

OFFICE OF THE CONTRACTOR-GENERAL

Addendum to Report of Investigation

Conducted into the Sandals Whitehouse Hotel Project

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Introduction

The decision to produce this Addendum was taken after documents which were previously not made available to the Office of the Contractor General (OCG) were submitted to the OCG on 2006 July 25 and July 27, after the OCG's Report of Investigation on the Sandals Whitehouse Hotel Project (the "Report") was tabled in the House of Representatives on July 18 and in the Senate on July 20. The documents in question were submitted respectively by the Urban Development Corporation (UDC) and by DunnCox, the attorneys for Gorstew Ltd.

The UDC's submission was composed of project site and technical working meeting minutes together with cash flow and implementation schedules, copies of which the UDC conceded were previously specifically requested by the OCG but which were never before produced.

The Dunn Cox letter of July 27, on the other hand, has challenged a number of the conclusions and/or statements which have been made in the Report. DunnCox has attempted to substantiate these claims in its letter, under cover of which it has submitted several documents.

The OCG believes that the interest of the public would be best served if it were to review, *inter alia*, these documents, record its views thereon and submit an Addendum Report encompassing same pursuant to the provisions of Section 20 and Section 28 of the Contractor General Act.

The primary objectives of the Addendum will therefore be as follows:

- (a) to say whether and to what extent the UDC and DunnCox information have impacted the Findings and Conclusions which are now contained in the Report;
- (b) to substantiate and/or to clarify certain statements which were made in the Report which have raised, within or without the public domain, the questions or issues which are listed below. Several of these issues, it should be noted, were raised, to the OCG, by DunnCox, the attorneys for Gorstew Ltd. The issues are as follows:

- (1) Whether the OCG interviewed representatives of Gorstew Ltd.;
- (2) Whether Beaches Negril was used as the original benchmark for the Sandals Whitehouse Hotel design concept and for the development of its original budget;
- (3) Whether the change in the design of the hotel from a 'Beaches' to a 'Sandals' concept contributed to the change in the Project's scope of works and ultimately to the cost overrun;
- (4) Whether there was a reasonable expectation that some amount of cost overrun was to be anticipated because the budget was preliminary in nature and was based upon Approximate Quantities;
- (5) The ignorance of the magnitude of the cost overrun as was alleged by one of the NEWTOWN participants, Gorstew Ltd.;
- (6) The question as to the parties' liability for the cost overrun;
- (7) The intended meaning of the statement as to "value" which appears on Page #13 of the Report;
- (8) The award of contracts to Appliance Traders Limited (ATL).

Since the tabling of the OCG's Report, the UDC has communicated a number of positions in respect of the Report's Conclusions, either through publicly issued statements which appeared in the media and/or through written correspondence to the OCG. The OCG, in turn, has responded, in writing, to some of these positions, either directly to the UDC or through its submissions made during the formal Hearings into the Project which, at the date of this Addendum, were being conducted by the Public Accounts Committee (PAC) of Parliament.

A brief synopsis of some of the referenced UDC positions, as at the date hereof, together with the OCG's responses thereto, will therefore be provided at the end of the Addendum.

Except as may be otherwise indicated in this Addendum, the OCG stands fully by those of its Findings, Conclusions and/or Recommendations as are indicated in its Report.

ISSUE #1 – Whether, and to what extent, the UDC and the DunnCox information have impacted the findings and conclusions which are contained in the Report

The minutes of the Project’s site and technical meetings, which were submitted by the UDC, have provided a greater insight into the general administration, implementation and management of the project.

These minutes have disclosed, among other things, a general trend of managerial problems and delays on the Project, inclusive of certain management deficits on the part of the UDC, the Project Manager, and Nevalco, the Site project manager.

Despite this, however, there is also evidence of efforts by the UDC and Nevalco, at various times throughout the life of the Project, to encourage, *inter alia*, the Project’s Consultants and the Contractor to adhere to set deadlines, etc.

The Minutes have also disclosed instances in which the Contractor was criticized for tardy work and for failing to achieve set deadlines. Some of these factors, among others, have contributed to the Project’s delay and cost overrun.

The documentation which was provided by DunnCox has not caused the OCG to materially alter its position regarding the original budget benchmark which were used for the project. The OCG stands by its Conclusion that Beaches Negril was used as the original budget benchmark for the hotel. The documentation which was provided by DunnCox, among others, confirms that Beaches Turks and Caicos was used as a benchmark for the Project particularly as it related to the *quality of finishes and services* which would be required.

The OCG also stands by its conclusion that the change in the design of the hotel from a ‘Beaches’ to a ‘Sandals’ concept did contribute to the change in the Project’s Scope of Works and to its cost overrun.

Both DunnCox and the UDC have provided additional information on the involvement of Appliance Traders Limited as a consultant and contractor on the Project. The information, however, has not changed the OCG's conclusion that the circumstances of Appliance Traders' engagement, together with that of other Consultants, have, *inter alia*, raised "evidence of a conflict of interest, an absence of transparency, a lack of competition and the absence of an arms length approach in the award of the ... contracts". (Page 65 of the Report).

The OCG still views Gorstew's position, that it was unaware of the Project's cost overrun until near the end of the project, as being inconceivable. It is an incontrovertible fact that, Gorstew, through IL, was at all material times intimately involved in the Project and had significant influence over the inputs which went into the final Project product.

Further, the OCG is of the view that information which was provided in Nevalco's monthly reports, particularly in the March 2004 report, a copy of which was submitted by DunnCox to the OCG upon request, disclosed enough information to objectively establish that there was a reasonable potential that a significant cost overrun was likely to occur on the Project.

This aside, it is still the OCG's contention that one of the significant issues which remains to be resolved is who should bear the liability for the cost overrun which was occasioned on the Project. The Report did not attempt to address this issue.

It must be emphasized also that at the very outset of its investigation into the Project, the OCG had made a general request of the UDC for it to produce all files and documents which were related to the Project. This request was separate and apart from the requests which were subsequently made for the UDC to furnish specific Project related documents.

