Sub-Officer in charge of the Negril Region, Westmoreland.

³⁰ Letter dated January 14, 2016 from Mr. Peter Knight, Chief Executive Officer/Government Town Planner, to Mr. Robert Pickersgill, MP, then Minister of Water, Land Environment and Climate Change and copied to Mr. John Junor Chairman, Natural Resources Conservation Authority, “*Re Enforcement of Cessation Order- Yabyanas Limited.*”



The letter stated as follows:

“WHEREAS, the Natural Resources Conservation Authority (NRCA) has issued a Cessation Order to Yabyanas Limited on 13 January 2016 to cease the removal of sand at Rutland Point without an environmental permit.

WHEREAS, it has been brought to my attention that the Cessation Order is not being complied with.

NOW THEREFORE, you are hereby authorized to use the necessary force to gain compliance with the Order.”³¹

At this juncture, the Director of Investigation highlights the following email correspondences between NEPA and MGD as it regards the excavation of materials by Karisma Jamaica Ltd. c/o Yabyanas Limited:

1. Email correspondence dated January 15, 2016, from Ms. Andrea Donaldson, Manager, Ecosystems Management Branch, NEPA to Mr. Peter Knight, CEO, NEPA and copied to

³¹ Letter dated January 14, 2016 from Mr. Robert Pickersgill, MP, then Minister of Water, Land, Environment and Climate Change, to Superintendent Adrian Hamilton, Sub-Officer in charge of the Negril Region, Westmoreland.



Anthony McKenzie, Morjorn Wallock, Miguel Nelson and Aisha Bedasse, under the subject “*Karissma Hotel excavation of material that includes sand.*”

The email correspondence stated, *inter alia*, the following:

“ ...

Based on discussions with Team, the material excavated – which includes sand – from the building footprint for the hotel does not currently form part of the sand budget. This is as the material (buried and formed part of the foundation for a previous development) cannot re-enter the Negril beach system by any normal, day to day process occurring at the location.

Using a dynamic model; with a sea level rise of 0.5m it is predicted that beach retreat will be between 3.9m to 10m. Under storm conditions it is likely that this could occur much faster.

The material in question, was only unearth as a result of the excavation activities being undertaken in connection with the construction of a hotel. As such, the Team has agreed that the removal of the material would not negatively impact the existing beach system in Negril. While the team has no objection to the developer removing the material to a secondary location for some



future, beneficial, environmental sound use in accordance with the approval granted by the Mine and Geology Division, after consideration and based on the fact that Negril is a sand based economy, it is now recommended that the preferred option is for the sand to remain in Negril and used for beach enhancement.

Regards”³²

In relation to the email correspondence which was dated January 15, 2016, from Anthony McKenzie, to Ms. Morjorn Wallock, and copied to Mr. Leonard Francis, under the captioned subject “***Fw: Karissma Hotel excavation of material that includes sand***” states as follows:

“...

Further to our brief discussion. The following was brought to my attention by Leonard:

Policy SP M 10 of the N&GI Development Order

The extraction of onshore coastal sand will not be permitted except under exceptional circumstances and sand extraction in such situations will be stringently controlled and removal confined to reuse in the area.”³³

³² Email correspondence dated January 15, 2016 from Ms. Andrea Donaldson, Manager Ecosystems Management Branch, NEPA to Mr. Peter Knight, CEO, NEPA and copied to Anthony McKenzie, Morjorn Wallock, Miguel Nelson and Aisha Bedasse.

³³ Email correspondence dated February 15, 2016 from Anthony McKenzie to Mojorn Wollack.



The Director of Investigation notes that **Policy SP M8, M9 and M10** of the Town and Country Planning (Negril and Green Island Area) Provisional Development Order, 2013 indicated, *inter alia*, the following:

***POLICY SP M 8** Lands which are slated for development may be quarried on a priority basis and be prepared for development to satisfaction of the planning authority.*

POLICY SP M 9 *In the event that contemplated development might affect licensed quarry operation the matter will be referred to the Commissioner of Mines for recommendation.*

Coastal sand (both onshore and offshore) should not be regarded as a source for extraction purposes. These deposits are not extensive and the rate of generation by natural means may not be as rapid as the rate of removal, resulting in the destruction of the beaches. In this regards, there are no sand quarrying sites in the area.

