

# ***SAVUSAVU MARINA VILLAGE***



## ***DRAFT PROSPECTUS***



# SAVUSAVU MARINA VILLAGE



## CONTENTS

### Section A

1. Investment Summary . . . . . 5
2. Company Details. . . . . 14
3. Project Details. . . . . 15

### Section B

1. Introduction to Savusavu Village Marina. . . . . 21
2. Fiji Details. . . . . 24
3. Tourism Summary . . . . . 26

### Section C

- Frequently asked questions and answers about aspects of the investments. . . . . 29

### Section D

1. Financial . . . . . 37
2. Voting rights. . . . . 40

### Section E

1. Legal Issues . . . . . 45
2. Summary of Legal Documents . . . . . 50
3. Statutory Information . . . . . 76



*Windward coast of Savusavu*



*Village Marina Site*



*Northern Fiji Islands*

# SECTION A

## 1.0 INVESTMENT SUMMARY

### INTRODUCTION

Kilowen Fiji Limited (hereafter referred to as Kilowen) is to proceed with the construction of a mixed waterfront development to be known as Savusavu Village Marina (hereafter referred to as SVM).

The development of 119 waterfront cottages is to be constructed on behalf of investors at Savusavu Bay, to be known as Savusavu Marina Cottages (hereafter referred to 'the Cottages') as an integral part of this marina village. There is an option to operate them as accommodation units under the management of a Hotel Operator. There is also an option to operate the associated berths under the management of a Marina Operator. Details of the cottages and associated rights to be received by investors are set out below.

Applications to purchase a Cottage can be made on the application form that accompanies the Investment Statement at the rear of this document and on the terms and conditions contained in the Sale, Purchase & Construction Agreement.

Interested persons may contact Kilowen or approved Selling Agents for assistance and for copies of the Sale, Purchase & Construction Agreement which must accompany each Application Form, and which must be accepted in writing by Kilowen.

Expressions of interest can also be registered on the form at the back of this prospectus. and will receive priority in order of receipt in the event of oversubscription.

If not accompanying this copy of the Prospectus, a list of the sale prices for each Cottage being constructed on behalf of each investor is available from Kilowen, the approved Selling Agents or the web site [www.marinavillagefiji.com](http://www.marinavillagefiji.com)

Details can be obtained from:

Kilowen Fiji Limited, Box 186, Savusavu, Fiji Islands

Telephone: . . . . . Fiji (679) 850 543

Fax: . . . . . Fiji (679) 850 42

Email: . . . . . savumari@is.com.fj

## 1.1 COTTAGE DEVELOPMENT OPTIONS

Kilowen intends to build 119 bay and inner harbour fully furnished and equipped luxury cottages that will be available for individual sale. There is an option to place the cottages under a management contract by the Hotel Operator as an investment. There is also a management contract option for the yacht/boat berths with the Marina Operator. The first Cottages will be sold at a 20% discount on the quoted sale price. Other options may be available from part management contract to no management contract. The location for the site is between the town of Savusavu and the proposed Savusavu Marina. The development will be known as Savusavu Marina Cottages.

## 1.2 SAVUSAVU MARINA COTTAGES (The Cottages)

'The Cottages' will be part of a resort complex comprising the 119 waterfront cottages with 240 adjoining yacht and boat berths, a 50 room waterfront hotel, a bar & restaurant, professional offices, quality shops, a 86 berth floating marina with marina facilities, a dive centre and later a yacht boatyard, a secluded beach, island & reef resort and a residential hillside development.

## 1.3 SITE LAYOUT

The site will comprise several clusters of waterfront cottages that can be accessed by electric cart buggies and boats. A site plan is set out in the accompanying plans, artists impressions and photographs of the site and area known as the 'Design Brochure'. For those opting for a management contract with the hotel and marina, the infrastructure and support for the operation of the Cottages will be provided from the Hotel and Marina Operators. For example, all guests checking in at the Cottages will proceed to the hotel office, check in there and then go to their Cottages. Guests staying at the Cottages will, while the Hotel Operator operates the Cottages under the Operating Agreement, have the facilities of the rest of the Village Marina available for their use.



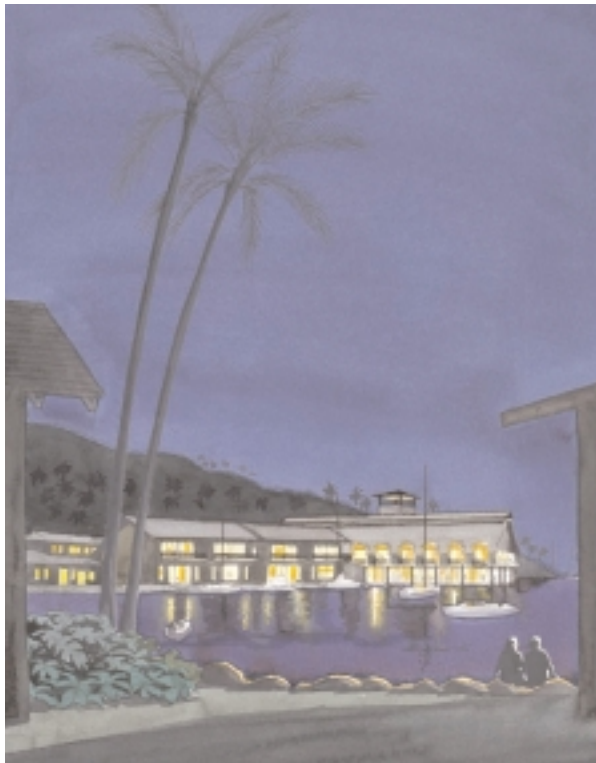


**LEGEND**

- 1-4 Landscaping
- 5-8 LORRY PARKING
- 9-11 Parking
- 12-14 Swimming Pools
- 15-17 Swimming Pools
- 18-20 Swimming Pools
- 21-23 Swimming Pools
- 24-26 Swimming Pools
- 27-29 Swimming Pools
- 30-32 Swimming Pools
- 33-35 Swimming Pools
- 36-38 Swimming Pools
- 39-41 Swimming Pools
- 42-44 Swimming Pools
- 45-47 Swimming Pools
- 48-50 Swimming Pools

Kilmer (P) Limited  
**Sivasavu Village Marina**  
 Master Plan  
 9018  
 Scale 1:1,000  
 February 2000

ARCHITECTS P A C I F I C





*Village marina site from hilltop*



*Village marina site from downtown Savusavu*

## 1.4 DESIGN ARCHITECTS

### A profile: Tourism experience resources, approach, capabilities

#### Architects Pacific Limited

108 Amy Street Suva FIJI  
 Phone (679) 303 855 Fax (679) 302 174  
 email archpacific@is.com.fj

#### The AP Team

Stuart Huggett RIBA ANZIA ARAIA . . . . .	Director
Gilly Huggett, Architect . . . . .	Director
Peter Rankin ARAIA . . . . .	Director
Conway Beg RIBA . . . . .	Associate Director
Viliame Ralulu . . . . .	Architectural Assistant
Kalivati Dokoni . . . . .	Senior Technician
Viliame Finau . . . . .	Senior Technician
Panapasa Balekana . . . . .	Technician
Nitish Parmanand . . . . .	Technician
Ben Whippy . . . . .	Technician
Rajneel Prasad . . . . .	Technician
John Murgan . . . . .	Technician
Support technical and admin staff . . . . .	5
Total staff. . . . .	17

#### Approach to architecture

Our approach to design has been one of involving the client in the design process and we would wish to carry out this most successful technique for this project also so that the end result achieves two significant goals:

- The client has maximum input to and interaction with the design process.
- The client is aware of the reasoning behind the built result.

We have found from this that our clients are more satisfied with the end result than when more traditional working methods are employed such as when the architect is assumed to know all the answers!

In recent years we have had increasing interest from overseas clients who wish to draw on our experience in two specific and related areas:

- The need for an architectural solution which responds sympathetically to the needs of remote sites, a tropical environment and unsophisticated building techniques.
- The need for a design approach which incorporates and reflects the cultures and traditions of the population in which the project is located.

Fiji's special geographic, climatic, and cultural characteristics form a special architectural environment. Until recently, the special design problems of the warm, humid tropics have not received the attention they merit from the international architectural profession and

we believe Architects Pacific has acquired unique experience in this field. Our climate requires careful understanding if buildings are to be safe, comfortable, efficient, cost effective, long lasting, and culturally identifiable.

AP has large, comfortable and well-equipped premises close to the centre of Suva with a large conference and presentation room. The office is the most advanced in the region in terms of computer aided design (CAD) with twelve A3 CAD workstations, 4 printers, a scanner and 6 supporting machines on a well integrated network. The network supports file serving and backup to optical disks and allows for rapid interchange of documents around the office.

All professional and technical staff use equipment to deliver high quality and well detailed documents in a minimum of time.

### Previous work

Selected major projects over \$1.0 million in value for private enterprise. Dates generally refer to the year of commencement of the project.

Year	Project	Client	Cost
1975	Fijian Hotel - Kalevu Restaurant & 84 room extension	Fiji Resorts Ltd	1.6m
1982	Gateway Hotel renovations and interior design	Burns Philp (SS) Ltd	1.2m
1984	Fijian Hotel, 48 room extension	Fiji Resorts Ltd	2.0m
1985	Master Plan for Renovations and extensions	The Rarotongan Hotel	5.0m
1986	Master Plan for Renovations and extensions	Tusitala Hotel, Samoa	1.0m
1986	Extensions to the Tahiti Beachcomber Hotel	Southern Pacific Hotel Corp	3.0m
1988	The Davui Conference Centre	The Fijian Hotel	1.0m
1989	Holiday Inn Nadi Beach Resort (design & approvals)	Tom Hoult	10.0m
1989	Paradise Island Resort, Queensland - Master Plan	Bruce Small	15.0m
1990	The Pacific Village at Expo 92, Seville	Pacific Discoveries Ltd	1.5m
1991	Master plan for a 60 bed private Hospital in Suva	Private Hospitals Ltd	6.0m
1991	Cakobau road apartments	Colonial Mutual Life	3.3m
1992	Hotel Tusitala, W.Samoa, new room block addition	Kitano Corporation	8.5m
1994	Mana Island Resort, Fiji - new guest rooms	Mana Island Resort Ltd	3.0m
1995	Le Meridien, Port Vila	Hotel Properties Limited	14.0m
1995	Hidden Paradise Resort, Savusavu, Fiji	Monte Lago Hotels, Davos	6.0m
1996	Upgrading and refurbishment	The Shangri La Fijian Resort	2.0m
1996	Refurbishment of the Suva Travelodge Hotel	Southern Pacific Hotel Corp	2.2m
1997	Vuda Marina	Aqua Foods Limited	1.0m
1998	Master planning for Nadi & Nausori airports	Airports Fiji Limited	
1999	Shangri La's Fijian Resort - Lagoon wing rebuilding - Concept design		
2000	GTZ, Germany – Pacific Village at the Hannover 2000 Expo		

## 1.5 INDIVIDUAL VILLA LAYOUT

There is a choice of one to three bedroom cottages all with water frontage and berthing. The plans in the accompanying 'Design Brochure' booklet lay out the availability of each design.

## 1.6 PURCHASE DETAILS

The Sale, Purchase & Construction Agreement provides that a deposit of 10% of the purchase price is payable on signing. The deposit will be held in a solicitor's trust account. The balance of the purchase price is payable when a number of conditions have been satisfied designed to safeguard the investor. These are construction of the Cottage being completed, a registered sublease of that part of the site occupied by the Cottage being completed, a registered sublease of that part of the site occupied by the Cottage being purchased being available for transfer to the investor and the Hotel Operator having agreed that the Cottage is ready to render first class services to guests on a fully operational basis. The Sale, Purchase & Construction Agreements will be conditional on Kilowen selling a minimum number of Cottages, satisfactorily completing arrangements for finance, entering into a construction contract for the Cottages, registering a prospectus for the sale of the Cottages with the Fiji Companies office, approval of the Fiji Capital Markets Development Authority (CMDA) and Kilowen obtaining Director of Lands consent to the sublease of the Cottage to the investor.

## 1.7 FIT OUT OF THE COTTAGE

As part of the sale, all Cottages will feature a fit out of furniture, fixtures and equipment. The fit out will be included as part of the price in the Sale, Purchase & Construction Agreements. The number of items of equipment will vary according to the cottage design and size chosen. The bathroom off the master bedroom will include a bath, shower, toilet, vanity and washing machine / dryer. The second bathroom will contain a shower, toilet and vanity. The kitchen will contain a sink, dishwasher, fridge and complete set of crockery, glasses and cutlery. The living room will contain a lounge suite, a stereo system and a television. There will also be a television in every bedroom & an owners private 'lock up' cupboard. All major rooms will have air conditioning.

## 1.8 CONSTRUCTION

Negotiations are underway with major construction companies.

## 1.9 AGREEMENT FOR THE HOTEL OPERATOR

The chosen Hotel Operator will be the operator for the Cottages. The Operating Agreement (hereafter known as the 'Cottage Scheme') will be signed between the Cottage owner and the Hotel Operator. Owners will receive a quarterly return calculated on the basis of the revenue received from guests occupying the Cottages less costs incurred. The terms of the likely Operating Agreement are summarised in detail on pages 52 to 61.

## 1.10 DESIGN STANDARDS

The Hotel Operator will have standards for the Cottage accommodation that it will manage. These standards will have been agreed in consultation with Architects Pacific as the basis for the designs of the Cottages.

### 1.11 TITLE

Each investor will own his or her Cottage Building and the Furniture Fitout in it and will receive a separate registered sublease for the part of the site occupied by the Cottage. The Common Facilities will be held in trust for all Cottage Owners by a Body Corporate to be formed known as Savusavu Marina Cottages Limited (hereafter called the Body Corporate) and Cottage Owners will receive shares in that company. The land is State Leasehold land which is leased to Kilowen Fiji Limited. The lease has a term of 99 years and commenced on 1st day of July 1998. Details of this lease, the terms of the subleases and State Lease tenure in Fiji are set out on page 6.

### 1.12 ROLE OF SAVUSAVU MARINA COTTAGES LIMITED (THE BODY CORPORATE)

Cottage Owners will hold the shares in the Body Corporate. Further details of the administration of the Body Corporate are set out on pages 63 to 67.

The Body Corporate will:

- own and administer the common Facilities Scheme;
- be permitted by Cottage Owners to enter into the Operating Agreement (Cottage Scheme) with the Hotel Operator;
- receive a licence from Cottage Owners to enable it to carry out the arrangements with the Hotel Operator; and
- administer the Cottage Scheme.

Further details of the Body Corporate are set out in Section E .

### 1.13 PROJECTED RETURNS

In the first part-year of operation the average return from the Cottage Scheme (before interest, depreciation and taxation) is projected to be 7.4% in the first year and rises to 8.39% by the fourth year. Investors' attention is drawn to the projections on pages 39 to 41, including details of the assumptions on which the projections are based. Returns will fluctuate depending on occupancy levels, room rates and costs.

### 1.14 REPATRIATION OF CAPITAL AND PROFITS

In order that foreign investors may repatriate capital and profits out of Fiji, consent must be obtained from the Reserve Bank of Fiji. These consents are given as long as various conditions that have been stipulated by the Government of Fiji have been complied with. For further details see the section on Reserve Bank of Fiji approvals on page 48.

### 1.15 INDIVIDUAL FINANCING PACKAGES

Kilowen has had discussions with ANZ Bank, Westpac Bank, Home Finance & Colonial National Bank in Fiji regarding local investment finance packages for investors in the Cottages. All have shown an interest to supply mortgages for purchasers subject to normal banking criteria. Indicative terms supplied by ANZ are for financing in Fiji of up to 70% of purchase price for 15 years. For details of ANZ Bank Fiji's lending criteria, investors should contact the ANZ Bank in Suva, Fiji, either directly or through a local ANZ Bank Branch. Alternatively, should finance be required in Australia, New Zealand or other locations where ANZ Bank is represented, investors should contact their nearest ANZ Branch for details of lending criteria. Under certain circumstances additional funding can be obtained from Kilowen Fiji Limited.

## 1.16 OWNER'S USE

Cottage Owners must advise the Hotel Operator when they intend to use their Cottage. All Cottage Owners and their immediate families are provided with 4 weeks free use per calendar year (with a maximum of 2 weeks use during "high season") without affecting their return. Cottage Owners will pay for the servicing fees to the hotel operator for room housekeeping and other costs during this period. Cottage Owners and their immediate family are welcome to use their cottages for longer periods of time but this use will be off-set against the returns they receive. Details of the persons falling within a Cottage Owners immediate family and details of booking requirements and availability of Cottages are set out on pages 32 to 33.

## 2.0 COMPANY DETAILS

### 2.1 PROMOTERS

The offer of the Cottage Scheme and associated rights is being made by Kilowen and the Hotel Operator. Kilowen is a Fiji registered company number 6890.

Full details are set out in the company's Statutory Information section on page 78 to 84 of the Statutory Information section.

