

CHARTER FOR DENARAU ISLAND

PREAMBLE

- A. This charter is formulated by Tabua Investments Limited and Dubbo Limited, Barton Limited, Tainui Limited, Matatua Limited, Aotea Limited, Te Arawa Limited, Tokomaru Limited, Richmond Limited and Denarau Golf & Racquet Club Limited (**'Founders'**), all of whom (except for Tabua Investments Limited) have acquired an interest directly or indirectly, as owner or as lessee from the State or NLTB, in one or more of the parcels of land comprising Denarau Island as shown on the Structure Plan.
- B. The Founders will become the holders of all the issued shares in DCL and, accordingly to their respective shareholdings, appoint the persons who are to comprise the board of directors of DCL at that time.
- C. Over time, as interests in land are disposed of to other persons, other persons will become (legally or beneficially) shareholders in DCL, with or in substitution for the Founders, depending on the nature and circumstances of each disposition.
- D. Essential bases on which, as amongst themselves, the Founders agreed to pursue, as a group, acquisition of the Island, were that -
- (a) the Island would be developed, managed and administered on an integrated basis;
 - (b) DCL would be the legal entity which would undertake the control, management and administration functions acting, for most purposes, like a municipal council, and its shareholders would pay the cost of its operations on an equitable basis;
 - (c) DCL would be entitled for a fee to provide certain services to persons on the Island, the cost of which services would not be borne by the shareholders generally;
 - (d) a document of this kind would constitute a basic reference document in relation to the ways in which the things referred to in paragraphs (a) to (c) would be done;
 - (e) other documents expanding on matters provided for in this charter and containing matters of detail (in particular DCL's articles of association and by-laws provided for in them) would be tested against this charter for basic consistency with it; and
 - (f) this charter would be capable of amendment, but only by a special resolution of the shareholders of DCL.
- E. The Founders have agreed upon provisions which will constitute DCL's memorandum and articles of association from at or about the time they first acquire their respective interest in land on the Island and those constituent documents are to be taken as satisfying the test mentioned in paragraph D(e).

OPERATIVE PART

1. Definitions

In this document the following terms have the following meanings:

buildings	(a) fixed improvements that are enclosed by walls and/or are roofed (including bures and, though not roofed against rain, pergolas); (b) wharves and jetties (including both the parts on or affixed to dry land and the parts over or in water); (c) marina improvements that are for day to day purposes effectively permanent, notwithstanding all or part of them may be floating and they may not be fixtures in the true sense (such as, but not limited to, pontoons and gangways attached to them, mooring buoys and the means by which they are anchored to the seabed); (d) tennis courts;
Charter	this document as amended from time to time.
DCL	Denarau Corporation Limited, a company incorporated in Fiji.
DRC	the development review committee established by DCL.
Island	Denarau Island, Fiji, as shown on the Structure Plan.
land	freehold or leasehold land which is part of the Island (and includes any area of water or waterway within or adjoining the Island leased or held under license from the State or NLTB).
Neighbourhood	any part, so designated on a Subsidiary Plan, of a Residential Precinct.
NLTB	Native Land Trust Board, constituted under the laws of Fiji.
owner	an owner or lessee of the kind described in clause 3 and, unless specifically excluded in a particular context, includes an occupier of relevant land.
person	a natural person, firm, unincorporated body of persons, body corporate of any kind, any government and any governmental body, authority or agency (and includes the NLTB).
Precinct	an area so shown on the Structure Plan or a Subsidiary Plan, designated by one of the Precinct names specified in clause 4.1.
Permitted Use	a use determined by reference to clause 4 to be a permitted use.
special resolution	a resolution passed at a general meeting of shareholders of DCL - (a) of which at least 21 days' written notice has been given to shareholders;

(b) by a majority of at least 75% of the votes actually cast at that meeting, by shareholders voting in person or by proxy.

Structure Plan the plan of the Island annexed to this Charter (including the schedules endorsed on or annexed to that plan) showing the Precincts.