As the OCG has concluded in its Report, "it is not satisfied (and it is still not satisfied) with the documentation which was made available to us by the UDC and which should have facilitated, but did not facilitate, an understanding of the chronological sequence of operations and events in the implementation and execution of the project, particularly as they related to the significant changes which took place in the budget and Scope of the Works of the project and what had to be the deliberate decisions of the parties which attended those changes".

In the premises, the OCG stands by those of its Recommendations which are contained in the Report on the matter of how the issue as to the determination of liability should be resolved. One of these recommendations reads as follows:

“We would therefore respectfully recommend that the UDC, in its capacity as the Project Manager, with the assistance of the Quantity Surveyor, be mandated to produce a comprehensive report detailing, *inter alia*, the rationale and justifications for the changes and cost overruns which were occasioned to the project, the specific authorizations which accompanied them and the persons to whom those authorizations were attributable.”

ISSUE #2 – Whether the OCG interviewed representatives of Gorstew Ltd.

OCG’s Response and Clarification

The OCG did in fact interview the persons who Gorstew Ltd. had designated as their Project representatives. Messrs. Jeremy Brown and Keith Rigbye of Implementation Ltd. (IL) were interviewed by the OCG for over two hours on 2006 March 8. DunnCox has complained, however, that no Directors of Gorstew, inclusive of the Hon. “Butch” Stewart, were interviewed by the OCG. The OCG’s decision to interview Messrs. Brown and Rigbye of IL, as opposed to the directors of Gorstew, was based upon the following:

- (a) Section 17 (1) of the Contractor General Act provides that “a Contractor General may adopt whatever procedure he considers appropriate to the circumstances of a particular case (of Investigation) and, subject to the provisions of the Act, may obtain information from such person and in such manner as he thinks fit”.
- (b) The Technical Services Agreement (TSA) for the Project named Gorstew’s representative as IL, “through whom all communications relating to the Lessee’s services under this agreement will be channeled.”¹
- (c) Patrick Lynch, the Director, Finance & Planning of Sandals Resorts International (SRI), in his letter, dated 2001 May 29, to the UDC, the Project Manager, stated thus: “I am directed by our Chairman, Mr. Butch Stewart, to advise that ... Implementation Limited has been appointed by Sandals Resorts International (SRI) to coordinate the activities of all the

¹ See Appendix 1 for copy of TSA – p.6

professionals within our Group and to be our representative in dealing with the UDC, its officers and consultants regarding the project at Whitehouse, Westmoreland. In an effort to ensure a totally professional approach and to avoid duplication, all enquires should be channeled through Mr. Jeremy Brown, Director of Implementation Limited, who has a full mandate to represent SRI in the important technical and operational areas for an orderly development of this project”.²

(d) The two (2) foregoing documents clearly confirmed that IL represented both Gorstew Ltd. and SRI on the Project.

Based upon the above, the OCG, during the period of its investigation, and acting fully within its statutory and discretionary investigative powers, entitlements and rights, believed IL to be an appropriate source for the specific Project related information which the OCG was seeking.

ISSUE #3 – Whether Beaches Negril was used as the original benchmark for the Sandals Whitehouse Hotel design concept and for the development of its original budget

The Report states, *inter alia*, that “the original development budget for the project ... was based upon a Beaches Negril concept.” (Pages 13 and 67)

Challenge Made

(a) DunnCox, in its letter, dated 2006 July 27, has challenged the OCG’s statement and has counter-claimed that the project was benchmarked against the Beaches Turks and Caicos hotel³.

OCG’s Response

The OCG has no reservations about its statement that “*the original development budget ... was based upon a Beaches Negril concept.*” The Beaches Turks and Caicos property was used to benchmark the *quality of finishes and services* which were required for the Project. However, the original budget for the Project was based upon the Beaches Negril concept.

² See Appendix 2 for copy of Patrick Lynch’s letter dated 2001 May 29

³ See Appendix 3 for copy of DunnCox letter – p.4

Substantiation of OCG's Position – Beaches Negril, the Benchmark for Budget

- (a) In an interview, which was held on 2006 March 29, with the Project's Quantity Surveyor, Mr. Brian Goldson, he reported that the original budget for the Whitehouse hotel Project was based upon Beaches Negril and that he was instructed to go to Beaches Negril to develop his budget for the Project. It was also Mr. Goldson who recommended that Beaches Negril and Sandals Whitehouse should be visited by the OCG's staff for comparative purposes.
- (b) The former Prime Minister, the Hon. P.J. Patterson's report to Parliament, dated 2005 May 16, is consistent with the OCG's position. At page 17 of the report, the assertion is made that "the initial costing (of the Project) was based on a significantly less elaborate product, which was benchmarked to Beaches Negril".
- (c) Nevalco's first set of monthly reports included the 1998 Beaches Negril approved drawings as the drawings which were approved for the Whitehouse project. It must be emphasized that these drawings were the same drawings which were previously approved for the private sector undertaking. The next set of drawings for the Project was approved in February 2003 by the Westmoreland Parish Council, more than 1 year and 3 months after the Whitehouse Project was officially commenced.

Substantiation of OCG's Position – Beaches Turks and Caicos, Benchmark for quality of finishes and services

The *standard and quality of finishes* that was to be expected at the Whitehouse development was benchmarked upon the Beaches Turks & Caicos hotel. The following considerations, among others, have led the OCG to this conclusion:

- (a) Section 01400-1 Vol. II of the contract document⁴ establishes that the French Village Room Block at Beaches Turks & Caicos was established as an agreed upon example of acceptable "quality of work".
- (b) In a letter, dated 2001 November 29, to Dr. Vin Lawrence⁵, Patrick Lynch indicated that the purpose of the trips to the Turks and Caicos was to view "the level of finishes and services required."

⁴ See Appendix 4 for copy of Section 01400-1 of Contract

⁵ See Appendix 5 for copy of 2001 Nov 29 letter to Dr. Vin Lawrence

It should also be noted that, according to DunnCox⁶, two (2) visits were made to the Turks and Caicos Islands. The stated purpose of these visits was to acquaint parties “with the standards and quality of finishes that would be expected at the Whitehouse Project”.