### 2.2 BODY CORPORATE MANAGEMENT

The ongoing administration of the Cottages will be undertaken by the Body Corporate, including administration of the operator arrangements with the Hotel Operator under the Cottage Scheme. While the Body Corporate is currently owned by Kilowen, the shares allotted to each cottage will be transferred to the Cottage Owners as part of the associated rights to be received by Cottage Owners two years after the sale of the last cottage. Cottage Owners' income rights under the Cottage Scheme are based on the total net return of the Body Corporate under the Operating Agreement (Cottage Scheme) with the Hotel Operator.

### 2.3 INFORMATION ABOUT THE PROMOTERS

The development company, Kilowen Fiji Limited, is a Fiji Registered company. The principals are Robin and Siteri Irwin of Fiji and Patrick Paul and Graham Oldreive of the United Kingdom.

### 2.4 DIRECTORS

Directors of Kilowen Fiji Limited are:

Robin Irwin                      Graham Oldreive  
Siteri Irwin

Directors of Marina Cottages Limited (to be incorporated)

The initial directors of the Body Corporate will be Robin Irwin and Siteri Irwin. Cottage Owners will vote to appoint replacement directors at the annual meeting of the Body Corporate held 2 years after completion of construction and settlement of all the cottages.

Under the Deed of Participation, the Body Corporate will be required to appoint a Representative to undertake the day to day administration of the Body Corporate and who will represent the Body Corporate in connection with the management arrangements with the Hotel Operator. Kilowen will fulfil this role in the first 2 years following completion of construction and settlement and thereafter the appointment of a suitably person will be decided at a meeting of the Cottage Owners. Details of the voting at meetings of the Cottage Owners are set out on pages 42 to 45.

## 3.0 PROJECT DETAILS

### 3.1 PROJECT PROFILE

This is a development of a Village Marina mixed waterfront development driven principally by waterside residential real estate sales with management options to an adjoining hotel to be built. A number of events have contributed to the decision to start this project:

- Visitor arrivals to Fiji and Savusavu have steadily increased over the last few years
- Savusavu is now a Port of Entry for yachts since May 1997
- Duty on yachts has been reduced
- Real estate in Savusavu has increased steadily in value
- There are no other waterfront properties of this nature currently available in Fiji with deep water berthage
- The Savusavu yacht arrival figures have increased to rapidly to 232 in 1999.
- The local ANZ & Westpac banks have agreed in principle to give mortgages of up to 70% to purchasers subject to normal lending criteria

The basis of the proposal revolves around the following components:

#### First phase.

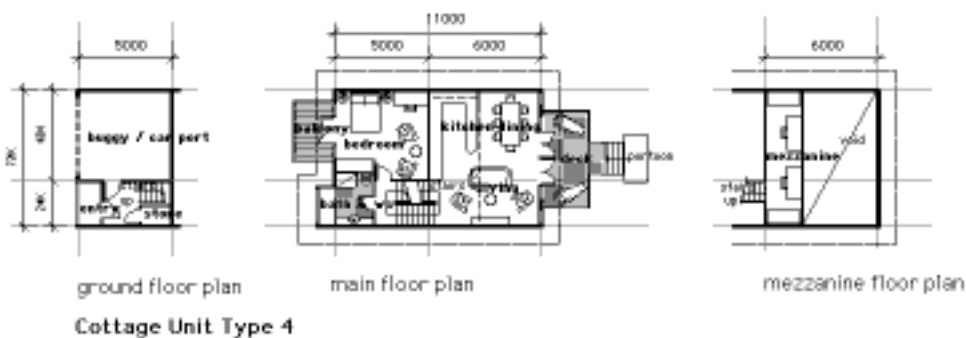
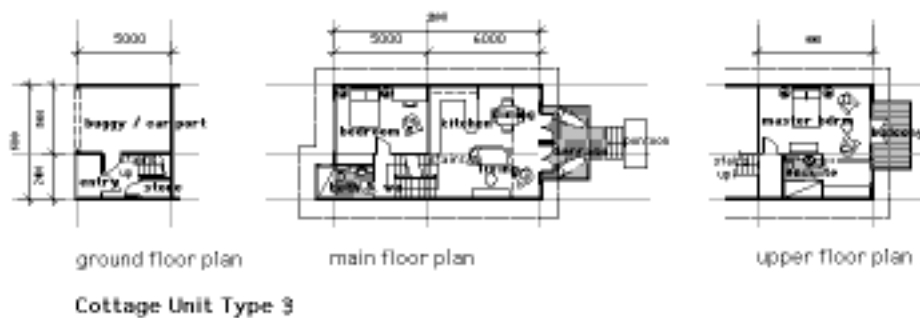
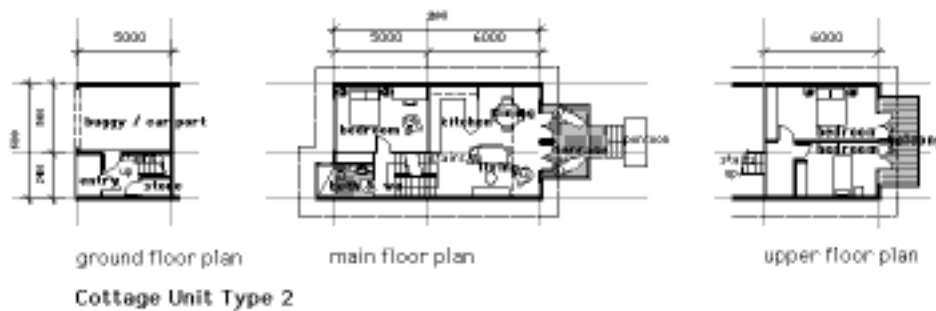
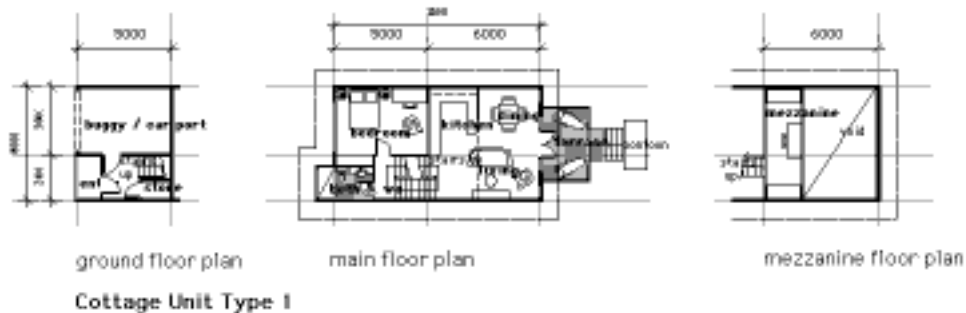
- Waterfront land adjoining Savusavu town of 5.8 hectares - 4.8 hectares will be used to build 119 bay and inner harbour front cottages for sale with management options as an investment and one month free owner use a year. The bay front cottages being capable of mooring two-ocean going yachts and the inner harbour cottages two power boats.
- A one hectare of waterfront land at the western town end to be developed for mixed waterfront use as restaurant/s, bar, club, shops, offices, entertainment displays and 50 room accommodation.

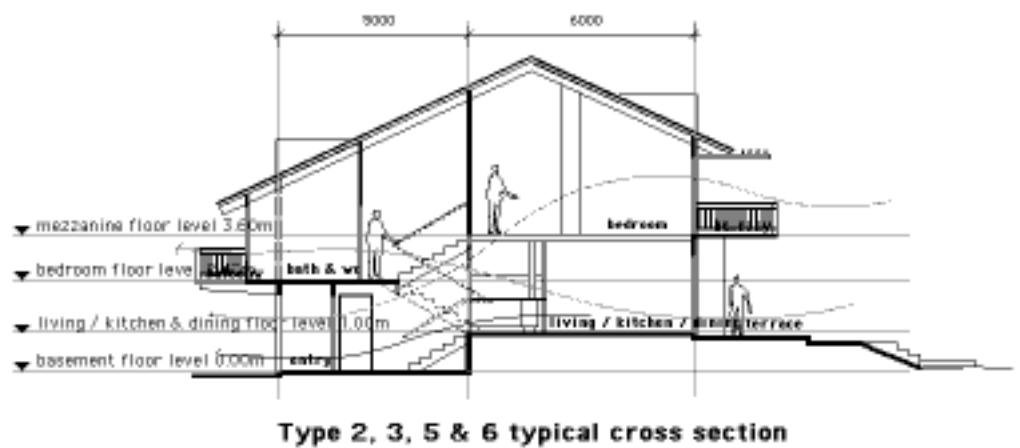
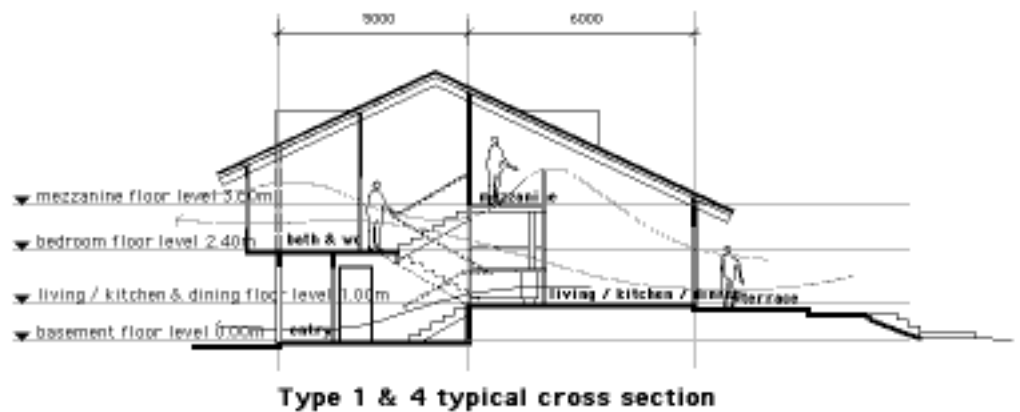
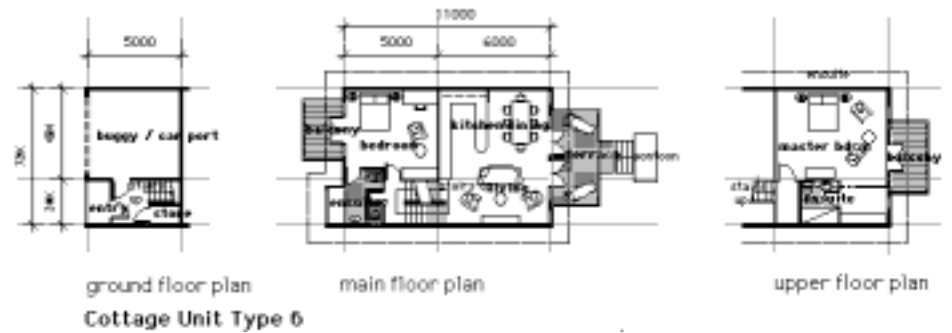
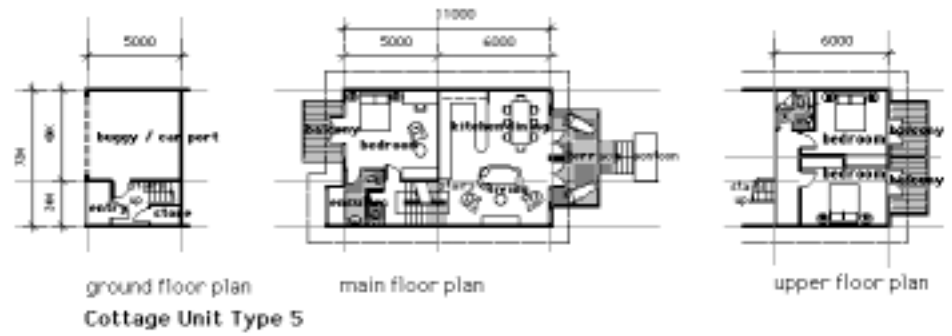
#### Subsequent phases.

- An island, reef & beach resort
- A further 15 hectares of hill land behind the waterfront suited for residential development.
- A 1.4 hectare sea area and 0.2 hectare land area suited for a marina, yacht charter & dive centre at the east end of the development.

### 3.4 COTTAGE DESIGN

- A choice of six attractive designs is available as shown in the plans
- The bay front cottages will be able to berth 86 ocean going yachts with draft up to 3 metres.
- The inner harbour cottages will be able to berth 118 boats with a draft up to one metre.
- A further 34 vessels can berth at other locations within the inner harbour. This is in addition to the later floating marina which will have approximately 90 slips (berths) able to accommodate yachts with a draft of up to 4 metres.





For more detailed plans, please see the design brochure

## 3.5 FURNITURE, FIXTURES AND EQUIPMENT SCHEDULE

LIVING AREA		BEDROOM 2		KITCHEN UTENSILS	
Item	Nr	Item	Nr	Item	Nr
Artwork	1	Artwork	1	<b>Utensils &amp; Cutlery</b>	
Bar stool	3	Bedside cabinet	3	Can opener	1
Dining chairs	4	Desk chair	1	Colander	1
Dining table	1	Desk	1	Egg beater/ whisk	1
Floor lamp	1	Queen sized bed	1	Carving fork	1
Side chairs	2	Mini bar fridge	1	Table fork	1
Side table	1	Outdoor chairs	2	Plastic funnel	1
Coffee table	2	Outdoor table	1	Grater	1
Single seat settee chairs	2	Table lamp	4	Condiments storage set	1
Stereo system	1	Television set	1	Bread knife	1
Table lamp	2	Television trolley	1	Knife block with set of sharp knives	1
Two seater settee	1	Two-seater settee	1	Lemon juicer	1
Floor rug	2	Floor rugs	1	Utensil set, fish slice etc	1
Television set	1	Telephone	1	Vegetable peeler	1
Television trolley	1	Radio alarm	1	Waiter's friend	1
Telephone	1	Coat hangers	1	Wooden spoons set	1
<b>MASTER BEDROOM</b>		<b>BATHROOMS</b>		Bottle opener	1
Item	Nr	Item	Nr	Salad servers	1
Artwork	1	Washing machine/Dryer	1	Salt & pepper set	1
Bedside cabinet	2	Hair dryer	2	Spatula (rubber)	1
Desk chair	1	Toilet brush & holder	2	Spoon/dessert	6
Desk	1	Rubbish bin	2	Spoon/serving	6
King sized bed	1	Toilet roll holder	2	Spoon/soup	6
Outdoor chair	2	Soap holders	2	Stainless steel serving tongs	1
Outdoor table	1	Shower curtains	2	Teaspoons	6
Table lamp	4	<b>KITCHEN</b>		Champagne stopper	1
Television set	1	Item	Nr	<b>Glassware</b>	
Television trolley	1	Refrigerator	1	Item	Nr
Two seater settee	1	Cooktop	1	Glass – beer	6
Floor rug	1	Microwave	1	Glass – beverage	6
Armoire	1	Dishwasher	1	Glass – champagne	6
Telephone	1	Clock	1	Glass – wine (burgundy)	6
Radio alarm	1	<b>ELECTRICAL &amp; MISCELLANEOUS</b>		Glass – wine (white)	6
Coat hangers	12	Item	Nr	<b>Crockery &amp; Cookware</b>	
<b>LINEN</b>		Item	Nr	Item	Nr
Item	Nr	Toaster	1	Set of microwave dishes	1
Pillows	8	Electric Jug	1	Set of soup/pasta dishes	1
Pillow slips	16	Iron	1	Set of dessert/cereal plates	1
Blankets	4	Teatowels	6	Main dinner plates	6
Duvet inners	3	Broom & shovel	1	Side plates	6
Duvet covers	4	Coasters	6	Side salad plates	6
Valance, king size	1	Tablemats	6	Coffee cups	6
Valance, queen size	1	Handtowels	4	Saucers for coffee cups	6
Mattress protector, ks	1	Ice bucket & tongs	1	Serving plates, ceramic	3
Mattress protector, qs	1	Ironing board	1	Stainless steel mixing bowl set	1
Sheets, king size	4	Floor mats	1	Stainless steel pot set	1
Sheets, queen size	4	Floor mop	1	Storage jar set	1
Face cloths	8	Candle holders	2	Strainer	1
Hand towels	8	Flower vases	2	Sugar bowl with lid	1
Bath mats	2	Plastic dish	1	Teapot	1
Bath sheets	2	Cutlery drainer	1	Frying pan	1
<b>LOBBY</b>		Washing up bowl	1	Wooden salad bowl	1
Item	Nr			Bread basket	1
Hall table	1			Bread board	1
Wall mirror	1			Casserole set	3
				Coffee plunger	1
				Water jug with lid	1
				Creamer	1
				Egg cups	6
				Fruit bowl	1

## 3.6 CONSTRUCTION DETAILS

### Specification of Building Construction and Finishes

---

#### GENERAL AREAS

**Building Structure** - Cement rendered concrete block walls, tile & Concrete ground floors, timber upper floors.

**Roof** - Timber structure with timber shakes or shingles Roof finish

**Exterior Terraces & Balconies** - Treated pine overwater and suspended decks, tiled Concrete decks on grade.

**Exterior Joinery, Doors & Windows** - All timber stained or painted with laminated Glazing.

**Fire Protection** - Smoke detectors in habitable rooms, fire Extinguishers and a fire hose reel in each residence. Fire hydrants on access roads.