POLICY SP M10 *The extraction of onshore coastal sand will not be permitted except under exceptional circumstances and sand extraction in such situations*



will be stringently controlled and removal confined to reuse in the area.³⁴ (DI Emphasis)

The Director of Investigation highlights that the Development Order specifically stated that any sand extracted should be reused in the area. Therefore, the usage of the extracted sand in another location was a breach of the Town and Country Planning (Negril and Green Island Area) Provisional Development Order, 2013.

³⁴ The Town and Country Planning (Negril and Green Island Area) Provisional Development Order, 2013, pg. 190v²⁹⁶



The Process to be Employed by the Mines and Geology Division for the Granting of a Quarry Licence

Pursuant to Section 2 of the Quarries Control Act, “quarry means any place (not being a mine as defined in the Mining Act) where quarry material or quarry mineral has been removed or is being removed, whether by excavation or otherwise, to supply material for construction purposes, other than dimension stones for the construction industry;”³⁵

The Director of Investigation also highlights the provisions of Section 8 of the Quarries Control Act:

“Section 8

(1) An application for licence to operate a quarry shall be filed with the Minister in the prescribed form and shall be accompanied by the prescribed fee and the prescribed particulars.

(2) Every applicant for a licence shall cause to be displayed in a prominent place at the proposed site of the quarry a notice in the prescribed form for a period of not less than twenty-one days, commencing from the date on which the application for a licence is filed with the Minister.

(3) On receipt of an application for a licence the Minister shall consult with the relevant authorities and

³⁵ Quarries Control Act, 1985



shall, subject to the provisions of section 9, either grant or refuse the application and, in the event of refusal, shall notify the applicant in writing of the grounds of refusal. (DI Emphasis)

(4) A licence granted under this section may contain such terms and conditions as the Minister considers advisable.

(5) A licence granted under this section-

(a) Shall, unless previously revoked, remain in force for such period as may be determined by the Minister acting on the advice of the Commissioner; or

(b) May, if the Minister thinks fit, upon the expiry of the period determined pursuant to paragraph (a), be renewed upon payment of the prescribed fee, for a period so determined.

(6) In this section-

“relevant authority “means –

(a) the local authority of the Parish in which the quarry is to be operated;



(b) the Chief Technical Director (Ministry of Works);

(c) the Natural Resources Conservation Authority;

(d) the Permanent Secretary, Ministry of Agriculture;

(e) the Water Resources Authority;

(f) Any statutory body or agency appearing to the Minister to have an interest in or to be likely to be affected by the issuing of a licence;

“local authority means in relation to the parishes of Kingston and St. Andrew, the Kingston and St. Andrew Corporation and, in relation to any other parish, the Parish Council of that parish.”³⁶

Based on the foregoing provisions of the Quarries Control Act, upon receipt of an application for a licence, the Minister shall consult with the relevant authorities and shall, subject to the provisions of Section 9, either grant or refuse the application.

³⁶ Section 8 of the Quarries Control Act



In respect of the foregoing, It is the Director of Investigation's observation that the Mines and Geology Division consulted with several authorities, that is, the NWA, NEPA and the WRA, however, the Office has seen no evidence to indicate that the Hanover Parish Council or the Negril and Green Island Planning Authority, and by extension, the Ministry of Local Government, was consulted prior to the granting of the Quarry Licence.



The Withdrawal of the Cessation Order to Prevent the Removal of Sand from the Karisma Hotel and Resort

By way of a Gleaner article published on January 25, 2016, it was revealed that the then Minister of Water, Land, Environment and Climate Change, Mr. Robert Pickersgill, MP, withdrew the Cessation Order, which barred the removal of sand from the Karisma Hotel and Resort. The referenced article was captioned “Gov’t lifts order barring sand removal from Negril property” and stated, *inter alia*, as follows:

“The Land and Environment Minister Robert Pickersgill has withdrawn the order barring the removal of sand from premises owned by the Karisma Group for a development of a hotel in Negril, Westmoreland.

...

As Minister, I have reviewed the entire matter and on advice have come to the following conclusions:-

1. **That the Sectoral Policy Mineral 10 (SPM10) in the Negril Green Island Area Development Order does not apply in this instance;**
2. *That the option pursued in construction of the foundation system was the result of engineering consideration;*
3. **That the material excavated belongs to the Developer.**



I have also take [sic] into consideration that the Developer received all necessary valid permits and a “no objection” from the NEPA on which the Developer relied to its detriment before the NEPA sought a Cessation Order.