Government Forensic Audit Team’s Position

It is instructive to note that the Government appointed Forensic Audit Team’s report has concluded, *inter alia*, as follows:

“Regarding the question of Benchmarking, we are of the view that the consultant Quantity Surveyor did use Beaches Negril as a “benchmark” in arriving at an initial Budget for Sandals Whitehouse”. (Executive Summary; Page 2)

ISSUE #4 - Whether the change in the design of the hotel from a ‘Beaches’ to a ‘Sandals’ concept contributed to the change in the Project’s Scope of Works and ultimately to the cost overrun

The Report indicates, *inter alia*, that the increased costs of the project were due substantially to the change from a ‘Beaches’ to a ‘Sandals’ concept (Page 68). The Report further concludes that “the changes in the Scope of Works, quality of workmanship, types of finishes and the types of materials which were utilized ... are to be attributed primarily to the change in the project’s initial Beaches concept to a Sandals concept”. (Page 70)

Challenge Made

- (a) DunnCox has refuted the OCG’s position⁷ re the consequences of the change from a ‘Beaches’ to a ‘Sandals’ concept.
- (b) The DunnCox position was also reflected in a Statement in the Observer⁸, of 2006 August 14, in which Gorstew maintained “that the cost overruns were not due to the name change from Beaches to Sandals, and that in fact the change actually saved money”.

⁶ See Appendix 6 for copy of DunnCox letter – p.5

⁷ See Appendix 7 for copy of DunnCox letter – p.10

⁸ See Appendix 8 for copy of Gorstew release in The Daily Observer

OCG's Response

- (a) The OCG stands by its prior view that the change from a 'Beaches' to a 'Sandals' has substantially contributed to the Project's increased cost.
- (b) It is the OCG's view that this was not just a 'name' change but also a change in 'concept'.
- (c) In addition to the changes in the Project's Scope of Works, it should also be remembered that the OCG's Report pointed to other factors which also contributed to the recorded cost overrun. These included cost fluctuations, extensions of time, additional supervision, interest payments, etc. (Pages 46-49 of Report). Partly implicit in this was the disclosure which is now evident in the new documentation that was furnished which suggests that certain Project management and administration deficits, among other factors, also contributed to the Project's cost overruns.

Substantiation of OCG's Position

The OCG's position that the change from a 'Beaches' to 'Sandals' concept contributed to the increased cost of the project, can be substantiated, *inter alia*, by the following:

- (a) Bryan Goldson, the Project's Quantity Surveyor, was the first to attribute the Project's cost overruns to the change in the Project's concept when he was interviewed, by the OCG, at his office, on 2006 March 29. He stated that the cost overruns would have been warranted due to the changes in the original budget of a Beaches style setup. He added that a tremendous amount of changes were made and that these would be seen in the final accounts.
- (b) The draft summaries from the final account, which were prepared by the Quantity Surveyor, indicated a significant cost increase in the Central Facilities (inclusive of Back of House Facilities) and External Works⁹.
- (c) In his report, tabled in Parliament, former Prime Minister, the Most Hon. P.J. Patterson, made certain statements which are consistent with the OCG's position. At page 17 of the report, the assertion is made that "...during construction, the project changed from a Beaches concept to a Sandals concept. This shift in operational needs, moving from a family resort to an upscale 5-Star hotel, increased the additional costs emanating from the final designs. ... A decision was made by the partners that extensive attractions and facilities had to be included in the final product".

⁹ See Appendix 9 for copy of final account summary

The OCG's understanding of the term 'concept', in the foregoing regard, refers not only to a change in name or target market but, more importantly, to a change in the physical amenities that attended the hotel, inclusive of its architecture, its ambiance, its quality of fixtures and finishes, etc.

It is the OCG's contention that the elaborate nature and level of sophistication which is now evident at the Sandals Whitehouse hotel, would not have been pursued had the concept for the property remained a family-oriented Beaches hotel.

Government Forensic Audit Team's Position

It is instructive to note that the Government appointed Forensic Audit Team's report, while concluding that the name change in the hotel did not have any "major impact" upon the Project's cost overruns, nonetheless otherwise concluded that "*the designs, standards and specifications at Sandals Whitehouse have turned out to be far more elaborate than those at Beaches Negril and the French Village at Beaches Turks and Caicos*". (Executive Summary; Page 2).

ISSUE # 5 – Whether there was a reasonable expectation that some amount of cost overrun was to be anticipated because the budget was preliminary in nature and was based upon Approximate Quantities

Page 45 of the OCG's Report states, *inter alia*, as follows: "It is reasonable to have expected some amount of inflation on the project because of the claim that the works had started long before the completion of the final drawings."

Challenge Made

DunnCox, in its letter dated 2006 July 27, has asserted that such "statements do not reflect the considerable inputs involved in determining the development budget of US\$70 million."

OCG's Response

Based upon its statutory mandate, the OCG is obliged to begin its assessment with what was agreed in writing, between the contracting parties, as the original cost estimate for the Project. This was established by the NEWTOWN Heads of Agreement as US\$60 million.

Despite the efforts and inputs which were involved in determining the Project's budget, two facts are irrefutable, namely:

- That the budget was preliminary in nature and was based upon Approximate Quantities;
- That construction work was being carried out on the Project simultaneously with the completion of detailed designs (i.e. "fast track" contracting).

In both instances, it would be reasonable to expect some amount of time and cost overrun. Further, the very circumstances of the situation would have demanded strict Project management controls to contain expenditures. We have now seen where there was a clear deficit of the said controls.

It is well established within the Quantity Surveying profession that the Approximate Quantities method of preparing construction budgets is not as reliable as the traditional method that involves the "taking off" of measurements from completed working drawings. Completed working drawings will always provide a more reliable basis for estimate than conceptual or schematic drawings that are not yet fully developed.

Available documentation overwhelmingly confirms that the original Project budget was based upon Approximate Quantities.