**Swimming Pool** - To architects design as part of the Club buildings

---

#### I N T E R I O R S

**Common & Party Walls** - Cement rendered block walls painted.

**Ceilings** - Gib board painted

**Interior Walls** - Gib board painted on treated pine studwork

**Bathroom Walls** - Ceramic tiles fixed to cement board sheets on Treated pine studwork

**Car Park** - 2 coat bitumen seal

**Air Conditioning** - Split units to main room and bedrooms

---

**LANDSCAPING & VEGETATION** - Palms, ground cover & some lawn on seawardside. On leeward dense shrubs and ground cover adjacent to main road.

## Cottage Specification

---

### LIVING & BEDROOM AREAS

**Doors & Hardware** - Timber & bronze

**Front Doors & Unit Entry Doors** - Timber & bronze

**Balcony doors** - Timber with laminated glass, timber screens

**Flooring** - Tiled finish to ground floors, timber boarding to Upper floors

**Wardrobes** - Built in

**Lighting** - Low energy & spot lighting

---

**BATHROOMS** - All fittings of high quality yet to be specified

**Showers** - High quality

**Tapware** - High quality

**Handbasins** - High quality

**Wastes** - To main Savusavu Town Treatment Plant

**Lighting** - Low energy & spot lighting

**WC Pan Set** - Caroma or equivalent high quality

**Floor Finish** - Tiled finish to ground floors, timber boarding to Upper floors

**Power Point 240v** - All rooms

**Mirrors** - In all rooms

**Washing Machine/Dryer** - In bathroom, of high quality

---

### KITCHEN

**Kitchen Cabinetry** - To high finish yet to be specified

**Kitchen benchtops** - To high finish yet to be specified

**Sink unit** - Stainless steel

**Tapware** - High quality

**Ceramic Hobs** - High quality

**Flooring** - High quality

# SECTION B

## 1.0 INTRODUCTION TO SAVUSAVU VILLAGE MARINA

### Project Concept

The overall objective of Kilowen Fiji Limited is to develop the site as a Mixed Waterfront Development which is referred to generically as a 'Village Marina'. The project strategy was developed using the village marina concept, incorporating the necessary success points and after a 'scoring' evaluation.

This is the first 'village marina' resort in the Fiji Islands with overwater elements. Overwater resorts exist in the South Pacific countries of Tahiti & Vanuatu & have proved to be a successful concept, but none has the additional attractive element of a marina and residential / ownership component with extensive water activities in the perfectly located Savusavu Bay.

The concept of an integral marina village is now universally accepted as a successful form of mixed waterfront development given adherence to the parameters. These are defined by James Elwin, a leading marina planning authority who contends that an excellent marina location leads on to a successful 'marina village'. Important factors that define 'success' are laid out in the book 'Marina Developments' by Dr Blain a world recognised authority on marinas and marina villages and has been the promoter of Marina Developments worldwide for the last 16 years. Savusavu Village Marina meets all these criteria as outlined in Success Points below.

Savusavu Village Marina resort has the added advantage of fronting on to protected deep water, where ocean cruising yachts can berth. It is on the main South Pacific tradewinds, yacht cruising route at the 'upwind' end of the Fiji Islands. These attributes contribute towards the high 'score' in the assessment on the next page and has been drawn on to create the Village Marina image. The overall theme and brand awareness is that of a cosy village harbour surrounded by cottages situated at the water's edge.

This proposal is driven financially primarily by the waterside cottage sales with a Management Contract (the Cottage Scheme) with the hotel. The hotel is to be managed by an operator with a good reputation. The development will also be targeted at the non marine market. A mixture of different housing types and the environmental attractions of the Savusavu area, in addition to the facilities afforded by the hotel, will appeal to the "semi-retirement" market.

Later phases are a marina, dive centre, water activities centre and a residential hillside development of 36 lots with associated marina berths. The specialist operations such as marina and dive centre will be leased to specialist operators.

### Essential Success Points for a Village Marina

*(Based on extracts from Dr. Blain's "Marina Developments")*

The site should be primarily suitable for a marina with sea protection, deep water and infrastructures such as water, power, roads & airports readily accessible. There is a shortage world wide of such sites in locations that are in attractive cruising areas. The evaluation used by James Elwin of the London School of Planning is an essential instrument in the choice of sites.

The creation of the equivalent of a village centre or green is important. This should have the function of a public and commercial hub acting as a general focus of interest. Therefore in the planning there should be cafes, pubs & restaurants spilling out onto the waterfront or quayside with shops, picture galleries & chandlery as well as service offices such as banks, estate agents, brokers & other Class A users. This creates the 'village

centre'. Elements such as towers, balconies & canopies are functional but also create visual interest. Traditionally a church marked this centre. The present Anglican church already exists in the centre of the project and will be incorporated in the overall design.

Matters of details and variety of scale are also critical such as creating differences in elevation to counter the strong horizontality of the water so the rooflines should be variable. From the main highway one should enter the site over a bridge or under an arch. Islands and causeways or bridges enhance the marina village effect. The juxtaposition of water, boats and buildings gives immense scope for creating superb environments.

Village marinas should be planned with a maximum of waterfrontage. Savusavu Village Marina will have over a kilometre of deep water frontage capable of berthing 120 ocean going yachts and an inner harbour with berthage for an additional 140 boats with up to one metre draft on a total waterfrontage of 2.3 kilometres. All these berths are associated with the residential 'cottages', the hotel and its village environs. An additional 86 yachts can be accommodated on the floating marina with another 10 swinging moorings. This makes Savusavu Marina by far the largest international marina in the South Pacific island countries capable of accommodating a total of 350 yachts.



Crown Copyright. Reproduced from Admiralty Charts 2691 and 378 with the permission of the controller or Her Majesty's Stationary Office.



*Savusavu Bay and property from hilltop*



*View down bay from top of property*



*View down bay from middle of property*



*View down bay from end of property*

## International Evaluation of Savusavu As A Marina Location

from

*Marinas - Site Selection*

*James F Elwin*

*School of Planning, Oxford, England*

Paper presented to the International Conference on Marina Planning, Design and Operation at Southampton University in September 1989. He weighted the criteria according to the importance to the particular project and scored as a percentage.

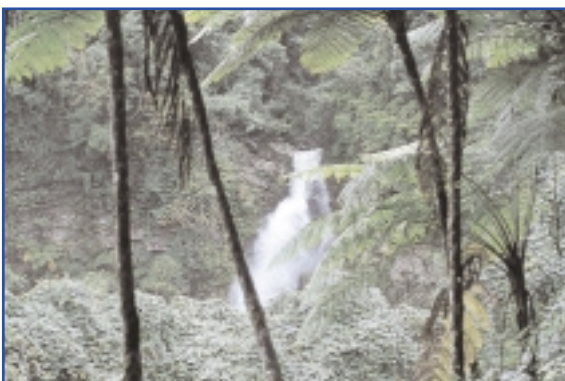
The Savusavu site scored as follows after evaluation (Source – André Cocquyt – Centre for Development of Industry consultant (Lomé) – Brussels).

	Weighting	Scoring as % of weighting	Score
Market	100	78	78
Capital Costs	100	85	85
Protection	100	100	100
Maintenance Costs	90	94	85
Sea and Tidal Access	80	100	80
Land and Air Access	70	46	32
Cruising Area	70	77	54
Climate	70	80	56
Services	70	59	41
Area of Land	60	71	43
Expansion Potential	60	73	44
Staff ( <i>friendly, skills and wages</i> )	50	70	35
<b>Highest possible scoring</b>	<b>920</b>		<b>733</b>

Savusavu at 733 scored 80%

*Most sites to be successful need to score 65% +*  
(James Elwin)

Savusavu at 80% indicates the potential for an economically viable marina.



## 2.0 INTRODUCTION TO FIJI

### Location

Fiji is an archipelago comprising some 332 separate islands in the south-eastern region of the Pacific Ocean. The group is arranged like a horseshoe around the Koro Sea, lying south of the equator. The tropical location is world renowned as a holiday destination due to the warm climate, natural beauty and friendly people.

Savusavu Village Marina is located on the Southern coast of Vanua Levu, the second largest island in the Fiji group. Pick up any brochure for a new marina development and you will be told about the superb and imaginative concept whereby luxury waterside residences are situated in beautiful coastal scenery with access to good sailing waters, good climate and so on. In reality most marinas are either adjacent to highly populated resorts, in regions of commercial or industrial redevelopment, or perhaps in a locality already exploited by tourist developments. This is where Savusavu – the Hidden Paradise – is different. It can truly claim to be exceptional in that it combines all of the most desirable features that the discerning investor could expect. This South Pacific Ocean site faces the sun in a large bay protected by reefs at the ocean entrance. Mango and palm trees fringed islands lie opposite the anchorage and tropical vegetation clads the high hills behind the village marina. Living coral abounds in the bay and supports myriad varieties of tropical fish. The local villages remain typical of Fijian community life – populated by people whose outgoing and friendly countenance is legendary. It is exposed to the gentle warmth and freshness of the south easterly trade winds and enjoys a sunny tropical climate with occasional refreshing showers. A small airstrip lies 2 miles away and allows quick and easy connection to international flights at Nadi airport on the main island of Viti Levu as well as being part of the local network of regular inter-island flights. It is difficult to imagine a more desirable place for the yachtsman or property owner who aims for something different and wants to escape from the better known and more commercialised tourist areas of the world.

### Government

Fiji was a British Crown Colony for 96 years prior to gaining its independence in 1970. Fiji became a Republic in 1987 and adopted a Constitution which incorporated a bicameral system of government based on the Westminster model. Fiji's head of State is its President. The lower house, the House of Representatives, from which a Government led by a Prime Minister and Cabinet is formed, was elected to office in 1992. In 1998 Fiji adopted a new Constitution.

### Legal system

Fiji's legal system is England law based and much of its legislation shares common features with other English law jurisdictions such as New Zealand and Australia. The court system includes as the ultimate appeal court, the Supreme Court of Fiji, which currently includes pre-eminent judges from New Zealand and Australia.

### Industry

Fiji is the most advanced economy in the South Pacific Island region. Its prosperity is premised on an efficient sugar industry, a well organised and profitable tourist industry, and more recently, an export- oriented manufacturing sector. Apart from export-oriented industries such as garments, manufacturing also includes concrete, cement and other building materials, furniture, processed timber and household products.

### Climate

Fiji enjoys a warm tropical climate without undue extremes of temperature. Between the months of May and October, dry south-east tradewinds allow daily temperatures to reach

the mid-20s. November to April is generally hotter and wetter, with temperatures ranging from 23° to 30° Celsius.

### Attractions

Fiji, and especially Savusavu, is known as an idyllic tourist destination providing spectacular natural scenery in a serene environment. The water colour, clarity and temperature has made Fiji a popular destination for swimming, diving and fishing. The smaller islands in the archipelago are accessible to tourists via boat transportation. Boats depart at all times from Savusavu Village Marina.

## 3.0 TOURISM SUMMARY

The statistics and information contained in this section have been collated from Fiji Visitors Bureau, Fiji Customs and the Fiji Hotel Association.

### Hotel Market Room Availability

There has been little growth in premium room supply in Fiji since 1987. Presently there are few hotels under construction. According to the Fiji Bureau of Statistics, the demand for hotel accommodation in Fiji has grown by an average growth rate of approximately 5.6% per annum from 1991 to 1997

### Visitor Numbers and Markets

The total number of international visitors to Fiji has increased every year since 1991 until the political disturbance of 2000. The numbers are now returning to 1999 levels.

### Visitors to the Northern area where Savusavu is located.

Year	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Aver.
1993	37.36	28.61	32.93	29.90	35.98	35.46	60.70	73.33	43.60	42.31	37.73	43.48	41.78
1994	28.98	23.49	39.41	49.60	44.85	42.55	60.01	68.97	64.22	57.06	55.98	50.28	48.78
1995	22.04	29.80	51.32	59.05	51.19	62.23	60.28	68.51	57.94	63.18	63.16	64.20	54.41
1996	38.85	40.31	50.67	66.76	62.13	60.75	78.57	76.03	66.83	73.27	77.44	58.20	62.48
1997	61.69	51.37	49.93	66.88	70.13	64.78	71.55	76.00	73.52	73.40	76.73	55.57	65.96
1998	46.08	48.08	36.23	47.37	56.45	53.77	62.53	64.70	59.26	72.25	64.90	55.34	55.58
1999	44.53	50.16	43.90	64.14	64.52	65.67	70.09	78.00	63.00	73.50	65.64	50.24	61.12
2000	48.26	44.95	47.37	75.00	64.00								

1998 shows the effect of the Asian crisis - not so severe as other areas because Asia is not a major source of Savusavu tourists

**Foreign Yacht Clearances**

1998	181
1999	231

**Yacht Customs Clearances Savusavu - 1999**

USA	65
United Kingdom	47
New Zealand	46
Canada	13
Germany	12
Australia	11
France	9
Holland	6
Norway	4
Italy	4
Austria	4
Sweden	3
Denmark	2
Switzerland	2
Belgium	1
Spain	1
Japan	1
South Africa	1
<b>Total</b>	<b>232</b>

**Summary of yacht Arrivals 1999**

	<b>No.</b>	<b>%</b>
Europe	95	40.9
North America	78	33.6
New Zealand	46	19.8
Australia	11	4.7
Japan	1	0.43
South Africa	1	0.43
Total	232	100

**Comparison with Air Arrivals**

Source area	Air	Sea
Europe	17%	41%
North America	19%	34%
New Zealand	12%	20%
Australia	24%	5%

### Port of Entry

Savusavu has only been a Port of Entry for yachts since April 1998. It is just becoming known. Fiji receives around 850 yachts a year and this is increasing. Most will come to Savusavu when facilities are in place as it is the first upwind port in the group with an excellent entrance & harbour. In 2000 it received the Australian Presidents Cup race, two New Zealand yacht rallies & the UK Blue Water Rally as well as an international game-fishing tournament. Yacht arrivals for 2002 are estimated to be around 350.

### Forecast

JLW of Australia forecasts a steady growth of visitor arrivals of 3.5% per annum.

### Airlines

In recognition of Fiji's growth potential, its national carrier, Air Pacific, has announced its intention to expand seat capacity and improve scheduling. In October 1998, Air Pacific took delivery of a new 737-700 allowing it to increase frequencies to Melbourne from two to four times weekly. Air Pacific's wide bodied aircraft capacity also expanded with the announced introduction of a second B 747-200 in December 1998. This coincides with its fourth weekly direct Los Angeles to Nadi service. In 1999/2000 followed two new generation 737-80's.

Air New Zealand's new strategic alliances with United Airlines, Singapore Airlines and Lufthansa of Germany will also significantly boost Fiji's profile in the key growth markets of North America and Europe. Air New Zealand continues to expand its services through Fiji and has recently received approval to commence direct services between Los Angeles and Nadi. The first direct services commenced in April 1998 and a second service in October 1998. These services provide direct connections from both London and Frankfurt. Approval has also been received to increase services between Nagoya to Nadi from two to three services per week with one of those services providing a direct service between Nadi and Christchurch.

### New Savusavu Catamaran Service

In addition to the services provided to Savusavu by Air Fiji, Sun Air, and the SOFE & Adi Savusavu RoRo ferries, Beachcomber cruises have introduced a new fast catamaran service from Lautoka to Savusavu from August 2000. Named the Lagilagi it is 20 metres long with a payload of around 100 passengers and cruises at 20 knots making the voyage in 5 hours. Most of the time it is close in shore making a marvelously scenic experience of the coasts of North Viti Levu and South Vanua Levu and their extensive reefs.

### Conclusion

The Fiji Islands, and particularly Vanua Levu Island, are well positioned to reap the benefits of expanding global tourism. The Islands proximity to the key feeder markets of Australia and New Zealand, and their perceived value for money pricing in a "comfortable and safe" destination, ensure Fiji's hoteliers of a steady core of business. The long haul markets of North America and Europe still perceive Fiji an exotic South Pacific paradise, and improvement in flight services will make the destination even more accessible.



# SECTION C

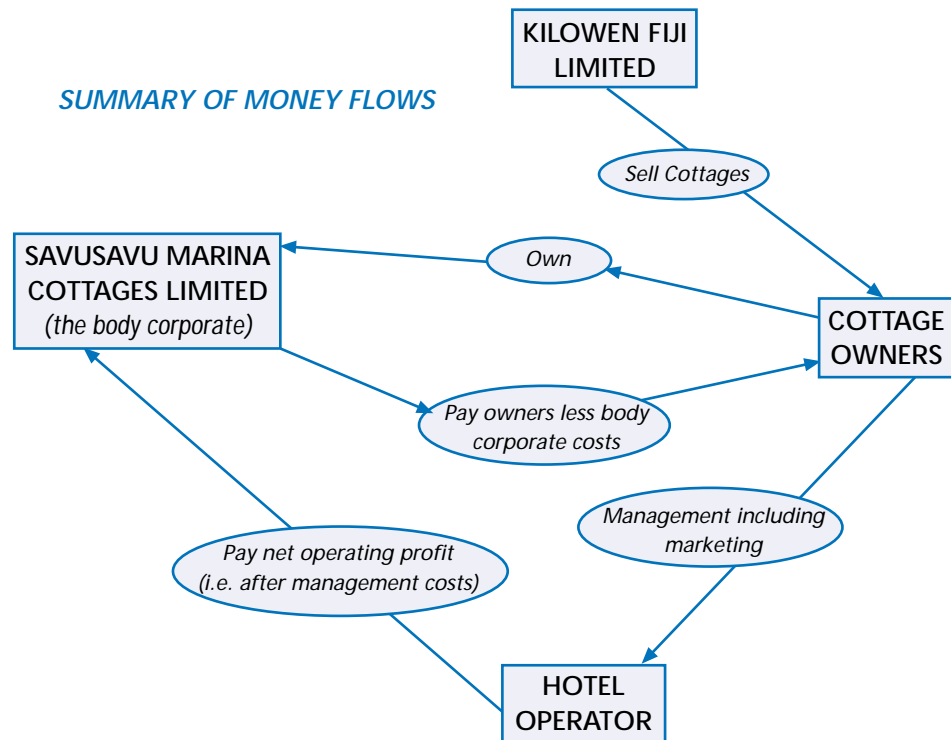
## FAQ's - Frequently Asked Questions

What will I receive on settlement?

