

GOVERNMENT OF FIJI

DENARAU (NADI RIVER) DEVELOPMENT DECREE 2011 (DECREE No. 3 of 2011)

IN exercise of the powers vested in me as President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority of Fiji Decree 2009, I hereby make the following Decree -

PART 1 - PRELIMINARY

Short title and commencement

1. – (1) This Decree may be cited as the Denarau (Nadi River) Development Decree 2011.
- (2) This Decree comes into force on the date appointed by the Minister by notice in the *Gazette*.

Interpretation

2. In this Decree, unless the context otherwise requires -

"Chief Registrar" means the Chief Registrar of the High Court of Fiji;

"demised area" means approximately 26.8883 hectares of soil under the waters at the entrance of the Nadi River and upstream in the vicinity of Denarau Island, and more particularly described as Lot 2 on Survey Office Plan 3265 (SO 3265) over which a special licence was issued by the Director of Lands with effect from the 1st day of January 1999.

"Director of Lands" means the person holding all State Lands on behalf of the State under section 4(1) of the State Lands Act [Cap. 132];

"instrument of title" has the meaning as defined in the Land Transfer Act [Cap. 131], and includes any agreement to lease, or any lease or any licence or special licence issued by the Director of Lands, and more particularly includes the special licence No. 1330 in relation to the demised area issued by the Director of Lands to Port Denarau Marina Limited, for 20 years with effect from the 1st day of January 1999;

"Minister" means the Minister responsible for Tourism;

"person" or "persons" shall include any company or association or body of persons, corporate or unincorporated;

"Registrar of Titles" or "Registrar" means the Registrar as defined in section 2 of the Land Transfer Act [Cap. 131];

"State" means the Republic of Fiji, and includes any official, Minister or employee of the State;

Object of the Decree

3. - (1) The objects of this Decree are -

- (a) to promote Fiji as a premier tourist and travel destination, including as a destination for yachts;
- (b) to liberalise access to the demised area for the purposes of tourism, recreation or for any non-commercial or personal use;
- (c) to enable unrestricted access to the demised area by all persons, including tourists, hotels and businesses engaged in tourism, recreation or for any non-commercial or personal use; and
- (d) to give effect to such other matters, as provided in this Decree.

(2) The Decree achieves these objects by -

- (a) providing for the cancellation of any lease, licence or any other instrument of title in relation to the demised area;
- (b) providing for any interest in the demised area to be absolutely vested in the Director of Lands for and on behalf of the State; and
- (c) allowing for unrestricted access and use of the demised area by any person.

PART 2 - VESTING OF INTEREST IN DEMISED AREA

Vesting of interest in the demised area

4. - (1) Notwithstanding any claim by any person under any instrument of title, lease or licence, the interest in and ownership of the demised area shall immediately upon the commencement of this Decree, wholly and absolutely vest in the Director of Lands for and on behalf of the State, without any compensation being payable to any person.

(2) The absolute vesting of all interest in the demised area in the Director of Lands under subsection (1) shall, upon the commencement of this Decree, override and nullify any other interest in the demised area existing in any other person or body by virtue of any written law, and to the extent of any inconsistency with this Decree, and any other written law, this Decree shall prevail.

Cancellation of any existing interest in the demised area

5. - (1) Any instrument of title, including any lease or licence issued by the Director of Lands, prior to the commencement of this Decree, in relation to the demised area, shall, immediately upon the commencement of this Decree, be deemed to have been cancelled, without any compensation being payable to any person.

(2) The cancellation of any instrument of title by virtue of subsection (1) shall, immediately

upon the commencement of this Decree, be notified by the Director of Lands by way of a written notice issued to any person having any interest prior to the commencement of this Decree in the demised area.

(3) The cancellation of any instrument of title under subsection (1) shall be effected by the Director of Lands in their respective records, and the Registrar of Titles shall make such entries to give effect to the above provisions or as may be directed by the Minister.