Substantiation of OCG's Position

- (a) The Quantity Surveyor's letter to Nevalco, dated 2001 August 22, re the budget being based "upon preliminary drawings and discussions".¹⁰
- (b) The Quantity Surveyor's Report on its negotiations with Ashtrom re the construction of the Project's room blocks and external works, asserting that same is based upon "Approximate Quantities".¹¹
- (c) The Quantity Surveyor's letter to Nevalco, dated 2002 March 19, re proceeding with works where "rates for the items are *included in the approximate bills of quantities.*"¹²

¹⁰ See Appendix 10 for copy of QS letter to Nevalco dated 2001 August 22

¹¹ See Appendix 11 for copy of QS document

¹² See Appendix 12 for copy of GBJ letter to Nevalco dated 2002 March 19

- (d) Clause 12 of the Building Contract provides that “the quantities set out in the Contract Bills are the estimated quantities for the Works, and they are not to be taken as the actual and correct quantities”.¹³
- (e) The UDC’s letter to Gorstew, dated 2001 November 23, regarding the contract sum being based upon Approximate Quantities. The letter stated thus: “The contract sum is also based on approximate quantities and will be finally determined on measurement of actual quantities”.¹⁴
- (f) Nevalco’s letter to Chris Shaw, of the UDC, dated 2002 May 10, indicated that designs were being worked upon during the construction phase of the Project. In part, the letter provides that “in keeping with instructions from the Board Meeting of 2002 May 1, I am requesting approval for the following consultants to travel to Florida to finalize design and budget for the captioned property”¹⁵.

ISSUE # 6 – The ignorance of the magnitude of the cost overrun as was alleged by one of the NEWTOWN participants, Gorstew Ltd.

Page 71 of the OCG Report indicates the difficulty that the OCG has in accepting that Gorstew was not privy to information, however, little, regarding the costs variations which took place in the Project.

Challenge Made

DunnCox, in its 2006 July 27 letter¹⁶, said that “No representative of Gorstew had any knowledge of cost overruns (which were) associated with the 2001 (Whitehouse) project prior to December 2004, at which time Nevalco’s Project Manager’s Report for the month of November 2004 indicated expenditure on the construction contract exceeding the amount budgeted.”

OCG’s Response and Clarification

It should be made clear that at no point in the Report was it definitively stated by the OCG that Gorstew had official knowledge of the full magnitude of the cost overruns.

¹³ See Appendix 13 for copy of relevant section of contract doc – CC3

¹⁴ See Appendix 14 for copy of UDC letter to Gorstew dated 2001 Nov 23

¹⁵ See Appendix 15 for copy of Nevalco letter to UDC dated 2002 May 10

¹⁶ See Appendix 16 for copy of DunnCox letter – p.17

It remains inconceivable, however, that Gorstew could have remained ignorant of the fact that costs were escalating on the Project. Nevalco's monthly Project reports, particularly its March 2004 report, disclosed enough information to objectively establish that there was a reasonable potential that a significant cost overrun was likely to occur on the Project. It is also an incontrovertible fact that, Gorstew, through IL, was intimately involved in the Project and, at all material times, had significant influence over the inputs which went into the final Project product.

Supporting Reasoning and Substantiation behind the OCG's Position

- (a) The Project Management Agreement provides for the dissemination of the Project's monthly reports which would include Project costs information:
- Documentation provided by DunnCox indicates that financial information, inclusive of Nevalco's and the Quantity Surveyor's monthly reports, was in fact forwarded to Gorstew Ltd. or Implementation Ltd. by the Site project manager, Nevalco. On 2003 July 31, Patrick Lynch, in a letter to NEWTOWN¹⁷, recognized Nevalco's efforts to provide Gorstew Ltd. with information but indicated that "these reports are lacking in important financial details as to the status of the work" and requested that the information be provided in a new format.
 - While the OCG has found that the format which was suggested by Gorstew Ltd. would have been helpful, the OCG is, notwithstanding, of the view that the monthly reports which were provided to IL/Gorstew Ltd., by Nevalco, inclusive of the Quantity Surveyor's report, contained enough information to give a fair to good appreciation of the Project's cost movements.
 - For example, the March 2004 report (i.e. Monthly Report #29) clearly indicated that, at that time, 93% of the Estimated Builders Contract (construction sum) was already certified as expended in respect of Project work which was completed. The relevant March 2004 report details were as follows:

¹⁷ See Appendix 17 for copy of Gorstew's letter dated 2003 July 31

<i>Revised Development Budget (May 29, 2002)</i>	<i>US\$70,493,350.00</i>
<i>Estimated Builders Contract (construction sum)</i>	<i>US\$48,513,535.00</i>
<i>Amount certified to date (Cert #27)</i>	<i>US\$45,250,532.00 (93% of Projected Construct. Contract Sum)</i>
<i>Amount paid to date</i>	<i>US\$41,336,719.00</i>
<i>Amount Due</i>	<i>US\$ 3,913,813.00</i>

As at the end of March 2004, the works on the Project were approx. eight (8) months away from the revised scheduled completion date (i.e. November 2004). This, in all reasonableness, should have given all parties concerned, inclusive of IL and Gorstew, a clear indication that the potential existed for the Project to substantially exceed its budget. In point of fact, as things turned out, Nevalco's October-November 2004 report, disclosed that the amount certified as expended on the Project had then galloped to US\$62,179,052.00 or to 128% of the Estimated Builders Contract (construction sum). The Project, it should be noted, was not completed until February 2005.

- It is not clear to the OCG whether IL and Gorstew received Nevalco's monthly reports for the period between March and November 2004.

(b) Article 4 of the Technical Services Agreement (TSA) provides, in part, that the "Lessee (i.e. Gorstew) will ... provide technical advisory services for the planning, designing, constructing, furnishing and equipping of the hotel". In addition, Article 1 of the TSA recognizes IL as Gorstew's representative through whom all Project "communications relating to the Lessee's services under the Agreement will be channeled".