Subsidiary Plan a plan prepared and certified (on its face) by the Developer to be such a plan and which -

(a) shows all or part (as the case may be) of the Future Development Precinct to be another Precinct or a Residential Precinct to be a Neighbourhood;

(b) on its face shows the Permitted Uses for the Precinct or Neighbourhood;
and

(c) is deposited with DCL.

transfer transfer, assignment, grant, lease or sub-lease.

Expressions defined in the Articles of Association of DCL have the same meanings in this Charter.

2. Charter - Creation, object and amendment

The Charter -

(a) deals with the structure of and is a scheme for the development, management and operation on an integrated basis of the Island as a resort with a variety of components;
and

(b) may be amended only by special resolution (subject to any limitations expressed in the articles of association of DCL).

3. Charter as a covenant

The remaining provisions of the Charter consists of covenants which are -

(a) intended to benefit and bind -

(i) the owners of the freehold land;

(ii) the lessees from the State of the State land; and

(iii) the lessees from the NLTB of the land vested in or under the control of that board,

which from time to time comprises the Island, and their respective successors in title;

- (b) created having regard (amongst other things) to the provisions of Sections 55 and 56 of the Property Law Act Cap 130 of Fiji and with the intent that those provisions apply to them.
- (c) subject to their being put in proper form (and for that purpose being expressed in the negative to the relevant extent) and being capable of being so registered, are to be registered as a covenant (or covenants) on -

- (i) the titles to the parcels of freehold land; and
- (ii) leases from the Crown and NLTB of the parcels of other land,

together comprising the Island, to the intent that they operate as restrictive covenant on the titles and leases.

4. Precincts (and Neighbourhoods) and use of land

4.1 The following are the names of the Precincts and ways in which, subject to any other provision, land in a Precinct can be used -

(a) **Hotel Precinct**

- (i) Primarily development and operation of accommodation, food and beverage and convention activities for an international-standard resort hotel and condominiums, timeshare and individually owned apartments;
- (ii) Secondary activities are permitted, but are restricted to the provision of services and operations customarily undertaken in conjunction with a hotel (such as sports and recreation, convenience goods, souvenir, retailing, hairdressing, travel desk and gaming facilities) and activities will cease to be secondary on a per hotel basis if the aggregate floor area from or in which they are conducted exceeds 25% of the gross floor area of the buildings in the particular hotel.

(b) **Residential Precinct**

- (i) Primarily the development and operation of residential facilities to service visitors and residents of the Island
- (ii) Secondary activities are permitted, but are restricted to the non-commercial provision of services (and specific secondary activities for a Neighbourhood will be any secondary activities specified in detail on a Subsidiary Plan).

(c) **Golf & Racquet Club Precinct**

- (i) Primarily the development and operation of the Denarau Golf & Racquet Club;
- (ii) Secondary activities are permitted, but are restricted to the provision of services appropriately complementary, but only to an extent identifiably ancillary, to the Golf & Racquet Club facilities (such as restaurant, bar, sports specialist and souvenir retail, entertainment and gaming facilities).

(d) **Commercial Precinct**

- (i) Primarily the development and operation of commercial facilities to service all persons lawfully on the Island (including retailing, food outlets, restaurants, gaming facilities, bars, entertainment, offices, health and medical services, travel reservations, transit operations and bus and car parking, motor-vehicle fuel station/garage and air terminal facility).
- (ii) Secondary activities are permitted, but the provision of visitor and permanent residential accommodation is restricted to less than 25% of the total floor area of all buildings in the Precinct.

(e) **Marina Precinct**

- (i) Primarily the development and operation of commercial and recreational boating facilities and services (such as ships chandlery, boat storage and repair, marine engineering and marine related trades, boat-fuel storage and supply), aquarium and motor-vehicle fuel station/garage.
- (ii) Secondary activities are permitted, but are restricted to the provision of services relating to boating activities (such as passenger terminal facility, passenger bookings and food and beverage).

(f) **Future Development Precinct**

Maintenance of existing improvements and flora and use of existing facilities while use is not otherwise designated.