Having carefully reviewed all the issues and circumstances, I have decided as follows:

1. ***That the Licence issued by my colleague Minister of Science Technology Energy and Mining on the recommendation of the Commissioner of the Mines and Geology Division is valid;***
2. *There was a clear misunderstanding of the NEPA’s “no objection” which is normally associated with an Environmental Permit;*
3. ***To allow the Developer to transfer the sand stockpiled at the site to the proposed development site in St. Ann, in accordance with the Licence granted;***
4. *Restrict the use of the portion of carbonate sand allocated to the St. Ann site solely to support the*



development and nourishment of the hotels beaches. Sale of the sand is prohibited. I also note the considerable and the substantial value of the project to the Jamaican economy which outweighs all other consideration.

5. The NRCA/NEPA have been instructed to collaborate with the Quarry Advisory Committee and the Mines and Geology Division to streamline the coordination and approval processes to avoid misunderstanding and a recurrence of any similar nature. The agreed framework and process flow are to be completed within one month and presented to me and the Ministry of Science Technology Energy and Mining for sign-off.

6. The Chief Executive Officer, of the NEPA and the Managing Director of the Mines and Geology Division to lead a process to develop a national policy on beach sand, including guidelines for importation and an accounting framework. The first draft of the policy should be produced in six months.

As a result of what I have stated, I will withdraw the Cessation Order forthwith.”³⁷ (DI Emphasis)

³⁷ Gleaner article published January 25, 2016, entitled “Gov’t Lifts Order Barring Sand Removal From Negril Property.”



In order to validate the information contained in the aforementioned media extract as to whether the Cessation Order was in fact withdrawn, the Director of Investigation, on June 15, 2018, wrote to Mr. Leighton Williams, Acting Commissioner of Mines, Mines and Geology Division, and the following was provided in his response of June 26, 2018:

“The details contained in the referenced article, which made reference to the withdrawal of the Cessation Order by the then Minister were in fact correct, except for one point. Recommendations for licences are made to the Minister by the Quarries Advisory Committee (QAC) of which National Environment & Planning Agency (NEPA) is a part.”³⁸

To that effect, Mr. Leighton Williams submitted a letter dated February 2, 2016, which was addressed to Ms. Taynia Nethersole, Company Secretary, Yabyanas Limited, from Miss Morjorn Wallock, Secretary, Natural Resources Conservation Authority. The letter stated, *inter alia*, that:

*“Dear Ms. Nethersole:
Re: Cessation Order dated January 13, 2016 against
Yabyanas Limited
Further to yours dated 27 January 2016, take note that
the Cessation Order issued by the Natural resources
Conversation Authority is withdrawn.*

³⁸ Mr. Leighton Williams’, June 26, 2018 response to the Integrity Commission’s requisition dated June 15, 2018, response 1a



...”³⁹

The Director of Investigation also wrote to NEPA, on June 18, 2018, in order to determine whether the Agency was made aware of the withdrawal of the Cessation Order. Mr. Peter Knight, Chief Executive Officer, NEPA, stated, *inter alia*, the following, by way of his response of June 25, 2018:

“Yes, the NEPA was made aware through verbal discussion with the Honourable Minister of his decision (and the then Cabinet) to withdraw the Cessation Order.

My recollection is that the Honourable Minister took the matter (the controversy) to Cabinet for deliberations/decision. Again, the NEPA was advised verbally that the Cabinet had taken a decision in the matter and that the Honourable Minister would be issuing a media statement. My further understanding is that the Honourable Minister complied with the directive of the then Cabinet to “Withdraw the Cessation Order forthwith”

I declare that no formal communication was issued to NEPA, except for the Media Statement which outlined the Honourable Minister’s (and Cabinet’s Decision).”⁴⁰

Additionally, the Director of Investigation wrote to NEPA, on October 11, 2019, to determine the

³⁹ Letter dated February 2, 2016, addressed to Ms. Taynia Nethersole, Company Secretary, Yabyanas Limited, from Miss Morjorn Wallock, Secretary, Natural Resources Conservation Authority

⁴⁰ Mr. Peter Knight’s, June 25, 2018 response to the Integrity Commission’s requisition dated June 18, 2018, response 1a



circumstances under which a Cessation Order issued pursuant to Section 13(1) of the Natural Resources Conservation Authority Act, may be withdrawn. In his response, Mr. Peter Knight, Chief Executive Officer, NEPA, stated, *inter alia*, the following:

“The Natural Resources Conservation (NRCA) Act does not describe circumstances under which a cessation order may be withdrawn.

From practice however a cessation order or indeed any enforcement instrument served by NRCA/NEPA is withdrawn in circumstances where it is clear that its use did not serve the mandate of the Act.