You will receive:

- ownership of the Cottage Building on subleased land and the Furniture Fitout in it;
- a registered sublease in respect of that part of the site occupied by your Cottage;
- Shares in Savusavu Marina Cottages Limited (the "body corporate");
- Rights to receive rental income from the Body Corporate flowing from the Operating Agreement with the hotel operator under the operating 'Cottage Scheme' (this is called the "Cottage Rights"); and
- an interest in the Common Facilities through the Body Corporate.
- you will receive discounted membership of the *Savusavu Club*

A summary of the money flows in the 'lease back' operating 'Cottage Scheme' follows in diagrammatic form.



You will have the rights and obligations as a Cottage Owner under the Deed of Participation described on pages 69 to 74.

The Body Corporate will own the Common Facilities. Each Cottage Owner will have an interest in the Common Facilities called their "Common Facility Rights" according to their shares in the Body Corporate. Cottage Owner will have the right, in common with other guests of the Cottages, to use the Common Facilities.

The Common Facilities will include furniture, furnishings and equipment in the common areas. These items together with the Furniture Fitout in all the Cottages are collectively described in this Prospectus as the "FF&E".

### **Do I have to include my Cottage in the arrangements with the Hotel Operator?**

No. Only the first tranche of cottages being sold at a discount have to join the lease back arrangement (known as the 'Cottage Scheme'), under which the Hotel Operator will manage and operate the Cottages as guest cottages. Thereafter it is optional and other arrangements such as partial lease back and no lease back are available to suit the individual circumstances of the purchasers. A Cottage owner not in the Cottage Scheme has to pay his or her share of the Body Corporate costs.

### **When will I be able to use my Cottage?**

If you join the full Cottage Scheme scheme your Cottage is available throughout the year except where the Cottages have been previously booked, for example, for a major conference or spend event involving a substantial number of the Cottages. All Cottage Owners and their immediate families are provided with 4 weeks free use of their Cottage per calendar year without affecting their return. This is called the Owner's Period. No more than 2 weeks of this use may be in the high season. The Body Corporate and the Hotel Operator will agree the high season each year. The high season dates for the first year of operation will be available on request. You will be able to permit your friends to stay during your Owner's Period on the same basis as if you were staying. Details on booking requirements are discussed below.

### **What happens if I use my Cottage more than 4 weeks a year?**

In the Cottage Scheme owners are welcome to stay in their cottages beyond 4 weeks. During this usage, to ensure a fair system for all owners, a charge based on a discounted rate is applied for the usage. This is because owners usage reduces income otherwise available to all the Cottage owners. These charges are based on special discounts that are personal to the Cottage Owner and Immediate Family and are not transferable. Arrangements have been made for these charges to be deducted from the rental payable to you under the Cottage Scheme. Details of the persons considered to be Immediate Family are set out on pages 58 & 59. These rates mean that you will be charged a per night room rate which will be approximately 15% to 50% less than the achieved average room rate for the same type of Cottage during that Trading Year. Servicing charges will not apply. The 50% off-peak period rate has special conditions attached. It will only be available during low usage periods that the Hotel Operator will designate as off-peak periods and may not be booked for longer than two weeks at a time. In addition, bookings cannot be made more than one-month in advance.

### **Do I need to book my Cottage in advance?**

In the Cottage Scheme, yes. If you book at least six months in advance you will be able to stay in your Cottage during your Owner's Period unless it is already booked for a major conference or other special event. If you book later than six months in advance and your Cottage is unavailable, the Hotel Operator will endeavour to find you a comparable Cottage to book for your stay. If this occurs, charges will be calculated as if you were staying in your own Cottage. Personal belongings can be transferred from the lockable storage unit on your own Cottage.

### **What are the options for servicing my Cottage when I am staying?**

You have two servicing options during your Owner's Period:

- minimum service option – the Hotel Operator will prepare the Cottage for your use, however there will be no daily servicing during your stay. The Hotel Operator will also service the Cottage on your departure.
- daily servicing option – the Hotel Operator will prepare the Cottage for your use and service it daily during your stay.

Each of these options will include the use of facilities at the Hotel such as the pool, pool towels, marina & marine water activities and telephone message facilities.

### **What will I pay to have my Cottage serviced when I use it?**

There will be a servicing charge payable to the Hotel Operator for cleaning and servicing of the Cottage. The minimum servicing option is projected to cost FJ\$10 per day. The daily servicing option is projected to cost between FJ\$20 and FJ\$30 per day, depending on the size of the Cottage. Servicing charges are payable to the Hotel Operator in the same manner as other guest charges incurred during your stay (such as minibar, room service, food and beverage and dry cleaning charges) and payment arrangements will be identified by the Hotel Operator on check-in. Arrangements will have been made with the Body Corporate for these charges to be deducted from the rental you earn so that you do not have to pay these charges at the end of your stay unless you want to.

### **What income will be earned under the management and marketing by the Hotel Operator?**

The projected income is based on likely occupancy rates for the differently located cottages and the types of occupancy being long term, medium term and daily. It is estimated that initial returns will be just less than 7% rising to just under 8.5% over 4 years. This income will be tax free under the Fiji Hotel Aid Investment Allowance for a number of years based on accelerated depreciation as explained on page 33. The projected income details are set out on page 25. Capital gain is also possible on sale of the Cottage.

### **What fees are paid to the Hotel Operator?**

This will depend on the final choice of operator and the negotiated contract. As a guide a fee for its role in marketing and management of the Cottages, the Hotel Operator could receive 2% of the gross revenue and a % of Gross Operating Profit on a sliding scale from 8 to 15% as explained on pages 56 & 59.

### **What other costs are there?**

The Body Corporate will deduct from the amounts paid to it by the Hotel Operator the expenses incurred by the Body Corporate. These expenses will include Land Rent payable to the Director of Lands, premiums for replacement insurance and loss of profits insurance for the Cottages, payments to Savusavu Town Council, services and fees payable to the Body Corporate Representative on a time and attendance basis for administration of the Body Corporate and representing the Body Corporate in relation to the Hotel Cottage Operating Agreement.

### **How is the Rental calculated?**

The rental is calculated by reference to the net income of the Body Corporate from the Cottage operation each trading year as determined by the Body Corporate after interest and depreciation, amortisation, repairs and maintenance and any non-deductible expenses (if any) of the Body Corporate (such non-deductible expenses must be grossed up to allow for tax payable by the Body Corporate by reason of such non-deductible expenditure) but before tax. You will be entitled to a portion of the Rental based on the ratio that the Cottage Share Entitlement of your Cottage bears to the Cottage Share Entitlements of all the Cottages. Cottage Share Entitlements have been calculated on the basis of an assessed value of each Cottage relative to the assessed value of all the cottages. Therefore, Cottage Owners who have a Cottage with a higher value will receive a payment equivalent to their Cottage Entitlement. These are set out on pages 42 to 45. The Cottage Entitlement of a Cottage will not change if the sale price of that Cottage subsequently varies.

### How much of the rental I earn will be paid to me?

Each quarter you will be entitled to receive a proportion of the rental based on the ratio that the Cottage Entitlement of your Cottage bears to the Cottage Entitlements of all the Cottages. This Rental Payment will be calculated by the Body Corporate and will be based on the cash sum received from the Hotel Operator in that quarter and paid into the Operating Account (after the amount required to be deducted by the Hotel Operator and paid in the FF & E Reserve Account has been paid) less:

- moneys required by the Body Corporate to meet Expenditure Provisions and Reserves as below;
- less any moneys owed by you under the Transaction Documents; and
- any money which the Body Corporate has a right of set off under the Transaction Documents
- any loan & interest commitments relating to your cottage

Expenditure, Provisions and Reserve are generally:

- the moneys required by the Body Corporate to meet anticipated costs to maintain the Furniture, Fittings and Equipment Reserve Account, and to reinstate the Cottages (if they have suffered damage):
- contingency sums and working capital which the Body Corporate determines it needs;
- costs and expenses incurred in operating the cottages under the operating agreement;
- costs and expenses incurred by the Body Corporate in administering the Body Corporate and the Schemes;
- repayment of any amount borrowed or moneys paid on behalf of the Body Corporate.

If the Rental paid exceeds the Rental due to a Cottage Owner the Rental paid in the next quarter will be reduced or the Body Corporate can choose to pay that excess on account of Rental payable in the next Trading Year.

### How will Rental be paid to me?

Rental will be paid by the Body Corporate quarterly. You can choose whether Rental will be paid by cheque or direct credit to your nominated bank account in Fiji, from where you can withdraw it as you require (subject to Fiji's usual exchange controls and tax clearance requirements).

### What happens if the income earned by the Body Corporate does not cover costs?

In the unlikely event that the revenue earned from letting the Cottages to guests is less than the operating costs, this will mean that the previous Rental Payments, if any, you received from the Body Corporate will have been overpaid and will need to be recalculated (as the total Rental paid to all Cottage Owners is required to equal the net income from the operation of the Cottages as guest accommodation). You will be required to pay a proportionate share of the previous Rental overpayments, based on your Cottage Entitlements, by way of levy within 14 days of being requested to do so. If previous Rental overpayments are insufficient, you will be levied an additional amount. It is anticipated that the level of occupancy would have to drop significantly from the level projected to below approximately 20% before you would be required to contribute to any shortfall.

If a Cottage Owner does not pay as required, the Body Corporate can take action to recover the amount due, and as a last resort may take the steps to sell the relevant Cottage and apply the proceeds to pay the debt. In the unlikely event that the proceeds were insufficient to meet such a liability, then the shortfall would be a cost to the Body Corporate. As this cost would indirectly affect other Cottage Owners, in this limited respect, there is an element of partnership to the arrangements between all Cottage Owners.

#### **How will the Cottages be fitted out?**

The Cottages will have a fitout that has been approved by the Hotel Operator. Full details of the Furniture Fitout are set out on page 18. It is a condition of the Operating Agreement with the Hotel Operator that you may not change the Furniture Fitout in your Cottage.

#### **What about "wear and tear" of my Cottage?**

Under the Operating Agreement, the Hotel Operator has agreed to maintain your Cottage and its Furniture Fitout in good order. The Hotel Operator will attend to ordinary day to day repairs and maintenance of the Cottages and deduct the cost incurred from the revenue earned from all the Cottages. In addition the Hotel Operator will deduct from revenue earned from the Cottages a levy for capital expenditure for replacement, redecoration and major repairs, starting at 1% of revenue in the first year of operation and rising to 5% in year 6 and subsequent years. This levy will be deposited in a separate reserve account, in the name of the Body Corporate and held on behalf of Cottage Owners.

#### **Can I use the facilities at the adjoining Hotel and the Marina (when constructed)?**

While you or a guest are staying in a Cottage you and those guests will have the same ability to use the other facilities as if you were a guest staying at these other accommodations. This right will apply while the Hotel Operator is operating the Cottages under the Operating Agreement.

#### **What happens if a cyclone damages the Savusavu Marina Cottages?**

The Body Corporate will insure the Cottages at replacement value against damage caused by cyclones and other types of risks that are commonly insured against by operations of this type. Loss of profits insurance will also be held. The insurance will be arranged either directly or through Kilowen Fiji Limited. Premiums for the insurance will be paid by the Body Corporate from the payments received from the Hotel Operator under the Operating Agreement.

Initial insurance quotations have been lower than average as the location is not on the direct path of cyclones in Fiji (ref: Professor Murphy – Meteorology Department of Auckland University report on Fiji Hurricanes). In addition Savusavu is listed as a 'hurricane anchorage' by the British Admiralty Pilot book for the South Pacific.

Costs, which are not covered by insurance such as insurance deductibles or excesses and the cost of items that cannot be insured will have to be met by Cottage Owners proportionately.

#### **Am I free to sell my Cottage?**

Yes. However you will require the consent of the Director of Lands to sell your Cottage, as they are located on State Land. For further details in relation to State Land and the basis on which the Director of Lands will grant its consent are laid out on pages 48 & 49.

Cottages, the Shares in the Body Corporate, the Common Facilities Rights and the Cottage Rights under the hotel operating agreement must be sold together as a package.

The consent of the Body Corporate is also required. Purchasers will be required to sign documents that commit them to the same arrangements as the original Cottage Owners.

### **Can all the Savusavu Marina Cottages be sold?**

If 75% of the Cottage Owners holding more than 75% of the Cottage Shares Entitlements for all the Cottages in the Cottage Scheme agree, all Cottage Owners in the Scheme can be required to sell their Cottages. The net proceeds of such sale will be divided amongst Cottage Owners in the Hotel Scheme in proportion to their respective Cottage Shares Entitlements. This does not apply to those not in the Cottage Scheme.

### **Can I mortgage my Cottage to my bank?**

Yes. A financier can register a mortgage over the sublease of your Cottage and take an assignment of all your Cottage Rights. Because all your rights are "stapled", the mortgage must also include your Shares in the Body Corporate and your Common Facilities Rights. A mortgage of your sublease will require the consent of the Director of Lands, which, if you finance your purchase, can be obtained at the time that consent is given to your purchase of the Cottage. For further details on consents see pages 48 & 49. Any mortgagee may be required to enter into a deed that requires the mortgagee to agree to be bound by the Schemes.

### **What is the role of the Body Corporate?**

The Body Corporate provides a forum for all Cottage Owners to control matters of common interest. It has the power to ensure that the Cottage Owners comply with their various obligations and, if a Cottage Owner does not, the Body Corporate can remedy the default in the interim and recover the cost of doing so from the Cottage Owner. Its powers include the power to take steps to sell the Cottage, Shares, Furniture Fitout, Cottage Rights and Common Facilities Rights relating to that Cottage, of a defaulting owner, repay itself from the proceeds of sale and pay the balance to the Cottage Owner.

### **Who controls the Body Corporate?**

Two years after sale of the last cottage all the Cottage Owners will each receive a number of Shares in the Body Corporate equal to their Cottage Entitlement will own the Body Corporate.

The Body Corporate's initial directors will be appointed by Kilowen Fiji Limited. Cottage Owners will vote on their own appointees 24 months after the last cottage sale settlement.

To provide for day to day administration of its responsibilities, the Body Corporate must appoint a Body Corporate representative to fulfill that role. This Representative will be the interface between the Hotel Operator and the Body Corporate/ Cottage Owners. For the first 24 months after completion this Representative will be appointed by Kilowen Fiji Limited. Thereafter, if Cottage Owners vote accordingly, the Kilowen representative can be replaced as Body Corporate Representative.

In appointing a replacement Body Corporate Representative, Cottage Owners must choose a company or professional partnership, which is suitable.

Kilowen will only retain Shares in the Body Corporate while it holds unsold Cottages. Once all Cottages are sold, Kilowen will not receive any Rental under the Cottage Scheme (and its only involvement in the arrangements will be undertaking its functions as Body Corporate Representative for the stated initial period).

### **Who controls the yacht berth in front of my cottage?**

The Hotel Operator if the Cottage is in the Cottage Scheme. The Body Corporate has the right to ask for the removal of any vessel that is considered to be unsightly or unsafe.

### How will the Hotel Operator market our properties to maximise our returns?

The responsibility of marketing is that of the Hotel Operator. For general information traditional methods, as have been successful in the past are tabled below. New marketing is via the Internet and the private data base of the Hotel Operator. Linkage on the Web is to other related sites such as 'Fiji', 'Yachting', 'Fiji Yachting', 'Fiji Real Estate' and 'Savusavu' which have already proved successful in Savusavu.

Channels of distribution	Commission	% sales
Direct sales	0%	40%
Travel agents	10%	5%
Wholesalers	20%	20%
Fiji Inbound Operators	30%	35%

### Can I market my and other cottages personally?

Yes, and we encourage you to do so. It will give us another 119 selling agents. The Hotel Operator may give you a negotiated commission. We aim for 100% occupancy!

### Can I leave personal possessions in my cottage?

Yes – there will be a personal lockable locker in your cottage.

### What other schemes are available in addition to the 100% Management Contract?

You can opt for no Management Contract on certain cottages with sole use for your own purposes. There will be a charge from the Corporate Body for common services such as security, insurance, maintenance, gardening, etc. Partial management contracts to suit the needs of the purchasers may also be arranged.