(g) **Common Area Precinct**

- (i) Primarily the development and maintenance of open space and access through and to other parts of the Island for the benefit of all persons lawfully on the Island, and installation, maintenance and operation of utilities.
- (ii) Secondary activities are permitted, but are restricted to the provision of facilities and infrastructure in support of the primary activity (e.g. maintenance depot).

4.2 Notwithstanding clause 4.1 -

- (a) a path or other structure (under, on or above ground) for provision of access across part of a Precinct to and from development in another Precinct is a permitted use in all Precincts; and
- (b) construction and use of a helipad is a permitted use in all Precincts except Residential.

4.3 Areas within a Residential Precinct may be determined as Neighbourhoods.

4.4 The Developer in respect of the land of which it is the holder of registered title:-

- (a) has the sole right to determine an area within a Residential Precinct as a Neighbourhood;
- (b) subject to paragraph (c), may make that determination at any time;
- (c) must make that determination before an area or part of an area which the Developer intends to be a Neighbourhood is transferred to another person or, if it is to be retained and developed by the Developer, construction begins; and
- (d) must make the determination by a Subsidiary Plan.

4.5 The uses permitted in a Neighbourhood are those, consistent with clauses 4.1(b) and 4.2(b), shown for the Neighbourhood on the relevant Subsidiary Plan, which may specify that only a particular kind of residence or residential facilities may be built in the Neighbourhood.

4.6 Subject to any other provision, land in a Precinct or Neighbourhood may be used for any or all of the uses permitted within that Precinct or Neighbourhood.

4.7 A use which is not permitted within a Precinct or Neighbourhood is prohibited in that Precinct or Neighbourhood.

5. Foreshore Protection

5.1 Each owner on the Island is responsible for the general maintenance and cleanliness of the entire foreshore area (whether that area be freehold land, state land or native land) that fronts the owner's land.

5.2 All owners of land on the Island (whether or not their land fronts a foreshore area) will contribute in appropriate proportions to all costs not within clause 5.1 that are incurred or to be incurred for or for the doing of things fundamental to the protection of the Island such as tsunami or storm mitigation measures, the cost of constructing and maintaining retaining walls and foreshore protection bunds, reinstating erosion and undertaking any other environmental measures and which are accordingly to be accepted as expenditure properly for the benefit for all such owners.

6. Future Development Precinct - Allocations to other Precincts

- 6.1 (a) The land in the Future Development Precinct will be allocated to one or more of the other Precincts over time; and
- (b) The Developer -
- (i) has the sole right to allocate land in the Future Development Precinct to one or more other Precincts;
 - (ii) subject to paragraph (c), may make the allocation at any time;
 - (iii) must before a part of the Future Development Precinct is transferred to another person or, if it is to be retained and developed by the Developer, construction begins, allocate that part to a Precinct; and
 - (iv) is to make the allocation by a Subsidiary Plan.
- 6.2 Notwithstanding clause 6.1, such an allocation cannot have effect earlier than the time when the permitted use of the relevant land is also consistent with any relevant planning consent.
- 6.3 Notwithstanding any other provision, any land or interest in land acquired by DCL (by purchase or on lease) will be deemed to be in the Common Area Precinct from the date of its acquisition until it no longer is held by DCL and any such land then will be in the Precinct determined by the board of DCL as appropriate having regard to the use then proposed for it.

7. Development Consent

- 7.1 A development consent from DCL is required for any of the following on an owner's land -
- (a) erection, construction or installation of buildings or other things in the nature of fixed improvements which exceed 2 square metres in area and/or 2 metres in height;
 - (b) engineering works such as (but not limited to) foreshore stabilisation, laying of underground services, roadways, car parks and outdoor lighting but excluding normal maintenance, repair or replacement works;
 - (c) landscape works, including planting, pools, ponds, waterways, paths, walls and feature lighting, but not mere replacement of any of them with a thing which is of the same kind and scope and which otherwise meets the criteria in clause 7.5; and
 - (d) any signage external to a building (but including any mounted on a building).
- 7.2 A development consent from DCL also is required for the erection (and maintenance) of any signage along the public road external to and providing access to the Island and which relates to -
- (a) the premises on the Island of; or

- (b) the business conducted at or from the Island by; or
- (c) a service provided to persons (whether persons generally or of a limited class) who may be on the Island by

the owner for whose benefit the sign is erected or to be erected.