- Gorstew's responsibilities under the TSA included "Design Review", "Design Services" and "Construction Review Services" responsibilities. Gorstew was also required, *inter alia*, to "attend design meetings" and to make "periodic observations of Work in accordance with the Project Schedule".
- Gorstew's responsibilities, under the TSA, particularly as they related to the provision of "design review services", would implicitly require that, in addition to quality, the cost implications for any material or finishes, or for any other element, would have to be determined and communicated before approval.

- Since various elements of the Project were being designed during construction, it would also stand to reason that discussions regarding the requisite material quality and cost would occur fairly frequently during the life of the Project.
- These discussions, which good contract administration would have demanded, and which we assume would have occurred, should have provided, at a minimum, a fair to good indication of the likely final costs, though possibly not the precise amounts.

In the premises, it is the OCG's view that it is reasonable to conclude that IL, as Gorstew's Project representative, was placed upon notice that the Project's costs were likely to run significantly above its budgeted costs. The view is further strengthened when one recognizes IL's significant involvement in, and influence over, the Project, particularly as it related to the Project's design inputs and changes.

Although one may be led to accept Gorstew's claim that it was ignorant, from a formal standpoint, of the *precise* value of the cost overrun prior to the NEWTOWN Board meeting of 2005 January 4, the fact nonetheless remains that IL must have had some inkling of the costs implications for the needs of the proposed operators which it was its obligation to oversee.

Government Forensic Audit Team's Position

It is instructive to note that the Government appointed Forensic Audit Team's report has concluded, *inter alia*, as follows:

- (a) *"Implementation Ltd. seemed to have performed an aggressive project management role in ensuring that the needs of the proposed operators were addressed."* (Executive Summary; Page 4)
- (b) *"In this round-table approach, Implementation Limited, on behalf of Gorstew Ltd., through the Technical Services Agreement (TSA), influenced the quality, costs and sophistication of the finished work. This influence was all the more effective especially in the absence of complete designs and specifications as reference points at the start of construction".* (Conclusion – 1).

ISSUE #7 – The question as to the parties’ liability for the cost overrun

The OCG’s Report did not seek to determine the manner in which the liabilities for the Project’s cost overrun were to be attributed to the parties to the Heads of Agreement. The OCG’s position, in this regard, was clearly stated at Pages 72 and 73 of the Report, as follows:

“We would therefore respectfully recommend that the UDC, in its capacity as the Project Manager, with the assistance of the Quantity Surveyor, be mandated to produce a comprehensive report detailing, *inter alia*, the rationale and justifications for the changes and cost overruns which were occasioned to the project, the specific authorizations which accompanied them and the persons to whom those authorizations were attributable”.

“We would respectfully recommend that the report, upon its completion, should be evaluated by the Auditor General who, we would further recommend, should be requested by Parliament to carry out a financial audit of the project with the aim of determining, *inter alia*, the total monies which were spent on its development and how these sums are broken down”.

“The Auditor General should then be required to submit his findings to Parliament. The findings should include a final determination as to the equities and liabilities of each of the entities that are parties to the NEWTOWN Heads of Agreement”.

It should also be noted that Clause 7 of the NEWTOWN Heads of Agreement provides as follows:

“Any question arising as to whether any instructions, matter or thing has given rise to a cost overrun shall be determined by the Project Quantity Surveyor and if the parties do not agree with the Project Quantity Surveyor, the matter shall be referred to and finally resolved by the Project Adjudicator.” (Page 54 of the Report).

ISSUE #8 – The intended meaning of the statement as to “value” which appears on Page 13 of the Report

The following statements were made on Page 13 of the Report regarding the subject of “value”:

“Overall, the Office of the Contractor-General (OC-G) believes that value for money was largely obtained given the works which are completed on the ground. The process of agreeing upon payments for unchanged items was fairly straightforward. The contractor indicated the labour and material unit cost for each item of work included in the contract. Payment was made by measuring the work done, and by applying these unit costs, plus overhead and profit. Varied items were somewhat different, because each item requires negotiation before agreeing on the unit prices to be adopted. Applying actual market prices, plus established or agreed labour rates, produced these unit prices”.

Challenge Made

A number of media stories and personalities have questioned the OCG’s meaning of the phrase: “value for money was largely obtained given the works which are completed on the ground”. Others have elicited their own meanings from the statement. On 2006 July 21, the Leader of the Opposition, Mr. Bruce Golding, also wrote to the OCG to seek clarification of the statement.

In all of these instances, the inadvertent but inaccurate assumption appears to have been made that what was being conveyed by the OCG was that the Sandals Whitehouse Hotel Project represented excellent economic value for taxpayers’ money.

OCG’s Response and Clarification

The OCG’s statement must be interpreted in the context within which it was placed. It should not be read and was never intended to be read as a standalone sentence. Please carefully read the statement together with the sentences which follow immediately thereafter. When this is done, it will become readily evident that there is a clear discourse which speaks to the process of agreeing payments with the contractor for work which was completed upon the Project. This unequivocally sets the context within which the sentence as to “value” was made and was intended to be interpreted.

The OCG's statement as to "value" was not based upon economic evaluations or indicators but rather upon the basis of work which was certified as completed by the Quantity Surveyor. The OCG's assessment as to "value" was an accounting one. It was not an economic one.

The objective of the assessment was to determine whether there was evidence that the payments which were made on the Project could be correlated with work which was certified as being done. It is in this context that the determination was made that there "was value ... on the ground".

Nowhere in the Report was any attempt made by the OCG to opine on the issue of the economic value of the Project or to justify in any way the reasons for the cost overrun which was sustained thereon. In point of fact, the Recommendations which were made in the OCG's Report have made it very clear that the OCG has reserved its opinion on this very critical issue. On page 72 of the Report, the following Recommendation was made. It speaks for itself.