...

The NRCA Act does not outline circumstances under which the Minister has authority to withdraw a Cessation Order issued pursuant to section 13(1).

I am not aware of any other legislation which outlines circumstances where the Cessation Order served on February 1, 2017 and issued pursuant to section 13(1) of the NRCA Act may be withdrawn by the Minister. ”⁴¹

⁴¹ Mr. Peter Knight’s, October 15, 2019 response to the Integrity Commission’s requisition dated October 11, 2019, responses 1a and 1b.



Further, Mr. Knight indicated, that Section 7 of the NRCA Act speaks to the Ministerial Directions, specifically:

“7.-(1) The Minister may, after consultation with the Chairman, give to the Authority such directions of a general character as to the policy to be followed by the Authority in the performance of its functions as appear to the Minister to be necessary in the public interest, and the Authority shall give effect thereto.

(2) The Authority shall furnish to the Minister such information as he may require with respect to the activities of the Authority and shall afford to him facilities for verifying such information in such manner, and at such times as he may reasonably require.”

Notwithstanding the foregoing, it is noted that Section 7 of the NRCA Act speaks broadly to the directions of a general character as to policy to be followed by the Authority which the Minister may give and not to a general authority of the Minister to withdraw or cause a Cessation Order to be withdrawn.



CONCLUSIONS

Based upon the documents which have been reviewed from the representatives of the National Environment and Planning Agency (NEPA) and the Mines and Geology Division (MGD), the Director of Investigation has arrived at the following considered Conclusions:

1. The sand which was located on the premises of Yabyanas Limited c/o Karisma Resort and Hotels, along a section of Gibraltar at Rutland Pen, in the parish of Hanover, was removed by the resort on the basis that the sand would be suitable for a new beach to be established at Llandovery, St. Ann, another property owned by the referenced resort. According to the development consultants who were employed by Yabyanas Limited c/o Karisma Resort and Hotels, the opportunity to use the sand which was excavated would prevent the importation of sand to undertake the process of beach nourishment at the other property.
2. Based on documentary evidence provided, Yabyanas Limited c/o Karisma Resort and Hotels, did in fact, apply to the MGD for a Quarry Licence on December 10, 2015. With respect to the referenced application and the subsequent granting of a quarry licence to Yabyanas Limited c/o Karisma Resort and Hotels, NEPA and the MGD had 'no objection', provided that the resort submits the exact location of the property in Llandovery, St. Ann, where the excavated sand would be deposited.

However, there is no evidence to suggest that the exact location of the property in Llandovery, St. Ann, was provided to NEPA. Notwithstanding this fact, the MGD granted a Quarry Licence to Yabyanas Limited c/o Karisma Resort and Hotels for the removal of the stockpiled sand.



3. Having regard to the need to ensure transparency and accountability between Public and Private Entities, it is the considered opinion of the Director of Investigation that the information requested by NEPA, regarding the exact location where the sand would be stockpiled, should have been provided to NEPA prior to the granting of the Quarry Licence by the MGD.

4. Yabyanas Limited c/o Karisma Resort and Hotels was granted a Quarry Licence (Ref No. 2110) from the Mines and Geology Division (MGD), on December 24, 2015, to relocate excavated sand from the referenced resort to the property located in Llandoverly, St. Ann.

5. With respect to the conditions of the Quarry Licence which was granted to Yabyanas Limited c/o Karisma Resort and Hotels, the following conditions to be most applicable to the circumstances surrounding the granting of the Quarry Licence to Yabyanas Limited c/o Karisma Resort and Hotels, for the removal of sand:
 - (i) All carbonate sand previously extracted and stockpiled by Yabyanas Limited c/o Karisma Resort and Hotels shall be transported to the designated site at Llandoverly, St. Ann;
 - (ii) The volume of material to be removed shall be limited to that indicated in the Volumetric Survey submitted to the Commissioner of Mines;
 - (iii) There shall be no removal of carbonate sand except the material that was previously extracted and stockpiled;
 - (iv) **The Licensee shall possess a valid Environmental Permit issued by the Natural Resources Conservation Authority (NRCA) for the duration of this licence;** and
 - (v) **The Licensee shall adhere to all the conditions of the Environment Permit issued by the Natural Resource Conservation Authority (NCRA).**



6. The Director of Investigation is of the view that the Mines and Geology Division failed to properly discharge their function under Section 8(3) of the Quarries Control Act, and to ensure that all prerequisites to the license were satisfied prior to the issuance of the license.