### What experience does the Hotel Operator have?

The hotel operator will be an international operator of experience.

### What conditions are applicable to the offer?

The offer is conditional on twenty (20) presales of the cottages to purchasers at a discount and the subsequent construction finance being available.

### How will potential investor purchasers be kept informed?

After completion the cottage owners are regularly informed on a quarterly basis as in the Hotel Operating Contract. Prior to the start and during construction the cottage purchasers will be kept informed on a monthly basis.



# SECTION D

## 1.0 FINANCIAL

### 1.1 FINANCIAL PROJECTIONS

#### Rental income projections

The Hotel Operator and Kilowen have prepared net Rental Income Projections for the Hotel Cottage Scheme, incorporating the Body Corporate expenditure for the first 4 years and has also undertaken sensitivity analyses on the projections as reported on pages 40 & 41. No separate projections are prepared in relation to the Common Facilities expenses as all those costs of operating the Common Facilities are met under the Hotel Cottage Scheme; nor in relation to the Body Corporate as its income and expenditure is also reflected in the Cottage Scheme. The Body Corporate revenue is for the benefit of the Cottage Owners. After deducting its own expenses the Body Corporate is required to pay the balance to the Cottage Owners. The intended resulting effect is that the Body Corporate will have a nil profit unless the Cottage Owners decide otherwise by a 75% majority of entitlement share votes.

The projections provided on page 40 are prospective financial information prepared using assumptions that reflect planned courses of action for the period covered and are based on hypothetical assumptions, which are possible outcomes but not necessarily the actual outcome. A projection is not a forecast. A forecast is prospective financial information prepared on the basis of assumptions as to future events which are expected to take place and the actions expected to be taken at the time the information is prepared. Forecasts therefore reflect the most probable outcome given the best estimate assumptions.

#### Key Assumptions

The following key assumptions have been made in preparing the profit projections. The items do not comprise all the assumptions made:

- Economic conditions – There will be no significant changes in local or general economic conditions.
- Tourism Industry – There will be maintenance and ongoing development of the necessary tourist industry infrastructure in Fiji. The Fiji tourism industry will continue to be supported by the Fiji Government and the national airline, Air Pacific. There will be no decrease in the number of flights into Fiji from New Zealand and Australia or other inbound markets.
- Construction – Cottages are projected to be available from September 2002 onwards. Buyers will be kept informed of progress and any delays communicated to them.
- Operational – The operating parameters (in terms of occupancy and average rates per key) set out in the summary of financial projections in subsection 1.2 will be met. The Resort will be managed, marketed and operated by the Hotel Operator. The level of operator expenses will not differ significantly from the costs associated with other existing hotel operations in Fiji. The Body Corporate will be efficiently managed and operated. The risk factors associated with, and the sensitivity of the projections to certain changes in the hypothetical operating parameters are set out in this subsection and subsection 1.4.
- The Hotel Operator will approve the Cottage as being built in accordance with the specifications.
- Exchange rates – No significant changes will occur in foreign exchange rates, or in Fiji currency in Fiji currency in relation to other currencies.

- Industrial relations – No industrial disputes will occur which will have a material impact on the operations of the Cottages.
- Inflation – Low inflationary conditions are forecasted to continue, with an annual inflation rate of 4.5% per annum throughout the projection (inflation in 1999 was 0.2%).
- Taxation – The Body Corporate, as distinct from the Cottage Owners, will not make a profit during the projection period and therefore not incur any income tax liability during that period.
- Stamp duty and other costs – An investor will treat the costs of completing his or her purchase as one off expense not reflected in the projections.
- Environment – No major natural disaster, or significant climate change will occur which impacts adversely on the operation of the Cottages
- Legislative and political – no major legislative, administrative or political changes occur during the period that would affect the operations of the Hotel Cottage Scheme.

## 1.2 PROJECTED RETURNS TO COTTAGE OWNERS

*In Fiji \$*

The following table is an estimate of the returns that cottage owners can expect on their investment over the first four years

Year	1	2	3	4
Gross Cottage Income	50,587.00	53,622.51	56,839.86	60,250.00
Operating Expenses including <i>Body Corporate Furniture, Fittings Equipment Reserve &amp; Pre-opening costs</i>	13,316.00	13,563.00	14,443.00	15,767.00
Gross Operating profit (GOP)	37,271.00	40,059.00	42,397.00	44,483.00
Management Fees per cottage	3,993.00	5,411.00	6,053.00	6,707.00
Projected net income per cottage	33,278.00	34,648.00	36,344.00	37,776.00
Percentage Return on Investment	7.40	7.70	8.08	8.39

Assumptions

*Average occupancy in the first year 49.5%*

*Average rate per day for the cottage rental in the first year is Fiji\$ 280*

*Return increases after 4th year as preopening costs recovered*

*There is currently no capital gains tax in Fiji*

*Assumption is that occupancy will increase by 4% and room rates by 2% a year and expenses will increase by 2% a year*

*Based on an average cottage sale price of Fiji\$ 475,000*

*There is an additional 10% Government Value Added Tax payable by guests*

*These projections are estimates and no guarantee is given.*

*These returns are tax free for a number of years under the Fiji Hotel Aid Investment Allowance  
Income from yacht berths in front of property not included*

## 1.3 SENSITIVITY ANALYSIS

Return on investment at differing occupancies in relation to financial projections in 1.2 above

Year	Occupancy	1	2	3	4
Projected	49.5%	7.4	9.7	8.08	8.39
Plus 10%	59.5%	9.08	9.4	9.84	10.22
Minus 10%	39.5%	5.08	5.36	5.65	5.88

Occupancy has to fall below 20% before there is no return on investment.

There is currently no capital gains tax in Fiji

No allowance has been made for an income from the associated yacht/boat berths

There is no tax on this return for a number of years under the Hotel Aid Investment Allowance

## 1.4 RISK FACTORS

Investors should be aware that investment in a Cottage carries an element of risk and the future value of the cottage will depend on the financial results for the Cottages under the Operating Agreement with the Hotel Operator, the property and tourism market conditions generally and economic conditions in Fiji and overseas.

Apart from the normal business management and operational risks associated with the Cottages, a number of other factors are relevant to an investment in a cottage. Some of the factors, which could influence the financial performances of the Cottages and the returns to investors, are outlined as follows:

- Lower levels of tourist visitation to Fiji.
- Increase in tourist numbers may be constrained by low or no growth in inbound airline capacity.
- If the first 20 cottages are not sold at the 20% discounted rate the development may not proceed and the 10% deposit plus interest in the trust fund is returned to the purchaser.
- These projections assume no military or political disturbances.

## 1.5 ACCOUNTING POLICY

The accounting policies adopted in the preparation of the projected financial performance and investment analysis are in accordance with generally accepted accounting practice in Fiji. The significant accounting policies adopted in the preparation of the projected financial results and investment analysis in sub-sections 1.2 & 1.4 above are in accordance with the historical cost convention:

### Gross Cottage Income

Gross Cottage Income represents the revenue derived from the letting of the Cottages & Boat Berths, revenue from the use of telephone facilities by guests and mini bar.

### Pre-opening expenses

Expenses incurred prior to the opening of the Cottages are capitalised and amortised over a three year period.

### Foreign Currency

All transactions are denominated in Fiji currency.

### HLB Accountants Report

To be inserted here.

## 2.0 VOTING RIGHTS

The voting entitlement equal the number of shares held in the Body Corporate. These shares are also related to the original purchase prices of the cottages set by Kilowen in the initial sale offer. They are not effected by any subsequent cottage resales at a different price. The total number of shares is projected to be 29,893.

### CLUB COTTAGES

	<i>Category</i>	<i>Area - metres</i>	<i>Premium</i>	<i>Voting Entitlement</i>
A1	6	192	1.27	305
A2	6	192	1.25	300
A3	6	192	1.25	300
A4	6	192	1.27	305

### HARBOUR SIDE

	<i>Category</i>	<i>Area - metres</i>	<i>Premium</i>	<i>Voting Entitlement</i>
B1	3	157	1.17	230
B2	2	159	1.15	229
B3	1	123	1.15	177
B4	1	123	1.15	177
B5	2	159	1.15	229
B6	3	157	1.17	230

### THE LOOK OUT

	<i>Category</i>	<i>Area - metres</i>	<i>Premium</i>	<i>Voting Entitlement</i>
C1	6	192	1.27	305
C2	6	192	1.2	288
C3	6	192	1.27	305
C4	6	192	1.3	312
C5	6	192	1.3	312

### THE RATLINES

	<i>Category</i>	<i>Area - metres</i>	<i>Premium</i>	<i>Voting Entitlement</i>
D1	6	192	1.27	305
D2	6	192	1.27	305
D3	6	192	1.27	305
D4	5	196	1.25	306
D5	1	123	1.27	195
D6	4	153	1.25	239
D7	5	196	1.25	306
D8	6	192	1.27	305
D9	6	192	1.27	305
D10	1	123	1.27	195

D11	4	153	1.25	239
D12	6	192	1.27	305
D13	5	196	1.27	311
D14	1	123	1.27	195
D15	4	153	1.25	239
D16	6	192	1.27	305
D17	6	192	1.27	305
D18	6	192	1.27	305

**THE SKERRY**

	<i>Category</i>	<i>Area - metres</i>	<i>Premium</i>	<i>Entitlement</i>
E1	6	192	1.27	305
E2	6	192	1.27	305
E3	6	192	1.27	305
E4	5	196	1.25	306
E5	4	153	1.25	239
E6	1	123	1.27	195
E7	5	196	1.25	306
E8	6	192	1.27	305
E9	6	192	1.27	305
E10	1	123	1.27	195
E11	4	153	1.25	239
E12	6	192	1.27	305

**THE BIGHT**

	<i>Category</i>	<i>Area - metres</i>	<i>Premium</i>	<i>Entitlement</i>
F1	6	192	1.22	293
F2	1	123	1.23	189
F3	4	153	1.2	230
F4	6	192	1.22	293
F5	6	192	1.22	293
F6	1	123	1.22	188
F7	4	153	1.2	230
F8	6	192	1.22	293
F9	6	192	1.22	293
F10	5	196	1.2	294
F11	1	123	1.22	188
F12	4	153	1.2	230
F13	5	196	1.2	294
F14	6	192	1.22	293

## SECTION D

---

F15	6	192	1.22	293
F16	2	159	1.2	239
F17	2	159	1.2	239
F18	6	192	1.22	293
F19	6	192	1.22	293
F20	1	123	1.22	188
F21	4	153	1.2	230
F22	6	192	1.22	293
F23	6	192	1.22	293
F24	6	192	1.22	293

### THE HAVEN

	<i>Category</i>	<i>Area - metres</i>	<i>Premium</i>	<i>Entitlement</i>
G1	3	157	1	196
G2	2	159	1	199
G3	1	123	1	154
G4	4	152	1	190
G5	2	159	1	199
G6	3	157	1.01	198
G7	3	157	1.01	198
G8	2	159	1.01	201
G9	5	196	1.15	282
G10	6	192	1.15	276
G11	5	196	1.15	282
G12	6	192	1.15	276
G13	5	196	1.15	282
G14	6	192	1.15	276
G15	5	196	1.15	282
G16	6	192	1.15	276
G17	5	196	1.15	282
G18	6	192	1.15	276
G19	5	196	1.15	282
G20	6	192	1.15	276

### SAILORS RETREAT

	<i>Category</i>	<i>Area - metres</i>	<i>Premium</i>	<i>Entitlement</i>
H1	6	192	1.11	266
H2	2	159	1.1	219
H3	4	152	1.1	209

---

H4	1	123	1.1	169
H5	3	157	1.1	216
H6	5	196	1.1	270
H7	6	192	1.11	266
H8	2	159	1.11	221
H9	4	153	1.1	210
H10	1	123	1.1	169
H11	3	157	1.1	216
H12	5	196	1.1	270
H13	3	157	1.1	216
H14	2	159	1.11	221
H15	4	153	1.11	212
H16	1	123	1.1	169
H17	2	159	1.1	219
H18	3	157	1.1	216
H19	3	157	1.1	216
H20	2	159	1.11	221
H21	4	153	1.11	212
H22	1	123	1.1	169
H23	2	159	1.11	221
H24	3	157	1.11	218
H25	3	157	1.1	216
H26	2	159	1.1	219
H27	4	153	1.1	210
H28	1	123	1.1	169
H29	2	159	1.1	219
H30	3	157	1.15	226

---



# SECTION E

## 1.0 LEGAL ISSUES

### 1.1 LEGAL TITLE

Savusavu Village Marina is located on two State lease titles – CL 13569 & CL 13772 and one Native lease title – NL 415/1406. The Cottages are mostly situated on state lease CL 13569.

Land held under Native Lease is the predominant form of land tenure in Fiji, comprising 83% of all land which is administered by the Native Land Trust Board (NLTB) which was set up to oversee the leasing of native land on behalf of the native owners.

State lease land is administered by the Ministry of Lands and is less common but includes all reclaimed land that was between high tide and low tide.

The two State leases held are on land that was reclaimed several years ago and has had satisfactory engineering tests carried out to ensure proper compaction and has been passed for construction.

As is the usual case with commercial leases, the consent of the land owner as lessor is needed for any dealings in a lease (including sale, mortgage and subleasing).

The Head Leases are currently held by Kilowen Fiji Limited. The larger state lease of approximately ten (10) acres, on which most of the cottages will be situated, commenced on 1-Jul-98 with a rental of \$500 a year for 5 years, increasing to \$5,000 a year for 5 years, then to \$10,000 a year for 5 years and then 3.5% of income or 6% of unimproved capital value whichever is the higher. The smaller state lease of approximately 2 acres, on which the hotel, shops, offices, the club & four of the cottages will stand, commenced on 1 April 1995 with a rental of \$10,000 a year for the first ten years rising to 3.5% of turnover or 6% of unimproved capital value whichever is the higher.

The Head Lease will be assigned to the Body Corporate at the time of the first sale of a cottage.

Each sublease of a cottage will be for the same period as the Head Lease. The rental payable under a Cottage Lease is \$1 plus a proportion of the amount the Body Corporate is required to pay as Land Rent under the Head Lease calculated by reference to the Cottage Entitlement of the Cottage subleased. The Sublease terms and conditions will require individual cottage owners to be a part of the Body Corporate structure. The Cottage leases will contain the same mortgagee protection provisions as the Head Lease.

To enable the Body Corporate to enter into the Operating Agreement with the Hotel Operator, all cottage owners that have opted to do so will licence their Cottage back to the Body Corporate for the period of the Operating Agreement (10 years) with a right to renewal for a term matching the renewal period under the Operating Agreement (a further 10 years). Further renewals of the licence will depend on the circumstances at the time of renewal.

### 1.2 GOVERNMENT APPROVALS AND REQUIREMENTS

#### Foreign Investment in Fiji

The Fiji Trade and Investment Board (FTIB) is responsible for the control, regulation and promotion of foreign investment in Fiji. All investment proposals by non-residents require FTIB approval, which looks at the overall impact of an investor's presence in Fiji, and the economic and social benefits that will be gained.

Reserve Bank of Fiji approval is also required for the issue to, or transfers of shares to, non-residents. The Reserve Bank also administers Fiji's exchange control regulations.

Kilowen Fiji Limited will make arrangements with the FTIB whereby only one form will be required to process the investment application through the Reserve Bank, exchange control, Lands Department, & FTIB approval procedures. This procedure should also apply to subsequent sales by Cottage Owners. A nominal fee may be payable and such applications should take 4 to 6 weeks to process.

### **Reserve Bank of Fiji Approvals**

The Fiji Exchange Control Act, amongst other things, regulates the payment of money by Fiji residents to non-residents, the holding by non-residents of shares in companies registered in Fiji and borrowings in Fiji by non-resident controlled companies. It is therefore necessary for the Body Corporate to obtain Reserve Bank approval for any distribution of profits made to non-resident Cottage owners. Overseas investment is important to Fiji and accordingly Reserve Bank policy has always been that, subject to tax clearance, investment profits should be freely transferable. The Reserve Bank of Fiji has advised that under the current exchange control guidelines Cottage Owners will be able to repatriate all profits of the current year and unrepatriated profits of any previous four years from the operations of the Hotel Cottage Scheme. Investors will also be permitted to repatriate funds on the sale of their Cottage provided tax clearance is obtained.

The share ownership restriction will only apply in respect of those owners who chose to hold a Cottage in the name of a Fiji registered company. Borrowing in Fiji by non-resident companies or non-resident controlled companies is also subject to Reserve bank control. The promotion of foreign investment in Fiji also is a focus of Reserve bank policy in respect of non-resident investment in Fiji companies which, in the case of any kind of bona fide investment, is generally approved. The only conditions likely to be attached to approvals granted in respect of the legal entities owning the Cottages would be that the Reserve Bank be satisfied that such investment funds as have an offshore source have entered Fiji through the banking system.