"We would therefore respectfully recommend that the UDC, in its capacity as the Project Manager, with the assistance of the Quantity Surveyor, be mandated to produce a comprehensive report detailing, *inter alia*, the rationale and justifications for the changes and cost overruns which were occasioned to the project, the specific authorizations which accompanied them and the persons to whom those authorizations were attributable"

Substantiation of OCG's Position

- (a) See QS Draft Final Account Summary¹⁸
- (b) See Table 5 (Page 52 of the Report)
- (c) See Payment Certificate # 38¹⁹

¹⁸ See Appendix 9 for copy of final account summary

¹⁹ See Appendix 18 for copy of Certificate # 38

ISSUE #9 – The award of contracts to Appliance Traders Ltd. (ATL)

The Report has concluded that there was, *inter alia*, a conflict of interest, an absence of transparency and a lack of competition in the award of certain contracts, inclusive of a consultancy contract, which was awarded to Appliance Traders Limited.

Challenge Made

DunnCox has disagreed with the OCG's position. Further, in a statement which was placed in the Observer newspaper of 2006 August 14, Gorstew claimed that "*for the contract with Ackendown, for the provision of kitchen and laundry equipment, the process of tendering was in accordance with accepted procedures.*"

OCG's Response

The OCG reiterates its positions as are outlined above.

Additionally, the OCG is of the view that the award of the consultancy contract to Appliance Traders, by NEWTOWN, breached, *inter alia*, the Government of Jamaica Procurement Procedures and Guidelines.

Also, the award of a supply and installation contract to Appliance Traders, by NEWTOWN, was, *inter alia*, unethical and amounted to a conflict of interest. The award also breached the Government's Procurement Procedures and Guidelines.

Substantiation of OCG's Position - The Consultancy Contract – J\$3.4m

The contract was awarded to Appliance Traders "to provide design and consulting services for food and beverage service, laundry equipment and cold/dry storage equipment" for the hotel. Appliance Traders provided a quotation for this service, reportedly at the request of the UDC. The UDC indicated by letter²⁰, dated 2006 October 6, that Appliance Traders was "*recommended by Gorstew Ltd. based on the Technical Services Agreement.*"

²⁰ See Appendix 19 for UDC letter of 2006 Oct. 6

Whilst providing the requested quotation/ Pre-Contract Fee Proposal for consultancy services, by letter dated 2001 April 9, Appliance Traders also indicated that “we will also be providing at a later date a firm turn-key quotation for the project.” This qualification is regarded, by the OCG, as inappropriate and appears to have set the stage for the award of the Supply and Installation contract to ATL.

Based upon the stated (below \$4 million) value of the contract, it is the OCG’s finding that the contract could have been awarded without reference to the National Contracts Commission (NCC). However, it could only be so awarded if it were subjected to competition, which it evidently was not, in breach of the then existing Guidelines.

If it was the intention of the UDC, who acted on behalf of NEWTOWN, to have the contract awarded on a “sole source” basis, it should have first sought the NCC’s approval to do so. As at the time of the purported signing of the contract, on 2002 September 1, the applicable provisions of the Ministry of Finance & Planning’s Circular #17, dated 2002 May 15, made it very clear that procuring entities could only “employ the sole source method of procurement in the acquisition of goods, services and construction works for contract values that are *less than \$1,000,000*”. The subject contract was valued at J\$3.4 million. There is no evidence, however, that the intended procurement was approved by the NCC.

Substantiation of OCG’s Position – The Supply & Installation Contract – (US\$3.31M)

It appears that this contract was awarded to Appliance Traders, by NEWTOWN, through competitive tender. Documents provided indicate that three (3) tenders were received and evaluated.

However, there is no evidence to show that the procurement opportunity, given that the contract was valued over J\$4 million, was advertised in the national newspapers or that NEWTOWN was exempted from so doing by the NCC. Additionally, the contract was not endorsed by the NCC and approved by the Cabinet (since it was over \$15 million in value), prior to award, as was required. The failure to satisfy these requirements, which were also applicable to the Project’s other consultancy contracts which were in excess of \$4 million and/or \$15 million in value, constituted serious violations of the Government’s Procurement Procedures and Guidelines.

Documents reviewed indicate that Nevalco had recommended to the UDC that the Appliance Traders proposal should be accepted, thus suggesting that the UDC acted on NEWTOWN's behalf in engaging or recommending the engagement of Appliance Traders.

Appliance Traders was allowed to bid in the tender process which was aimed at choosing a contractor to supply and install "food service, laundry and hot water equipment" on the Project. This was despite the fact that Appliance Traders, itself, had been contracted as consultants to design the subject equipment. As a term of its tender, Appliance Traders had also proposed that it would rebate those of its fees which were payable for its consultancy services were it to be awarded the supply and installation contract.

The referenced procedures were adopted by the UDC, through the project manager, Nevalco. It is the OCG's view that this constituted an inappropriate, unfair and unethical practice. Allowing a Consultant to first design a system and then to subsequently permit it to participate in the tender process to supply same cannot guarantee equity and fairness. Such a process gives the designer an unfair advantage as it may well chose to skew the designs and specifications to match its own product line. It also places the evaluators of the tender in a position where objectivity cannot be guaranteed. It is the OCG's opinion that such a practice only serves to undermine the basic tenets of the public sector procurement process and, in this instance, raises very serious concerns given ATL's qualification of its consultancy proposal.

The fact that ATL was willing to give up its consultancy fees, for the more lucrative supply and installation contract, is wholly irrelevant. This clearly constituted a patent conflict of interest of which the UDC should have been well aware.

Government Forensic Audit Team's Position

It is instructive to note that the Government appointed Forensic Audit Team's report has concluded, *inter alia*, as follows:

(a) General Consultancy Contracts

"... it should be pointed out that obtaining these competitive fees does not justify the circumvention of any relevant procurement rules and guidelines." (Executive Summary; Page 2)

(b) Supply & Installation Contract

“The Audit Team considers this arrangement inappropriate as Appliance Traders Limited should have been contracted through Ashtröm Building Systems as a Nominated Sub-Contractor and not contracted by the client.” (Section 2 – 12)

SYNOPSIS OF UDC POSITIONS AND OCG RESPONSES THERETO

The UDC has expressed certain positions regarding two (2) main issues.