7.3 Appropriate drawings, specifications, work plan and programme are to be submitted to DCL for development consent.

7.4 The relevant owner must comply with changes to the proposed works or other conditions that DCL attaches to the development consent.

7.5 Applications are to be assessed by the DRC against the following general criteria -

- (a) The Island is to be developed and maintained as an international standard tourist destination offering a range of quality hotel, residential and recreational visitor experiences built upon excellence in standard of -
 - (i) facilities,
 - (ii) maintenance;
 - (iii) services; and
 - (iv) both the built and natural environment.
- (b) All development is to contribute positively towards establishing the Island as a premier international destination resort.
- (c) All development is to be undertaken in a manner sympathetic to the Island's unique landscape setting, cultural associations and architectural heritage.
- (d) Without limiting paragraphs (a) to (c), all development is to be undertaken in a way that will avoid, remedy or mitigate any adverse effects on the environment and ensure safe and orderly operation of the Island as a tourist resort.
- (e) Building form, materials and finishes are to be designed to integrate with their landscape setting and the Island's built environment.
- (f) Building height is to be restricted to a maximum of 2 storeys (ground floor and one upper floor) with a combined maximum height of 20 metres. This restriction shall not apply to architectural features or 3 storey construction approved by the DRC.
- (g) All buildings adjacent to the golf course must be set back at least 50 metres from the centreline of all fairways and centrepont of all greens and at least 30 metres from the back edge of all tees.
- (h) The existence (if relevant) of a planning consent from a governmental or local authority, or the conditions of or of a dispensation from such a consent.

- (i) By-laws determined by the Board of DCL pursuant to Articles of Association, not being inconsistent with the general criteria set out in Clause 7.5
- 7.6
- a) Obtaining a development consent does not amount to a dispensation from obtaining and complying with any relevant governmental or local authority planning consent.
 - (b) No Owner may apply for or obtain any governmental or local authority planning consent (including any conditions of or dispensation from a consent) which conflicts with the development consent given by DCL.
- 7.7
- Once a development consent has been issued, by DCL, it shall be irrevocable, provided that if construction has not begun within two years after the grant of the consent or such further period as DCL may by written notice permit, the development consent shall expire. The development consent may be renewed upon application to DCL, but such renewal shall be on such terms and conditions as DCL shall in its sole discretion allow.

8. Linkage of land and share ownership

- 8.1 No person can become by transfer the owner of land unless that person contemporaneously acquires shares in DCL or an interest in a body corporate which is itself a shareholder of DCL where, in each case, such shares, under DCL's Articles of Association, are designated as attached to the land concerned. However, this provision shall not apply:
- (a) in the case of land acquired by DCL for a permitted use in the Common Area Precinct or in another Precinct but for use in connection with its primary objects; or
 - (b) where the shares attached to that land are held by any B Shares Joint Owners.
- 8.2 No owner may transfer land unless contemporaneously -
- (a) if the transferor is not DCL, that person transfers such share or group of shares to the transferee of the land or otherwise ceases to be the holder of such share or group of shares; or
 - (b) if the transferor is DCL and the land is not or is not to be in the Common Area Precinct, the transferee becomes the holder by any means of a relevant group of shares.
- 8.3 No Owner may grant any sub-lease or other right of occupation to any person ("**Occupier**") in respect of any land (other than a licence granted for the purposes of a secondary activity in the relevant Precinct) unless contemporaneously thereto the Owner procures that the Occupier becomes bound to the provisions of this Charter by the execution of such documents as DCL shall require and the name of such Occupier is entered in the Contribution Roll.
- 8.4 Each Occupier must comply with the provisions of clause 8.3 as if it was an Owner and every transfer of any sub-lease or other right of occupation was a grant of such rights.