### **Consent of Director of Lands**

As part of the settlement requirements, investors must obtain the consent of the Director of Lands to their acquiring a Cottage Lease. The application to the Director of Lands will be included in the combined application form. The application must refer to any mortgage that the owner intends to provide to a financier. The Head Lease will provide that the consent of the Director of Lands cannot be unreasonably withheld in the case of a reputable and responsible assignee or mortgagee and no rent premium can be claimed for giving such consent. This position also applies to the Cottage Leases and the Director of Lands has advised Kilowen Fiji Limited that its policy in relation to applications for consent for dealing with Cottage Leases will be to confirm the bona fides of the purchaser but otherwise consent should be provided as a matter of course. If approved, the Director of Lands will note the application form accordingly and then this part of the form will be submitted to the Registrar of Titles for registration together with the other settlement documents. Usually, registration must occur within three months of consent being granted or a fresh application must be made but the Director of Lands has advised that it will waive this requirement in relation to the initial transfer of the Cottage Leases. A minimal fee will be charged for the processing of an application for a transfer of a Cottage Lease.

In relation to consent where a Cottage Owner wishes to mortgage his or her Cottage Lease, the Director of Lands has advised that its policy will be to approve any mortgage to a recognised bank or financial institution, whether or not that company has a branch in Fiji.

Consent will also be required when a Cottage Owner seeks to sell the Cottage. The same procedures and time frames will apply and Cottage Owners will have to ensure that persons who purchase from them obtain such consents.

### VAT and tax

The Fiji VAT legislation is based on the United Kingdom VAT legislation and similar to New Zealand GST. VAT applies to all goods and services supplied in Fiji by a registered person in the course or furtherance of a taxable activity, other than the exempt supplies. The present rate of VAT is 10% of the actual or deemed value of supply of the goods and services. Exempt supplies include domestic rentals and financial services.

Where a person makes, or will make, taxable supplies in the course of a taxable activity which exceeds F\$15,000 in any 12 month period, then that person is obliged to register for VAT purposes. If supplies made, or to be made, in the course of a taxable activity by a person in any 12 month period are less than F\$15,000, then that person is not obliged to register, but may choose to do so.

An input credit may be claimed for VAT paid by any registered person in relation to goods and services acquired for the principal purpose of making taxable supplies. In this way only the value added at each stage in the chain is taxed. The full tax is borne by the ultimate consumer, not the registered person.

Where VAT payable on supplies made by a registered person exceeds input credits in relation to goods and services acquired for the principal purpose of making taxable supplies, the registered person must pay the excess to the Commissioner. If, however, VAT payable on supplies made is less than input credits in relation to goods and services acquired for the principal purpose of making taxable supplies, the Commissioner must refund the deficit to the registered person.

VAT returns are required to be prepared on a monthly (or three monthly basis if the turnover does not exceed F\$100,000). Returns and payments (if any) are due by the last working day of the first month immediately following the end of the relevant return period.

Cottage Owners will be required to register for VAT purposes. On the basis that an investor is registered, supplies made by an investor, in consideration for which it receives rental income, will be taxable supplies and subject to VAT. Initial registration for VAT purposes must be completed as part of completing the requirements under the Sale, Purchase & Construction Agreement and is discussed below. Thereafter, returns will have to be filed periodically, together with annual income tax returns. The Body Corporate will provide Cottage Owners with the individual records needed to complete these returns.

On the resale of a Cottage by the investor, no VAT should be payable provided the Cottage remains subject to the Hotel Cottage Scheme. In such circumstances the sale of the Cottage should constitute the supply of a taxable activity as a going concern and therefore be zero-rated for VAT purposes.

### Stamp Duty

Fiji stamp duty will be required to be paid by investors at the following rates.

- 2% of the purchase.
- 1% of the amount of money borrowed under any registered mortgage.

## 1.3 TAXATION

Investors are advised to consult their own tax advisors on their own particular tax situation. However in general a Fiji tax return will need to be prepared and lodged annually with the Fiji tax authorities by all Cottage Owners.

Rental income derived by an investor from the Hotel Cottage Scheme will be assessable for tax purposes in Fiji. (see following paragraph for tax concession under the Hotel Aid Investment Allowance scheme). Any expenses incurred by an investor, which qualify for tax deductibility under the normal rules, should be deductible for Fiji tax purposes. Depreciation deductions (including a special initial allowance) and deduction for interest paid on loans used to fund the purchase of a Cottage also should be available. Annual depreciation rates currently applicable in Fiji are as follows:

- Buildings . . . . . 1.25% of prime cost
- Furniture and fittings . . . . . 7.00% of cost net of initial allowance
- Plant and machinery . . . . . 7 to 15% of cost net of initial allowance
- Initial allowance is-
  - 10% of prime cost for buildings claimable in the year construction is completed; and
  - 30% of the cost for buildings claimable in the year in which the expenditure is incurred

It is not mandatory to claim the initial allowance. If the initial allowance is not claimed in the year of acquisition, it cannot be claimed in the future. However, the depreciable cost base of the asset will not be notionally reduced and can be depreciated in the future based on the annual depreciation rates listed above.

Contributions to the FF&E Reserve Account will not be tax deductible in Fiji. However, as the FF&E Reserve Account is utilised, amounts paid should be allowable as a repair and maintenance deduction or be depreciable for Fiji tax purposes depending on the nature of the payment.

The highest marginal tax rate currently applicable in Fiji is 35% for individuals and resident companies. Fiji branches of non-resident companies are taxed at the rate of 45%.

The Body Corporate will provide certain assistance in the form of calculations and information necessary for the completion of the Fiji tax return. This will include calculations of Hotel Aid Investment Allowance (see below), calculation of initial allowance (should the Cottage Owner elect to claim it) and annual depreciation on the Cottage Buildings and Furniture Fit Out. Personal details such as interest paid on loans used to fund the purchase of a Cottage will need to be maintained by the individual Cottage Owner.

### **Hotel Aid Investment Allowance**

Investors in the Hotel Cottage Scheme may apply to Fiji's Minister of Tourism to qualify for Hotel Aid Investment Allowance (HAIA). Where an investor has been granted approval for HAIA that person shall be entitled to claim as being free of income tax, income from the hotel operation equal to 55% of total capital expenditure incurred in the hotel project (including amenities) as approved by the Minister but less the cost of any land acquired for such a project. Any HAIA not set off against taxable income for the first fiscal year must be carried forward and set off against taxable income from the hotel operation of the next successive fiscal years until such amount is wholly set off. The HAIA is granted in addition to depreciation as described above.

In similar Fiji developments the HAIA was granted by the Fiji Government to all investors who participated in the initial offering and who applied before construction of their investment property commenced. Investors should make formal application for the HAIA when they have entered into the Sale, Purchase and Construction Agreement. The approval in principle is subject to the proviso that the investors give a written undertaking that they will not occupy their Cottage for more than 12 weeks a year. Therefore, subject to any possible future legislative change in Fiji, the HAIA will provide a tax shelter to offset Fiji tax payable by the investor on the income arising from the Cottage, to the extent of the HAIA.

The HAIA is 55% of approved expenditure incurred by an investor. The Fiji Ministry of Tourism is responsible for approving the level of expenditure that is able to benefit from the HAIA. The Ministry of Tourism will review the expenditure incurred by an investor, and will determine what it considers to be the approved expenditure that qualifies for HAIA.

It is not possible, except in limited circumstances, to transfer unutilised hotel aid to new investors on the sale of a Cottage. In addition, where an investment in a Cottage is structured through a company, certain ownership requirements must be satisfied in order that the company remains entitled to the HAIA.

### Incentives

There are a number of tax incentives available in Fiji for which non-Fiji resident investors may qualify. These include the:

- waiver of non-resident withholding tax (10% for New Zealand and Australian tax resident financiers) on interest paid on non-Fiji sourced funding to purchase a Cottage; and
- waiver of non resident withholding tax (15% for New Zealand tax resident shareholders and 20% for Australian tax resident shareholders) on dividends paid by a Fijian company where that company is used by a foreign investor to purchase and rent the Cottage.

Investors have been granted the following the following incentives by the Fiji Government:

- Pursuant to section 9 (3)(b) of the Fiji Income Tax Act, a waiver of Fiji non-resident withholding tax on funds borrowed outside Fiji to fund the acquisition and construction of the Cottages. The incentive is granted subject to the proviso that the interest income is not subject to tax in the financier's home country or, alternatively, a tax credit would have been granted in the financier's home country for the withholding tax that would have been paid had it not been for the waiver.
- Pursuant to section 8 (6)© of the Fiji Income Tax Act, a waiver of Fiji non-resident withholding tax on dividends paid by a Fiji company where that company is used by a foreign investor to construct and rent the Cottage. The incentive is granted subject to the proviso that the dividend income is not subject to tax in the investor's home country or, alternatively a tax credit is granted in the investor's home country for the withholding tax that would have been paid had it not been for the waiver.

### Capital gains tax

Fiji does not have a capital gains tax, therefore investors should only be taxed in Fiji on any gain arising on the sale of their Cottage if they are in the business of buying and selling property through a Fiji permanent establishment, or the Cottage was acquired for the purpose of resale. However, there will be a recoupment of depreciation which will be subject to tax where the Cottage is sold for a consideration in excess of its tax written-down value.

### Fiji resident investor

A Fiji resident investor will, include the rental income and allowable deductions in their Fiji income tax return as outlined in the general section above. Fiji investors are entitled to apply for HAIA.

## 2.0 SUMMARY OF LEGAL DOCUMENTS

This section contains a summary of the following documents:

- i) Operating Agreement
- ii) Technical Services Agreement
- iii) Hotel Operator Licence Agreement
- iv) Reservation Service Agreement
- v) Body Corporate Rules
- vi) Constitution of the Body Corporate
- vii) Cottage Lease
- viii) Marina Cottages Trust
- ix) Deed of Participation
- x) Sale, Purchase and Construction Agreement
- xi) Representative Agreement

### i) OPERATING AGREEMENT

#### Background

The Body Corporate will enter into an agreement called the Operating Agreement with the Hotel Operator to manage the Cottages for 10 years. Subject to the Hotel Operator not being in default under the Operating Agreement, the Hotel Operator has an option to renew the Operating Agreement for a further period of 10 years.

The Deed of Participation records the basis on which the Body Corporate is given the ability to enter into this agreement with the Hotel Operator and that deed, this agreement, the Technical Services Agreement and the Body Corporate Rules are the principal component documents in the Cottage Scheme.

#### Key matters covered in Agreement

The Operating Agreement deals with the following key matters:

- The appointment of the Hotel Operator and the term of that appointment.
- The Hotel Operator's management duties.
- The standard to which the Hotel Operator must perform its duties.
- The appointment of the Hotel Operator to act on behalf of the Body Corporate as its agent.
- The way in which disagreements between the Hotel Operator and the Body Corporate are to be resolved.
- How monies received from the hotel guests for occupying the Cottages are to be collected and what expenses are to be paid out of that money before the balance is remitted to the Body Corporate.
- The proportion of revenue to be set aside each year to establish a fund to be applied for major refurbishment, alternations or replacements and major repairs.
- The fees payable to the Hotel Operator and how these fees are calculated.
- The extent to which Cottage Owners are entitled to use their own Cottage, the procedure for booking, and charges payable by Cottage Owners for housekeeping,

etc. when they are using a Cottage.

- The insurances to be kept in place and the circumstances which the Cottages must be reinstated if some or all of the Cottages are damaged or destroyed.
- The events which entitle either the Body Corporate or the Hotel Operator to terminate the Operating Agreement for failure to perform obligations.

### Name

During the term of the Operating Agreement, the Hotel Operator is required to market the Cottages under the trade name "Savusavu Marina Cottages" or such other trading name under which the Hotel is operated.

### Condition

The Operating Agreement is conditional on the construction 20 of the Marina Cottages being satisfactorily completed.

### Standards

The Hotel Operator must manage those cottages in the Cottage Scheme:

- In accordance with the business plan agreed between the Body Corporate and the Hotel Operator each year;
- To a standard not less than the standard to which the adjoining hotel is managed and operated;
- As an integrated part of Savusavu Village Marina;
- Giving a fair opportunity for reservations to be made at the Cottages and taking no steps, subject to meeting guest preferences, that are designed to or have the effect of dissuading people from making reservations to stay at the Cottages.

The Hotel Operator is required to operate the Cottages in accordance with industry standards for the operation of similar international hotels.

The Body Corporate appoints the Hotel Operator to manage the Cottages as its agent. Subject to the terms of the Operating Agreement, the Hotel Operator has exclusive control of the management and operation of the Marina Cottages. The Body Corporate will not be responsible to third parties for the Hotel Operator.

The Hotel Operator, in carrying out its duties, must use all reasonable endeavours to comply with relevant laws.

The Body Corporate is required to ensure that Cottage Owners and their guests comply with the rules applicable to guests staying at the Hotel. The Hotel Operator must also use reasonable endeavours to ensure that it and its guests do not breach the Rules of the Body Corporate relating to Cottage's use.

The Hotel Operator's authority to enter into contracts on behalf of the Body Corporate without its prior approval is limited to expenditure that has been budgeted for, contracts for not more than one year, and expenditure that is not more than FJ\$20,000 per annum. There is an exception where the urgency and gravity of the situation doesn't allow time for the approval of the Body Corporate to be obtained beforehand.

The Hotel Operator can make purchases from companies that are related to it provided those prices are competitive. Volume discounts must be passed on to the Body Corporate.

The Body Corporate has the sole right to issue proceedings. The exception is in respect of debts up to FJ\$20,000 where the Hotel Operator may collect those debts. If the Hotel Operator is sued in its own name, then it has a right to appoint its own lawyers and those costs will be treated as operating expenses and therefore paid for by Cottage Owners. The

Hotel Operator is required to consult with the Body Corporate with a view to reducing legal fees associated with each party being represented.

The Hotel Operator is required to ensure as far as reasonably possible that Cottages are not taken out of commission at times where there is demand that might fill them unless the decommissioning is reasonably necessary. Cottages may not be used to provide staff accommodation.

Staff are to be employed by the Hotel Operator.

### **Access to Savusavu Village Marina**

Guests of the Cottages must be given access to other SVM facilities.

### **Car Park**

The Hotel Operator is required to operate the Cottages car park & garages including the 'buggy' charging garage.

### **Pre-opening expenses and working capital**

Kilowen must pay, on behalf of the Body Corporate, pre-opening expenses of FJ\$1,750 per cottage, associated with financially and operationally preparing the Cottages for opening and including advertising and promotion. It should be noted that the Body Corporate must reimburse Kilowen for this audited expenditure by equal payments over 3 years, interest free.

Kilowen must also lend the Body Corporate FJ\$50,000 to be used as working capital in connection with the operation of the Cottages by the Hotel Operator. This expenditure is also repayable by the Body Corporate over 3 years, interest free.

### **Construction and Pre-Opening**

Kilowen is required to build the Cottages in accordance with the plans and specifications. A procedure is set out for the approval of plans and works.

### **Pre-Opening Programme**

Prior to the Opening Date, the Hotel Owner must prepare and submit to the Body Corporate a pre-opening programme that deals with matters to be undertaken before opening.

### **Pre-Opening Budget**

The Hotel Operator is required to prepare a pre-opening budget that sets out dates and amounts of expenditure that must be paid by the Body Corporate.

### **Opening Date**

The Hotel Operator will not be obliged to start managing the Cottages until the opening date, with the exception of some agreed elements of the pre-opening activities and expenditure. This will be when construction of the first 20 Cottages are complete and are ready to render a first class service to guests and all FF&E and operating equipment has been installed and adequate working capital has been provided.

### **First Business Plan**

The Hotel Operator must prepare and submit the first business plan for the Hotel Cottage Scheme to the Body Corporate for approval four months prior to the estimated opening date.

### Accounting records and financial reports

The Hotel Operator is required to keep full books and records in accordance with its standard operating system that reflect the results of operating the Cottages.

The Hotel operator must provide to the Body Corporate a detailed financial statement and report each quarter showing the results of the operation. The Hotel Operator's key representative is also required to provide a narrative report on the present and future operation of the Cottages. At the end of each trading year ended 31 December, the Hotel operator is required to prepare and have audited a detailed annual financial statement.

The financial statements to be provided to the Body Corporate by the Hotel Operator are to be prepared in accordance with Fiji generally accepting accounting standards.

### Review of records and reports

The Body Corporate Representative or an independent expert has a right to inspect the books and records of the Hotel Operator, as they relate to the Cottages.

The Body Corporate can request the Hotel Operator to provide details of its room and its occupancy rates, to assist performance monitoring, for the preceding 6 Accounting Periods.

The Body Corporate is also, at its expense, entitled if it believes that the Hotel Operator is not complying with its obligations under the Operating Agreement, and the Hotel Operator has not satisfactorily addressed the concerns raised, to require that an independent expert undertake a management audit or management report to ascertain whether or not the Hotel Operator is performing its obligations under the agreement.

Information provided by the Hotel Operator about its business must be kept confidential.

### Business plan

At least three months before the commencement of each Trading Year, the Hotel Operator must prepare and submit for the Body Corporate's approval a comprehensive draft business plan for the Next Trading Year. The business plan will include a budget of total revenue, operating expenses, gross operating profit, Cottage Owner's costs, and it will also contain the Hotel Operator General Manager's narrative report, a description of the programme for marketing, advertising and promotions, complimentary rooms budget, proposed capital expenditure, FF&E expenditure, room occupancy projections, room rates by room types and location and by market segments, projected statement of financial position and a statement of cash flows.