Importantly, the Director of Investigation opines that the deficiency could not have been cured by imposing on the Licensee the requirement to possess of a “...*valid environmental permit issued by the Natural Resources Conservation Authority*” as a Special Condition of the Quarry License.

In point of fact, Section 8(3) of the Quarries Control Act states that “*On receipt of an application or license the Minister shall consult with the relevant authorities and shall... either grant or refuse the application ...*”

7. The Director of Investigation has gleaned no evidence to indicate that the then Hanover Parish Council, the Negril and Green Island Planning Authority, and by extension, the Ministry of Local Government and Community Development, were consulted prior to the granting of the Quarry Licence, in keeping with the provisions of Section 8(3) of the Quarries Control Act.
8. The process involving the removal and/or relocation of sand by Yabyanas Limited c/o Karisma Resort and Hotels **was not devoid of irregularity.** The Director of Investigation’s conclusion is premised on the following breaches and/or irregularities:
 - (i) Notwithstanding the fact that the request to relocate the excavated sand from the Yabyanas Limited c/o Karisma Resort and Hotels to Llandoverly, St. Ann, was deemed an ‘exceptional case’, it is concluded that Policy SP M 10 of the Town and



Country Planning (Negril and Green Island Area) Provisional Development Order, 2013, which stipulates that “*sand extraction in such situations will be stringently controlled and removal confined to reuse in the area*” should have been observed.

- (ii) In keeping with the provisions of the Special Condition No. 21 of Quarry Licence No. 2110, there is no evidence that Yabyanas Limited c/o Karisma Jamaica Hotel, the Licensee, possessed “...*a valid Environmental Permit issued by the Natural Resources Conservation Authority (NRCA) for the duration of this licence*” in respect of the “*Mining of Carbonate Sand at a section of Gibraltar, Rutland Point, Hanover*”, which would have been required for the relocation of the sand to another area.

In this regard, Yabyanas Limited c/o Karisma Resort and Hotels was in breach of the Special Condition 21 of the Quarry License as they ought to have been in possession of the referenced Environmental Permit.

9. The Director of Investigation was unable to determine the authority or any provisions in law and or policy, which governed the withdrawal of the Cessation Order by the then Minister of Water, Land, Environment and Climate Change, Mr. Robert Pickersgill, MP, which was issued to Yabyanas Limited c/o Karisma Resort and Hotels by NEPA. As a point of fact, Section 7 of the NRCA Act speaks broadly to the directions of a general character as to policy to be followed by the Authority which the Minister may give and not to a general authority of the Minister to withdraw or cause a Cessation Order to be withdrawn.



RECOMMENDATIONS

Section 54 (1) of the Integrity Commission Act mandates that “*on completion of an investigation the Director of Investigation shall prepare and submit to the Commission, through the Executive Director, a report of his findings and recommendations.*”

1. It is recommended that the Ministry of Science, Energy and Technology, as well as, the Ministry of Transport and Mining enforce, and where necessary, develop and implement Standard Operating Guidelines with regard to the granting of Licenses and Permits in relation to sand quarrying and other related activities. These guidelines should be established through consultations with the National Environmental Planning Agency (NEPA), the Mines and Geology Division (MGD), the National Works Agency (NWA), the Water Resource Authority (WRA), the Natural Resources Conservation Authority (NRCA) and other relevant state authorities.
2. The Director of Investigation recommends that the Mines and Geology Division ensures that scrupulous verification exercises are conducted to ensure that **all conditions** are met prior to the issuance of a licence.
3. It is also recommended that there should be greater collaboration between Agencies responsible for the granting of Quarry Licenses and Environmental Permits. This recommendation is being made against the background that adequate consultations were not made with the relevant Local Authorities in relation to the quarry licence which was granted to Yabyanas Limited.
4. With regard to the need to ensure environmental sustainability and good governance, it is recommended that local authorities should work to attain the highest level of compliance with



policies and regulations in relation to development activities which could adversely impact the environment.

5. To guard against the arbitrary or perceived misuse of power by the relevant Minister, it is recommended that a policy guideline be issued in relation to circumstances in which a cessation order may be withdrawn.
6. To avoid instances of ambiguity or misunderstanding, the Director of Investigation recommends that the Mines and Geology Division in granting a Quarry Licence expressly indicate the type(s) of Environmental Permits which are required to “mine sand” and/or to “*construct and operate a hotel*”.

David D. Grey, JP