9. Access

Rights of access and use are all to exist throughout the Island according to the principles that -

- (a) subject to paragraphs (b) and (c), all persons lawfully present on the Island will have equal rights of access throughout the Island;
- (b) to the extent that there generally at a particular time is no limitation on the public entering various parts of hotel premises (including areas operated as ancillary to a hotel) no owner of land in the Hotel Precinct on which there is an operating hotel will, or will allow the operator to discriminate against those who are guests in another such hotel, in access to and use of the hotel. This provision does not limit:
 - (i) the right of the owner or the operator to designate certain areas, facilities and guest related services (such as, without limitation, swimming pools or sailing and other water craft) as for the use only of guests; or
 - (ii) the right of the owner or operator to offer marketing incentives, packages, frequent guest or club benefits to qualifying persons, and participate in programs, whether or not relating to any chain of which the owner or operator is a member
- (c) subject to the provisions of any State or Native Lease, owners of land may restrict the access of the general public to some or all of their land at all times or from time to time;
- (d) the Owners of land in the Golf & Racquet Club and Marina Precinct may not discriminate against the owners of land in the other Precincts, and invitees of those other owners, in relation to use of the facilities in the Golf & Racquet Club Precinct and Marina Precinct and for the purpose of this clause 9(d), “use” includes availability, timing, price and any other terms and conditions related to use; provided that nothing in this clause shall prevent.
 - (i) the right of the owner or operator in the Golf & Racquet Club Precinct to offer Denarau Golf & Racquet Club membership benefits to qualifying persons; or
 - (ii) the owners of land in the Marina Precinct from restricting access to provide secure berthage and maintenance facilities for marine craft
- (e) government representatives and police officers will have all the rights of access they have under Fiji law.
- (f) owners, lessees, or sub-lessees of land in the Residential Precinct may restrict access to all persons at all times or from to time, subject to the provisions of this Charter and the Articles of Association of DCL;
- (g) for the purposes of this clause 9, but without restricting the definition thereof, discrimination occurs:
 - (i) whether it is direct or indirect; or
 - (ii) whether it is intended or not intended; or

- (iii) if the effect of any act or omission by any owner (“the first party”) is to treat any other owner (“the second party”) less favourably than the first party treats or proposes to treat itself or any other owner or their invitee.

10. Enforcement

10.1 Without limiting any other right or remedy available to a relevant person at law or in equity, in the case of a breach by a person bound by this document of -

- (a) a provision of this document;
- (b) a relevant planning consent;
- (c) a relevant development consent;
- (d) the terms of a relevant lease from the State or NLTB;
- (e) the terms of a relevant sub-lease of all or any land held by the sub-lessor under a lease from the State or NLTB;
- (f) an obligation to pay money to any person where, in the reasonable opinion of DCL’s directors the failure to pay may result in that person being entitled to -
 - (i) take or sell (or procure the sale) in execution for the debt; or
 - (ii) terminate or forfeit; or
 - (iii) not renew or extend the term of,

a lease or sub-lease of the kind referred to in paragraph (d) and (e) or, though that person may not at law have such a right, may result in the doing of a thing which will or might adversely affect -
 - (iv) the standing of another such lease or sub-lease; or
 - (v) to the detriment of the Island as a whole, any relationship relevant to the continued good standing of the Island and lessees generally under such leases or sub-leases,

DCL may at its option, if the breach is capable of rectification, give 14 days’ notice to the party committing the breach to rectify it, failing which (or in case of urgency) it may without notice rectify the breach at the cost (including all ancillary or incidental costs) of the person in breach and, for that purpose, may enter on the relevant land with or without notice, provided that in the case of urgency the requisite notice need not be given.

10.2 That right of entry includes a right to enter with or by DCL’s officers, employees, contractors and sub-contractors (and their respective officers and employees) with such plant, equipment and other chattels and materials as are necessary, as to which the board of DCL is the sole judge.