If agreements cannot be reached between the Hotel Operator and the Body Corporate on the final form of the business plan then the business plan is to be finalised by an independent expert. Until the issues in the dispute have been resolved, the business plan for the previous year relating to those areas that are in dispute is to apply, with the appropriate Fiji CPI adjustment, until the dispute is resolved.

Both the Body Corporate and the Hotel Operator must notify the other in writing within 45 days of any significant event or circumstances which is considered likely to adversely impact on the profitable operation of the Cottages. In such an event the Hotel Operator must prepare new forecasts and plans for the remainder of the Trading Year to take into account the impact.

### Fair allocation of expenses

Where expenses relate to both the Hotel and the Cottages, the Hotel Operator may only charge a fair proportion of those expenses to the Cottages. While generally, the Body Corporate will check whether there has been a fair allocation of cost when the business plan is prepared each year, a management audit is available during the year if an issue concerning expense claims arises.

### Representatives and meetings

Both the Hotel Operator and Body Corporate must each appoint a representative. The representative will be the point of contract between the Body Corporate and the Hotel Operator.

Meetings of the representatives will occur monthly or as the representatives agree.

Disagreements between the representatives that cannot be resolved between them must be determined in accordance with the dispute resolution process provided for in the Operating Agreement.

### Setting room rates

The Hotel Operator has the exclusive right to vary discounts off rack rates during the trading year to reflect market conditions.

If the Body Corporate believes that the Hotel Operator has not given a fair opportunity for bookings to be made at the Cottages, it must notify the Hotel Operator. The Body Corporate and the Hotel Operator must resolve the dispute. The Body Corporate cannot terminate the Operating agreement or seek damage under this provision.

### Accounts and payments

In order to operate the Cottages, the Body Corporate must open a bank account called the "Operating Account". Exclusively the Hotel Operator will operate the Operating Account. All the revenue received from the operation of the Cottages including telephone usage and mini bar consumption is credited to this account. All other revenue earned by the Hotel Operator from the guests of the Cottages belongs to the Hotel Owner and Hotel Operator under their separate management agreement. The Hotel Operator is required to pay all expenses incurred in the operation of the Cottages from the Operating account and after the various deductions are made, it is required to pay the balance to the Body Corporate by the 20th of the month following or otherwise as the Body Corporate directs.

In practice the Hotel Operator will receive payment from guests in one sum, and will then need to divide that payment by allocating to the Hotel the revenue that relates to food and beverage and use of hotel services, and the balance allocated to Cottages accommodation.

Where the Hotel Operator's offers discounted 'packages' for the services provided by the Hotel and Cottages accommodation, each component must be discounted by the same percentage to ensure that the burden of the discount is shared fairly.

In the event that there is insufficient money in the Operating Account to meet expenses, the Body Corporate must pay that shortfall, if the Body Corporate cannot meet the payment it can fund that shortfall either by borrowing, or by levying Cottage Owners.

The Hotel Operator is entitled to set off against monies owed by it to the Body Corporate monies owed by the Body Corporate to the Hotel Operator. The Hotel Operator is entitled to withdraw monies owed to it from the Operating Account.

### FF&E Reserve Account

In order to provide a fund to contribute towards the cost of meeting capital expenditure on the Cottages and the Common Facilities, the Hotel Operator is authorised to deduct, on behalf of Cottage Owners, from the Operating Account a percentage of the total revenue earned by the Cottages and pay that sum into a bank account in the name of the Body Corporate called the Fittings, Furnishing and Equipment (FF&E) Reserve Account. The amount is 1% of total gross revenue in the first operating year, 2% in the second operating year, 3% in the third operating year, 4% in the fourth operating year and 5% a year thereafter.

Money in the FF&E Reserve Account will be held in trust for the Cottage Owners (to meet the expenditure noted below).

The FF&E Reserve Account is to be applied towards meeting what is called expenditure which generally relates to structural repairs, major refurbishment, alterations and replacement to the Cottages and furniture, furnishings and equipment. Ordinary day-to-day repairs are treated as an operating expense that will be paid from the Operating Account before distributions are made to the Body Corporate. Capital expenditure anticipated to be incurred in each trading year will be set out in the business plan. Funds in the FF&E Reserve Account can only be used for budgeted capital expenditure unless the expenditure is necessary or urgent for the immediate protection of property or the prevention of injury to or for the safety of individuals.

If there is insufficient money in the FF&E Reserve Account to pay any approved capital expenditure then the Body Corporate may ask the Hotel Operator if it is possible to defer that expenditure to a future trading year. If, however, the Hotel Operator does not agree to the deferral, then it will be necessary for additional funds to be made available by Cottage Owners or the Body Corporate either by way of levy, by borrowing or from the revenue received from the Hotel Cottage Scheme.

### Fees

These will depend on the final choice of hotel operator, but as a general guide the following is likely.

The Hotel Operator is entitled to a base fee of 2% of gross revenue of the Cottage Scheme during its term as operator.

The Hotel Operator is also entitled to be paid an incentive fee based on the gross operating profit (GOP) of the Cottages in each trading year, being 8% of GOP up to FJ\$1.0m, 10% of GOP between FJ\$1.0m and FJ\$3.0m and 15% of GOP thereafter. Of benefit to Cottage Owners, these threshold levels will be adjusted each trading year for changes in the Fiji Consumer Price Index (CPI) as prepared by the Fiji Government Bureau of Statistics during the preceding trading year so that these numbers against which the incentive fee is calculated will increase with inflation.

The Hotel Operator is entitled to be paid its base fee monthly, and its incentive fee quarterly based on the estimates of the GOP of the Hotel Cottage Scheme set out in the business plan adjusted to reflect actual trading results. In the event that the Hotel Operator is overpaid part of its incentive fee in one quarter, it must repay that overpayment in the next quarter. Final calculation and payment to the Hotel Operator of the last installment of any incentive fee takes place once the accounts have been audited at the end of each Trading Year.

If during the five full Trading Years commencing after the first full Trading Year the earnings before interest, tax and depreciation ("EBITD") of the Marina Cottage Scheme do not exceed FJ2.0m (called the "Minimum Return") then the Hotel Operator will not be entitled to receive its incentive fee to the extent of that shortfall. For the first Trading Year the Minimum Return the Hotel Operator must achieve is increased by the CPI from the opening date of the Cottages to 12 months ahead, but not exceeding 3%. In each of the other Trading Years in which the Hotel Operator is required to achieve a Minimum Return, the Minimum Return will be increased each year by the CPI increase each year by the CPI increase in the preceding Trading Year, but not exceeding 3%.

If the Hotel Operator has failed to achieve the Minimum Return in a Trading Year but EBITD of the Cottages in the next Trading Year exceeds the Minimum Return, the Hotel Operator is entitled to recover the incentive fee foregone to the extent of that excess.

The Hotel Operator is entitled to pay money to Cottage Owners to ensure that the Hotel Cottages Scheme achieves the Minimum Return and to avoid termination of the Operating Agreement. The Minimum Return provision will not apply if Hotel Operator's

failure to achieve the Minimum Return is caused by an event reasonably unforeseeable or beyond the Hotel Operator's control. The Hotel Operator is entitled at any time to pay a shortfall to the Body Corporate and receive its incentive fee for that trading year.

### Marketing

The Hotel Operator is entitled to an annual marketing fee, payable monthly in arrears, equivalent to up to 5% of total gross revenue as an advertising budget to cover marketing expenses.

The Cottages must participate in any loyalty scheme that the Hotel Operator may participate in - for example a loyalty program under which members earn points towards free accommodation.

### Other Hotel Operators

This agreement will apply in its entirety if the Hotel Operator decides to operate with another hotel management scheme.

### Role of the Body Corporate

The Hotel Operator has the exclusive right to operate the Marina Cottages during the term of the Operating Agreement. The Body Corporate must not, and must ensure that each Cottage Owner does not, grant any right to carry on any commercial activity within the Cottages without the prior written consent of the Hotel Operator.

The Body Corporate must generally provide assistance necessary to the Hotel Operator in order to enable the Hotel Operator to carry out its duties.

The Body Corporate must not dispose of any interest in or create any charge over the Common Facilities without the consent of the Hotel Operator.

### Owner Occupation Rights of Cottage Owners

In each year, each Cottage Owner or their nominee is entitled to use their Cottage free of room charge for a period of four weeks provided that not more than two of those weeks can take place in the high season. This is called the "Owner's Period". The high season is the periods to be agreed between the Body Corporate and the Hotel Operator each year. It can be expected that the high season will include Christmas and school holidays and the period between 1 July and 31 October. Stays do not need to be consecutive days.

Cottage Owners and Immediate Family may stay longer than 4 weeks in a year. In that case, the room rate they will be charged will be approximately 15% to 50% less than the average room rate achieved by Cottages of the same type in that trading year. The 50% discount will only be available during periods of low usage which the Hotel Operator designates as off-peak periods and for not more than 2 weeks at a time. The Cottage must be occupied personally by the Cottage Owner or their Immediate Family and may not be booked more than one month in advance. (To qualify for the tax advantages under the Fiji Government Hotel Aid scheme owners must not occupy the cottage personally for more than 12 weeks a year).

### Immediate Family

The Operating Agreement contains a definition of the Cottage Owner and Immediate Family that includes:

- where the Cottage Owner is one person, that person and their spouse or partner with whom they live, and their children;
- \* where the Cottage Owner is more than one person then two persons (who must be registered as sublessees of the Cottage) and whose names must be advised in writing to the Hotel Operator and their respective spouse or person with whom

they live and their children;

- \* where the Cottage Owner is a trust, partnership, or company then two persons whose names must be advised in writing to the Hotel Operator, and may not be changed more than once each trading year, those persons spouse or partner with whom they live and their children.

Cottage Owners must check in and check out in accordance with the Hotel Owners usual reservation procedures.

A Cottage Owner who books more than six months in advance is entitled to use their Cottage unless the Cottage has been booked previously, for example for a major conference or special event involving the Cottages and the Hotel Operator. If a Cottage Owner's Cottage is unavailable, the Hotel Owner must endeavour to accommodate the Cottage Owner in a comparable Cottage.

While the Marina Cottages are operated by the Hotel Operator under the Operating Agreement, each Cottage Owner, while staying at a Cottage, is entitled to use the Hotel and facilities as if the Cottage Owner were a member or guest of their establishments. The guests of the Hotel will similarly be able to use the Cottage facilities.

A Cottage Owner may nominate some other person to use their Cottage during their Owner's Period.

Cottage Owners personal possessions can be stored in a locker in the Cottage.

Cottage Owners occupying a Cottage during their Owner's Period must pay the Hotel Operator's costs in providing housekeeping, laundry services etc. Details are provided in section B on page ?.

Cottage Owners must pay on departure all guest charges and special rate charges for a Cottage over and above the Owner's Period and Cottage upgrades from, for example, a one to a two bedroom Cottage.

The Hotel Owner must give Cottage Owners reasonable access to their Cottage for the purpose of inspection or to show the Cottage to prospective purchasers or agents.

The Body Corporate must ensure that the Body Corporate Rules prohibit Cottage Owners from interfering in or contacting the Hotel Operator about the operation of the Cottages other than through the Body Corporate.

### Repairs to the Marina Cottages

The Hotel Operator is required to maintain the Cottages and the FF&E in good order, repair and condition. The costs incurred are an operating expense payable from the revenue of the Hotel Cottage Scheme.

The Hotel Operator is not permitted to make any alternations to the Cottages without the prior approval of the Body Corporate unless required to remove a threat of injury to persons or property.

### Insurance

The Body Corporate is required to put in place and maintain comprehensive replacement insurance for the Cottages. Insurance can be arranged through Kilowen if there is an opportunity to take advantage of volume discounts.

The Body Corporate must also put in place insurance to cover damage to machinery and plant, and also loss of profit and the Hotel Operators management fee. These insurance premiums will be payable by the Body Corporate. Cottage Owners will need to ensure that the Body Corporate has funds required to meet those payments.

The Body Corporate assumes all risk for insurance and waives any claim against the Hotel Operator and any related company arising out of uninsured claims.

### Damage to and destruction of the Cottages.

If the Cottages are damaged such that the cost of reinstatement is no more than two-thirds of replacement cost and can be reinstated from the insurance monies available, the Body Corporate must reinstate the damaged portion to the same condition as existed previously. If the Body Corporate is not required to reinstate, then it is the Body Corporate's decision as to whether or not to reinstate. If the Body Corporate decides not to reinstate, then the Operating Agreement terminates. If the Body Corporate however decides to rebuild even if it is not obliged to do so, then the Operating Agreement continues for the unexpired part of the term. It should be noted that while there is limited obligation on the Body Corporate to reinstate under the Operating Agreement, the Body Corporate Rules require the Cottages to be reinstated if damaged or destroyed.

### Indemnities

The Body Corporate indemnifies the Hotel Operator and its affiliated companies from any claim, action, loss or expense which the Hotel Operator and those companies may suffer from management of the Cottages provided that management is accordance with the terms of the Operating Agreement.

The Hotel Operator is only obliged to indemnify the Body Corporate in very limited circumstances.

### Termination

The Operating Agreement lists a number of events of default which include non-payment of money, and breaches of the agreement by one party which have a material adverse effect on the other. In such cases, and where there has been a failure to remedy the default can terminate the Operating Agreement.

If the earnings from the Marina Cottage Scheme in a full trading year, before interest, tax and depreciation, do not exceed the Minimum Return in each of two consecutive trading years other than the first Trading Year, and the Hotel Operator has not paid that shortfall to compensate Cottage Owners then the Body Corporate is entitled to terminate the Operating Agreement. A party not in default can decide not to exercise the right of termination and instead pursue any other remedies that party has in law.

If the agreement is terminated then the Hotel Operator must leave the Cottages clean, and remove its property; repair damage & leave operating equipment.

### Termination if new hotel operation

If the Hotel Operator intends to cease to be the operator of the Cottage Scheme it must advise the Body Corporate. The Body Corporate must decide whether it wishes to operate the Cottages itself or require the new operator of the Hotel to do so. If so the Hotel Operator and the Body Corporate must use their best endeavours to negotiate a new operating agreement with the new operator, which must be:

- \* for the remainder of the term of the agreement with the former Hotel Operator
- \* with the proposed new operator of the Hotel
- \* on the basis that there will be a smooth transition from the original hotel operator to the new operator

The Body Corporate must do all things necessary to give effect to the intention and to negotiate in good faith with the new operator.

The existing Operating Agreement will cease when the new operating agreement commences.

If the Body Corporate wants to operate the Cottages itself then the existing Operating Agreement can be cancelled after 50 days' notice.

### Dispute Resolution

The Operating Agreement sets out a procedure for resolving disputes first by negotiation, and then for determination by an expert. The decision of the expert is generally not final and binding, leaving the parties free to ultimately resolve their dispute through the Courts.

The Laws of Fiji govern the Operating Agreement. Each party agrees to be subject to the non-exclusive jurisdiction of the Courts of Fiji for the resolution of disputes between them.

## 2) TECHNICAL SERVICES AGREEMENT

The Technical Services Agreement is between the Hotel Operator and the Body Corporate.

### Technical Services

The Technical Services Agreement sets out a procedure by which the Hotel Operator will provide information and guidance, with respect to the interior and exterior design and decoration of the Cottages and the services, furniture, furnishings and operating equipment. The agreement provides for the Hotel Operator's input approval to be obtained at various design phases.

Kilowen Fiji Limited is required to provide full Interior Design illustrations and documentation in accordance with the plans and specifications.

The Hotel Operator may require changes to the Interior Design plans and specifications if operational and safety problems are disclosed. The layout is required to be finally approved by the Hotel Operator.

Kilowen Fiji Limited is required to complete the construction of the Cottages and provide furnishings, equipment and supplies in accordance with the plans and specifications approved by the Hotel Operator.

### Termination

The Hotel Operator is entitled to cancel the Technical Services Agreement if any money which Kilowen Fiji Limited is required to pay it is unpaid. Either the Hotel Operator or Kilowen Fiji Limited can cancel the agreement, if the other of them breaches the agreement and it has material adverse effect on the party seeking to cancel.

### Termination of Operating Agreement

If Kilowen Fiji Limited does not build the Cottages in accordance with the plans as approved by the Hotel Operator, the Hotel Operator has no obligation to manage the Cottages under the Operating Agreement.

### Liability

The Hotel Operator is not liable for any loss suffered by Kilowen Fiji Limited except arising from willful default or gross negligence in connection with the services it performs under the Technical Services Agreement.

## 3) HOTEL OPERATOR LICENCE AGREEMENT

This agreement is between the Body Corporate and the Hotel Operator and sets out the terms on which the Hotel Operator's name and other related service, trade marks, symbols, slogans etc. can be used in connection with the Cottages.

### Use of Hotel Operator's name.

The Body Corporate is granted a non-exclusive licence to use, in connection with the operation of the Cottages, the Hotel Operator's name, service marks, and all other trade marks, trade names, slogans and other identifying characteristics to which the Hotel

Operator has rights in Fiji. The use of those rights are, however, subject to certain usual commercial conditions designed to protect the Hotel Operator's rights in the intellectual property. The Hotel Operator and its affiliated companies may use & grant to others the right to use the Hotel Operator's Intellectual Property.