(4) Nothing in the State Acquisition of Lands Act [Cap. 135], State Lands Act [Cap. 132], Land Sales Act [Cap. 137], Land Transfer Act [Cap. 131], Native Lands Act [Cap. 133], Native Land Trust Act [Cap. 134], or any other written law shall invalidate or affect the vesting of absolute interest in the demised area in the Director of Lands and the cancellation of any instrument of title issued or existing prior to the commencement of this Decree.

(5) No further consent, permit, certification; ratification, fees or charges, registration fees of any kind, filing fees, lodgement fees, stamp duties or fees of any kind whatsoever shall be required to be given or paid in respect of any document or instrument sought to be registered for the purpose of evidencing, recording or effecting the matters referred to in subsections (1) and (2) notwithstanding any provision to the contrary in any written law.

(6) The vesting of absolute interest in the demised area in the Director of Lands, and the cancellation of any interest in the demised area existing prior to the commencement of this Decree, by virtue of this Decree, shall be valid and effective notwithstanding any non-compliance with any written law.

PART 3 - USE OF DEMISED AREA

Use of demised area

6. - (1) Subject to subsection (2), any person may, whether individually or in a group, access and use the demised area for the purposes of tourism, recreation or for any personal or non-commercial use, without obtaining any permit or approval from any person and without the payment of any monies or any compensation to any person, for the use of the demised area.

(2) Any person who intends to access and use the demised area for any commercial use, or to install, erect, construct or build any structure of any sort whatsoever in the demised area, must apply for and obtain the prior written approval of the Minister.

(3) Any person who, prior to the commencement of this Decree, -

(a) had installed, erected, constructed or built any structure of any sort whatsoever in the demised area, or

(b) had access to and use of the demised area for commercial use,

must apply for and obtain the written approval of the Minister for any such structure in the demised area, and for the continued access or use of the demised area, upon the commencement of this Decree.

(4) Any person who –

- (a) obstructs or prevents any person from accessing or using the demised area;
- (b) attempts to obstruct or prevent any person from accessing or using the demised area; or
- (c) solicits a person to obstruct or prevent or to attempt to obstruct or prevent any person from accessing or using the demised area,

shall be guilty of an offence and shall be liable on conviction, in the case of a body corporate, to a fine not exceeding 100 penalty points; or in the case of a natural person, to a fine not exceeding 10 penalty points or to a term of imprisonment not exceeding 2 years, or both.

PART 4 – MISCELLANEOUS

Certain decisions not to be challenged

7. - (1) No court, tribunal, commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain any proceeding, claim, challenge or dispute by any person or body which seeks or purports to challenge or question:

- (a) the validity, legality or propriety of this Decree;
- (b) the validity, legality or propriety of the cancellation of any leases, licences or other instruments of title in relation to the demised area and the vesting of interest in the demised area in the Director of Lands; or
- (c) any decision of any Minister or any State official or body, made under this Decree.

(2) Any proceeding, claim, challenge or dispute of any nature whatsoever in any court, tribunal, commission or before any other person or body exercising a judicial function, in respect of any of the subject matters in subsection (1) that had been instituted before the commencement date of this Decree but had not been determined at that date or is pending on appeal, shall wholly terminate immediately upon the commencement of this Decree, and all orders whether preliminary or substantive made therein shall be wholly vacated and a certificate to that effect shall be issued by the Chief Registrar.

(3) Where any proceeding, claim, challenge, application or dispute of any form whatsoever, is brought before any court, tribunal, commission or any other adjudicating body, in respect of any of the subject matters in subsection (1), then the presiding judicial officer, without hearing or in any way determining the proceeding or the application, shall immediately transfer the proceeding or the application to the Chief Registrar for termination of the proceeding or the application and the issuance of a Certificate under subsection (2).

(4) A certificate under subsection (2) is, for the purposes of any proceedings in a court, tribunal, commission or any other person or body exercising a judicial function, conclusive of the matters stated in the certificate.

(5) A decision of the Chief Registrar to issue a certificate under subsection (2) is not subject to challenge in any court, tribunal, commission or any other adjudicating body.

Minister may make regulations

8. The Minister may make regulations to prescribe the use of the demised area and to give effect to the provisions of this Decree.

Given under my hand this 29th day of January 2011.

EPELI NAILATIKAU
President of the Republic of Fiji