UDC ISSUE A – The UDC’s denial that it deliberately withheld information from the OCG

OCG’s Position

On Page 63 of the Report, the OCG has concluded as follows: “We are not satisfied with the documentation which was made available to us by the UDC and which should have facilitated, but did not facilitate, an understanding of the chronological sequence of operations and events in the implementation and execution of the project, particularly as they related to the significant changes which took place in the budget and Scope of the Works of the project and what had to be the deliberate decisions of the parties which attended those changes. *This has led us to believe that there was a deliberate attempt to conceal information regarding certain relevant decisions as well as the basis upon which those decisions were made*”.

The statement speaks for itself. As is stated elsewhere in this Addendum, it must be emphasized that at the very outset of its investigation into the Project, the OCG had made a general request of the UDC for it to produce all files and document which were related to the Project. The OCG believed then, and still believes now, that this request was never fully complied with by the UDC.²¹

Given what they had come to regard to be the inadequacy of the documentation which was provided by the UDC, the OCG’s Inspectors, whilst conducting site visits to the UDC’s Office, had to resort to the making of separate requests for specified and named documents to be

²¹ See Appendix 20 for copy of 2006 September 25 OCG letter to PAC

supplied. Included in these specified lists of documents were written requests for the Project site meeting minutes, and the cash flow and implementation schedules.²²

The UDC has conceded that these documents were specifically requested by the OCG, in writing, but were never produced until after the Report was tabled in Parliament.

Challenge made

- (a) The UDC, in its letter to the OCG of 2006 July 24, claimed that it had “completely overlooked the fact that they (the documents) had not actually been sent”. The UDC has also publicly stated elsewhere that its failure to meet the OCG’s request was “an oversight”.
- (b) The UDC further claimed that the OCG should have written to follow-up on the request but did not do so.

OCG’s Response

- (a) The UDC, in its letter to the OCG, dated 2006 July 24, has acknowledged its failure to submit the referenced documents in a timely manner in compliance with the OCG’s request.
- (b) Further, on 2006 April 18, the OCG requested, in writing, certain particulars in respect of the 24 Consultants who were engaged on the project. The requested information was submitted by the UDC, to the OCG, in spreadsheet format, on 2006 May 24. However, there was an inexplicable failure upon the part of the UDC to provide some or all of the elements of the requested information for three (3) of the named Consultants²³.

To be specific, no information was provided for Art Inc. and there was no revised or final contract sum indicated for Charsal Marketing. Further, and quite significantly, none of the requested information was provided by the UDC in respect of the Appliance Traders Limited contract/contracts.²⁴ The omitted information was only provided by the UDC on 2006 October 6, during the course of the PAC Hearings, and only after the OCG had written again, on 2006 September 27, requesting same.

²² See Appendix 20

²³ See Appendix 21 for copies of spreadsheet and related email

²⁴ See Appendix 21

(c) The OCG's statement, made at Page 63 of the Report, was, and continues to be directed at what the OCG regards to be the failure by the UDC to provide adequate documentation to the OCG "... which should have facilitated, but did not facilitate, an understanding of the chronological sequence of operations and events in the implementation and execution of the project, particularly as they related to the significant changes which took place in the budget and Scope of the Works of the project and what had to be the deliberate decisions of the parties which attended those changes."

UDC ISSUE B – The UDC's stated position that the Public Sector Procurement guidelines, *inter alia*, did not apply to the consultancy contracts which it had awarded

OCG's Position

In its response to the Conclusions which were reached in the Report that it had awarded consultancy contracts, *inter alia*, in violation of the Government's Procurement Policy and Procedures, the UDC has made a number statements, some of which were issued to the media. These statements are false, erroneous, conflicting and/or incapable of credible substantiation.

The OCG has concluded that the UDC's statements have been made in an effort, on its part, to (a) avoid culpability for its unequivocal and flagrant breach of the relevant Government Procurement Procedures and Guidelines and, (b) to deliberately mislead the public into believing that it had not breached the said Procedures and Guidelines.²⁵

Substantiation of OCG's Position

(a) In a statement which was published in The Gleaner newspaper on 2006 September 6, the UDC claimed that the Project's Consultants were "*rehired prior to the publishing of the Guidelines for Public Sector Procurement in October 2000*".

The UDC's own records have proven this to be a false and misleading statement. By way of letter, dated 2006 September 6, the OCG advised the UDC that it, the OCG, had in its possession written evidence which unequivocally confirmed that Jentech Consultants

²⁵ See Appendix 22 for copy of OCG letter to UDC dated 2006 Sept 14

Limited²⁶, Nevalco Consultants Limited²⁷, Environmental Solutions Limited²⁸, Hospitality Purveyors Inc. (HPI)²⁹, Smith Warner International³⁰ and Goldson Barrett Johnson³¹, were all offered engagements as project Consultants, by the UDC, by way of letters which were dated 2001 October 24.

Further, the NEWTOWN Board Meeting Minutes of 2001 October 1, reportedly states that “it was resolved that the UDC, as Project Manager, would (proceed to) negotiate and agree the Consultancy Contracts within a total amount not exceeding US\$6.5 million”. This would clearly suggest that, contrary to what the UDC has stated, as at 2001 October 1, the Project’s Consultancy contracts were not yet negotiated, much less awarded.

The UDC was directed by the OCG, by way of letter dated September 6, to produce documents to substantiate its public statement that the Consultants were “rehired prior to ... October 2000”. As at the date of the writing of this Addendum, the UDC has failed to substantiate its statement.

- (b) In its letter of 2006 July 18, to the Contractor General, the UDC asserted that the “... *National Contracts Commission, although coming into effect in 2000, did not issue its guidelines until 2001 and in doing so made reference to Contractors only and not to the appointment of Consultants*”.

This is an erroneous statement. The Guidelines or GPPH were, from their very inception, expressed to govern contracts for the procurement of goods, works and services. Moreover, and contrary to what the UDC has stated, the GPPH, in its original edition of May 2001, makes abundant and specific reference to procedures for the procurement of consulting services. The inaccuracy of the UDC’s assertion was pointed out to it, by the Contractor General, by way of letter dated, 2006 July 18. The UDC, to date, has not in any way challenged the OCG’s communication.

²⁶ See Appendix 23 for copy of UDC letter to Jentech Consultants Ltd.

²⁷ See Appendix 24 for copy of UDC letter to Nevalco Consultants Ltd.

²⁸ See Appendix 25 for copy of UDC letter to Environmental Solutions Ltd.

²⁹ See Appendix 26 for copy of UDC letter to Hospitality Purveyors Inc.

³⁰ See Appendix 27 for copy of UDC letter to Smith Warner Int’l

³¹ See Appendix 28 for copy of UDC letter to Goldson Barrett Johnson

- (c) In its Statement to the Gleaner of September 6, the UDC categorically stated that the Consultants were rehired “prior to ... the establishment of the relevant (NCC/UDC) Sector Committee in August 2001”.

This is a false statement. The NCC/UDC Sector Committee was in fact launched one year earlier, on 2000 August 11, *and more than a year prior to the actual hiring of the Projects Consultants*.

It is instructive to note also that the NCC/UDC Sector Committee’s launch date was one which the OCG’s records have disclosed was formally proposed, in writing, by Mrs. Marjorie Campbell, the then UDC General Manager. Mrs. Campbell currently serves as the UDC’s President and Chief Executive Officer and was so serving at the time that the UDC’s 2006 September 6 statement was published in the media.

When the inaccuracy of the UDC’s statement was formally brought to its attention by the Contractor General by way of a letter dated 2006 September 6, the UDC conceded same in its letter of reply to the OCG, dated 2006 September 13. The UDC, however, did not offer an explanation or reason as to why it had communicated, to the public, a statement which it must have known to be false.

- (d) In the UDC’s letter of September 13 to the Contractor General, which was copied, *inter alia*, to the Chair of the Public Accounts Committee (PAC) of Parliament, the UDC asserted that “... *the interim Guidelines for procurement issued in 2000 stated that they were ‘General Guidelines for Public Sector Agencies entering into **works** contracts’*”. (UDC’s emphasis).

This, too, is another false statement. If it is not corrected, it will succeed in substantially misleading the PAC and, by extension, the members of the public.

Contrary to what the UDC has stated, the 3rd paragraph of the referenced Interim Guidelines, which were issued by the Ministry of Finance and Planning on 2000 October 24, clearly provides as follows:

“Procuring entity recommendations for contract award for all contracts (**goods, services and works**) with an estimated value of J\$4,000,000 and above, shall be referred to the National Contracts Commission for review and approval”. (OCG’s emphasis).

- (e) In Sect 2-3 of the Sandals Whitehouse Forensic Report, the following statement is made: *“The matter of the requirements for NCC approval ... for Consultants ... engaged by ANDCO/UDC was discussed at ANDCO (NEWTOWN) board meeting held on October 1, 2001. The Chairman, Dr. Vincent Lawrence, indicated that the issue was raised with the NCC and (that) it was agreed that there would be no requirement for these ... approvals for this Project”.*

The OCG, which, by law, is required to provide the NCC with its support resources, has found no record or meeting minute of any such alleged decision of, or agreement by, the NCC, in its repository of formal NCC meeting minutes’ records.

It is instructive to note that the Third Schedule to the Contractor General Act clearly sets out the procedures which the NCC is bound by law to comply with in its convening of meetings, the manner in which it must arrive at its decisions in such meetings, as well as the requirement for its decisions to be documented in formal meeting minutes.

- (f) The UDC, in its letter of 2006 July 18 to the Contractor General, asserted, *inter alia*, that *“it is not the Corporation’s policy or modus operandi to flaunt or breach the Government’s procurement guidelines and (that) these policies are faithfully adhered to by the Corporation and its staff in all our projects.”*

Nothing could be further from the truth. On 2006 September 15, in a letter which was addressed to the Contractor General, the UDC’s President and Chief Executive Officer wrote admitting “that the UDC Procurement Committee became fully operational in June 29, 2006”. This admission was made by the UDC in its submission of its OCG Quarterly Contracts Award (QCA) Report, a requirement which was mandated by the OCG for all Public Bodies, effective with contracts which are awarded as of 2006 May 1.

To understand just how serious the implications of the UDC's admission is, it must be grasped that the establishment and operation of a Procurement Committee by every Public Body/procuring entity, is a critical, mandatory and in-dispensable element of the Government's Procurement Procedures Handbook (GPPH), which was introduced into operation in July 2001.

In point of fact, Section 1.5.2.3 of the GPPH provides, *inter alia*, that "the Procurement Committee (of a procuring entity) is mandated to effect objective evaluation processes with respect to quotations, tenders and requests for proposals", "to maintain proper records of committee meetings, including records of procurements" and to "ensure compliance with relevant (procurement) policies, guidelines and procedures."

Consequently, if the UDC did not have a "fully operational" Procurement Committee in place for the past 5 years, how then could it have categorically stated that "the Government's procurement guidelines and ... policies are faithfully adhered to by (it) and its staff in all our projects"?

What is clear is that because the UDC, by its own admission, had no "fully operational" Procurement Committee in place until "June 29, 2006", there is now significant doubt as to whether its procurement and contract award practices, over the years, have been executed in full compliance with the requisite Government Procurement Procedures and Guidelines.

The foregoing, (a) through (f), among other considerations, has led the OCG to conclude that since the OCG's Report was tabled in Parliament in July 2006, the UDC has embarked upon a campaign to deliberately mislead the recipients of the referenced communications into believing that it has not breached the Procurement Guidelines in its conditional engagement of Consultants on the Sandals Whitehouse Hotel Project.³²

³² See Appendix 29 - OCG Timeline Notes summarizing Government of Jamaica Procurement Procedures/NCC Regime development and procurement of consultants on Sandals Whitehouse Hotel Project

OFFICE OF THE CONTRACTOR-GENERAL
Addendum to Report of Investigation
Conducted into the Sandals Whitehouse Hotel Project

APPENDICES