#### **Savusavu Marina Cottages**

The Cottages will be known and designated as the "Savusavu Marina Cottages", or such other name agreed between the Hotel Operator and the Body Corporate.

#### **Compliance with other agreements**

The Body Corporate is required to comply with its obligations under the Technical Services Agreement and the Operating Agreement.

#### **Fees**

The Body Corporate is obliged to pay to the Hotel Operator a monthly fee equal to 5% of the gross room sales but not exceeding 2% of the total revenue of the Cottages during each month. These amounts are included in and are not additional to the fees payable to the Hotel Operator pursuant to the Operating Agreement.

#### **Termination**

The Hotel Operator may terminate the right to use its Intellectual Property if the Body Corporate or Kilowen Fiji Limited breach any of its agreements with the Hotel Operator or its affiliated companies including the Technical Services Agreement, or the Operating Agreement. The Hotel Operator may terminate the Licence Agreement if any Fiji government approval is not obtained to remit funds to the Hotel Operator or to make the agreement binding and enforceable. The Licence agreement will only continue for as long as the Operating Agreement continues.

### **4) RESERVATION SERVICE AGREEMENT**

This agreement is between the Hotel Operator and the Body Corporate and sets out the terms on which the Body Corporate can participate in the Hotel Operator's reservation system.

#### **Fees**

The Body Corporate is bound to pay fees to the Hotel Operator. The fee basis is 0.6% of gross room revenue plus US\$5.00 per available room per month plus US\$3.00 per gross bookings.

In the three months prior to the projected opening date of the Cottages, a reduced monthly reservation cost is payable on the estimated numbers of rooms as follow: third month prior to opening US\$2.00 per room, second month US\$3.00 per room and in the month prior to opening US\$4.00 per room.

#### **Termination**

The agreement will terminate on termination of the Operating Agreement.

## 5) BODY CORPORATE RULES

### PART 1 – DUTIES OF COTTAGE OWNERS

#### Compliance with Rules and Transaction Documents

Each Cottage Owner must comply with the rules that form part of the constitution of the Body Corporate and with the terms of the Transaction Documents.

In addition, the Body Corporate and any hotel operator that manages the Cottages, with the consent of the Body Corporate, can make rules for the use and enjoyment of the Cottages. While the Cottages form part of Savusavu Village Marina, the Hotel operator is entitled to require Cottage Owners to abide by the same rules that govern the occupation of hotel rooms and the use of Cottage's facilities by its guests.

The Body Corporate can make further Rules relating to the use and enjoyment of the Cottages including the following matters: requiring interior and exterior appearance and furniture, furnishings and equipment of cottages to be standardised and preventing Cottage Owners removing, or adding to any of those items; security for and access to the Cottages; the use and closure of the Common Facilities; restrictions on making undue noise; restrictions and prohibitions on the keeping of pets; avoiding the creation of a nuisance or disturbing guests; and restrictions on the number of persons who may use or occupy a cottage and the conduct of guests.

While the Hotel Operator and the Body Corporate through its directors and the Body Corporate Representative can make rules, those rules cannot conflict with the Rules that form part of the Body Corporate constitution.

Amendments to the rules can be made by an extraordinary resolution that requires a majority of 75% of the votes cast to support the resolution. There are certain special Rules with regard to insurance of the Cottages that require the unanimous approval of Cottage Owners before those Rules can be changed.

#### Indemnity

Each Cottage Owner must indemnify the Body Corporate for any loss suffered by the Body Corporate arising from a breach by that Cottage Owner of the Rules, but this is subject to no insurance money being available. The indemnity does not apply to the breach of a rule by one of the hotel operator's guests.

#### Exclusion of liability

The Body Corporate has no obligation or liability for loss or damage to personal property of a Cottage Owner or a guest, unless it was caused by the Body Corporate's breach of the Rules.

#### Other duties

Each Cottage Owner must allow the Body Corporate and the Hotel Operator to have access to the Cottage to view the condition of the Cottage for maintenance and service installation purposes and to ensure that the rules are being observed.

Cottage Owners are prohibited from doing anything, which may prejudice any insurance policy, or to interfere or obstruct the Body Corporate, the Body Corporate Representative or the Hotel Operator from performing their duties.

Cottage Owners must not contact the Hotel Operator with respect to the performance by the Hotel Operator of its obligation under the Operating Agreement other than through the Body Corporate.

## **PART II – POWERS AND DUTIES OF THE BODY CORPORATE**

### **Enforcement Obligations**

The Body Corporate must do all things reasonably necessary to enforce the terms of any Transaction Document and any lease or licence under which the land relating to the Cottages is held. There is also a requirement that the body Corporate do all things reasonably necessary to enforce any contract of insurance entered into by the Body Corporate.

The Body Corporate must promptly and properly exercise all its rights and obligations under the Rules and must ensure, as far as it is reasonably practicable, that a Cottage Owner does not suffer any loss and is not prejudiced by the Body Corporate's failure to do so.

The Body Corporate must exercise all its powers for the benefit of Cottage Owners at the time.

### **Maintenance**

The Body Corporate must ensure the proper maintenance, repair, renovation and replacement of the Cottages. The Body Corporate will establish a FF&E Reserve Fund for future renovation and maintenance.

### **Power to borrow**

The Board of the Body Corporate may not borrow more than FJ\$250,000 without the approval of an ordinary resolution of the Cottage Owners in general meeting.

### **Levies**

If the Body Corporate becomes aware that there is, or is likely to be, a shortfall between the monies received by the Body Corporate from the Hotel Cottage Scheme and the monies required by the Body Corporate to meet expenses, maintain any reserve or provide working capital, the Body Corporate must give each Cottage Owner details of the estimate of that shortfall and the proportion that will be payable by that Cottage Owner and when. The proportion payable by each Cottage Owner will be based on their respective Cottage Entitlements. This will be the case where Cottage Owner's have negotiated non standard 'lease backs' with longer owner occupied periods or no 'lease backs'.

Each Cottage Owner is obliged to pay their proportion of the shortfall within 14 days of receipt of request to do so from the Body Corporate. If a Cottage Owner fails to pay, the Body Corporate can take enforcement action as noted above. In the unlikely event that this action does not recover sufficient moneys to satisfy this liability, then the shortfall would be a cost to the Body Corporate, and hence other Cottage Owners and, in this respect, there is an element of partnership in the arrangements between all Cottage Owners.

### **Insurance**

The Body Corporate has a duty to insure all the Cottages and contents to replacement value and provide details of the insurance arrangements to Cottage Owners and any mortgagee, which the Body Corporate has received notification of.

If the whole or any part of the Cottages is destroyed or damaged, the Body Corporate must reinstate the Cottages, and to the extent that the insurance monies is insufficient to reinstate the Cottages, each Cottage Owner must be levied for the shortfall in accordance with their respective Cottage Entitlements.

### Rule Enforcement

The Body Corporate or any Cottage Owner or security holder in respect of a Cottage is entitled to apply to any Court of competent jurisdiction for an order enforcing the Rules, or restraining the breach of any of the Rules and seek compensation for loss or damage arising from a breach of the Rules by any person bound to comply with the Rules or by the Body Corporate.

### Force Majeure

There is no obligation or liability on the Cottage Owners or the Body Corporate if they are respectively unable to perform their obligations due to causes beyond their control.

### Alteration of Rules

The Rules of the Body Corporate forming part of the constitution may only be altered by a special resolution of Cottage Owners in accordance with the constitution with the exception of those Rules relating to insurance.

In any case where in accordance with the rules a unanimous resolution of Cottage Owners is required before any act can be done and that resolution is not passed but the resolution or act is supported by 80% of the Cottage Owner holding 80% or more of the Shares in the Body Corporate, a Cottage Owner included in the majority in favour of the resolution can apply to the Court for relief. The Court is specifically authorised to deem that the resolution has been passed unanimously if the Court so orders.

### Additional Rules

If the Operating Agreement is terminated and not replaced by an agreement with a new Hotel Operator for the management and operation of the Hotel Cottage Scheme, then the Body Corporate is required to adopt additional Rules and until those Rules are adopted, the rules of the Hotel Operator which applied to Cottage Owners immediately prior to the termination of the Operating Agreement will continue to apply until those new Rules are adopted.

## 6) CONSTITUTION OF THE BODY CORPORATE

### Registered company

The Body Corporate will be registered under the Fiji Companies Acts. It is to be registered under the name of Savusavu Marina Cottages Limited.

### Shares

The Body Corporate will have a share capital comprising the number of shares that equate to the total Cottage Voting Entitlement at \$1 a share which is projected to be \$29,893.

The registered owner of a Share has a right:

- To receive notice of and attend annual and special meetings of the Body Corporate;
- To vote at annual and special meetings of the Body Corporate on the basis of one vote for each Share held;
- On the liquidation of the Body Corporate to:
  - Receive payment of the capital paid up on the shares;
  - Participate in the distribution of surplus assets (if any) of the Body Corporate;
  - To receive dividends as may be determined from time to time by the directors.

No further shares may be issued over and above the Cottage Voting Entitlement.

### **Allocation of Shares**

Each Cottage will be allocated a specific number of Shares. These shares will be issued to the first registered sub-lessee of each Cottage Lease.

### **Transfer restrictions**

Cottage Owners are unable to transfer the Shares they hold in respect of a particular Cottage other than to a person purchasing that Cottage.

### **Variation of rights attaching to Shares**

The rights attaching to a Share may be varied with the approval of Cottage Owners holding 75% or more of the Shares in the Body corporate.

### **Equitable interests in Shares**

Except as required by law, the Body Corporate will not be bound to recognise any person other than the registered holder of a share as having any interest whatsoever in that share.

### **Lien on Shares**

The Body Corporate has a lien on each and every share for:

- All unpaid calls on the Share;
- Any amount the Body Corporate may be legally obliged to pay in respect of the Share; and
- Any amount owed by the shareholder to the Body Corporate whether such amount is owed pursuant to the Articles and Memorandum of the Body Corporate, the Fiji Companies Acts, the Rules or otherwise.

### **Forfeiture of Shares**

Shares held by a Cottage Owner may be forfeited to the Body Corporate if the Cottage Owner breaches a Transaction Document and the board of the Body Corporate resolve to forfeit the shares.

A person whose shares have been forfeited will not be entitled to the rights and benefits associated with the forfeited Shares but will continue to be liable as if they remained the registered owner of those Shares.

### **Reinstatement of forfeited Shares**

A person whose shares have been forfeited will be reinstated as owner of the Shares if the Body Corporate is satisfied that the reasons for the forfeiture are no longer valid.

### **Sale of forfeited Shares**

The Body Corporate must not sell forfeited Shares otherwise than to a purchaser of the Cottage to which the forfeited Shares relate.

Any proceeds of sale shall be applied towards satisfaction of:

- Any unpaid calls on the Shares (including interest thereon); and
- All monies owing to the Body Corporate by the prior registered owner of the Shares, whether owing pursuant to the Articles and Memorandum of the Body Corporate, the Companies Acts, the rules or otherwise.

### Appointment and removal of directors

There must at all times be at least two directors of the Body Corporate.

Directors are appointed by the Cottage Owners by either ordinary resolution or by notice in writing to the Body Corporate signed by a majority of the Cottage Owners. Directors may be removed from office in a similar manner.

### Shareholders

The Body Corporate must convene an annual meeting of Cottage Owners each calendar year not later than 6 months after the end of each Trading Year. The Body Corporate need not hold its first annual meeting in the calendar year it is incorporated but must hold its first meeting within 18 months of it being incorporated.

The board of directors decides where the annual meeting will be held.

Cottage Owners holding not less than 5% of the Shares in the Body Corporate can require a special meeting to be held.

Notice of all meetings of the Body Corporate must be sent to all Cottage Owners.

The quorum for meetings of shareholders is nine (9) Cottage Owners present in person or by proxy.

The procedure for meetings, voting proxies, and polls is generally in accordance with the procedure set out in the Fiji Company Acts.

## 7) COTTAGE LEASE

Each Cottage is a sublease of that part of the site on which the particular Cottage is situated. Prior to the sale of the first Cottage, the Body Corporate will receive a transfer of the Head Lease from Kilowen Fiji Limited and thus the Body Corporate will be the sublessor of each Cottage Lease.

The Cottage Lease is in respect of a space described as a Cottage on the Plan defined by reference to the centre of the internal walls (floors and ceilings) and the external faces of the exterior walls, structure and roofs of each unit unless otherwise shown on the Plan.

All Cottages are split-level or two storied comprising the first and second floors.

The Cottage Lease provides that each Cottage Owner has the right to use pipes, cables and drains constructed or connected over or under the floors of the particular cottage.

### Rent

The annual rent is a nominal \$1 if demanded. In addition, a share of the Rental due under the Head Lease is payable by each sublessee as part of the requirement to comply with the requirements of that Cottage Lease.

### Termination at end of Head Lease

The Cottage Lease will terminate on termination of the Head Lease.

### Compensation for Improvements

Under legislation presently applicable to the Head Lease, on the expiry of the Head Lease and provided the Body Corporate has complied with the Head Lease, the Body Corporate will be entitled to receive a renewal of the Head Lease or, if the Director of Lands will not renew the lease, compensation for the improvements on the land.

The Cottage Lease provides that the Cottage Owners' improvements will vest in the Body Corporate if a renewal is not granted and each Cottage Owner will be entitled to receive

a proportion of any compensation paid by the Director of Lands in proportion to the Cottage Owner's Cottage Entitlement.

### **Compliance with Transaction Documents**

Both the Body Corporate and the Cottage Owners are required to observe the Transaction Documents. Each Cottage Owner is required to ensure that any holder of security over a Cottage Lease also complies with the Transaction Documents.

### **Compliance with Head Lease**

The Body Corporate is obliged to comply with all the terms of the Head Lease from the Director of Lands and not to do anything or permit or tolerate anything which might result in the Director of Lands becoming entitled to re-enter the site occupied by the Cottages and terminate the Head Lease.

### **Termination of Cottage Lease for Default**

If the Cottage Owner breaches the terms of the Cottage Lease and fails to remedy that breach or default within 21 days of the Body Corporate giving to the Cottage Owner notice of that breach then the Body Corporate will be entitled to re-enter the Cottage and terminate the Cottage Lease and the Cottage Building and the Furniture Fitout will vest absolutely in the Body Corporate.

The Body Corporate has a first lien over the Cottage Building and Furniture Fitout for moneys owed to it.

### **Power of Sale**

If the Cottage Lease is terminated for default then the Body Corporate must offer for sale a new lease of the Cottage on the same terms as contained in the Cottage Lease determined for the unexpired term together with the Cottage Building and the Furniture Fitout. The Body Corporate is required to use all reasonable endeavours to obtain a fair market price for the Cottage Lease, Cottage Building and the Furniture Fitout but it is not liable to the Cottage Owner in respect of any loss however that loss is incurred. The proceeds of sale of the new Cottage Lease, Cottage Building and the Furniture Fitout is to be paid to the Cottage Owner after deducting all monies owed to the Body Cottage Owner.

The sale of the Cottage will be combined with the Cottage Owner's Shares in the Body Corporate, the Furniture Fitout, the Common Facilities Rights and the Cottage Rights under the provisions of the Deed of Participation.

### **Requisition**

If the Cottage is required, taken or requisitioned by a competent authority then the Cottage Lease taken will cease. In these circumstances the Cottage Owner will not have any claim against the Body Corporate. Any damages or compensation payable by the requiring authority on account of the Cottage will be payable to the Cottage Owner.

If only part of the cottage is required, taken or requisitioned the rent of the Cottage will be proportionally reduced.

### **Vesting of Improvements**

Unless the Head Lease is renewed, or a special resolution of the Body Corporate and Cottage Owners decides otherwise, on termination of the Head Lease each Cottage Building and its Furniture Fitout vests absolutely in the Body Corporate. Each Cottage Owner is then entitled to receive a proportion of any compensation received by the Body Corporate from the Director of Lands pursuant to the Head Lease.

### Renewal

If the Head Lease is renewed the Body Corporate must renew the Cottage Leases.

## 8) DECLARATION OF TRUST

The Marina Cottages Deed of Trust establishes the Marina Cottages Trust, in terms of which the Body Corporate holds the Common Facilities on Trust for the Cottage Owners in proportion to their respective Cottage Entitlements.

The rights and interest of each Cottage Owner in the Common Facilities are called their Common Facilities Rights.

The Body Corporate as trustee must comply with the Rules of the Body Corporate and the Deed of Participation.

There is provision for resettlement of the trust for at least the term of the Head Lease on which the Common Facilities are situated.

## 9) DEED OF PARTICIPATION

### Summary of Schemes

The Deed of Participation describes the formal components of the offer to investors as it involves joint arrangements with other Cottage Owners for participation in:

- The Cottage Scheme and
- The Common Facilities Scheme.

The Deed is the document that combines all the other agreements and is the overall set of detailed terms setting Cottage Owner's Rental.

### Conditions Applicable to the Offer

The offer is conditioned on:

- The minimum subscription level being reached. Being 20 Cottage sales out of the 119.
- Kilowen Fiji Limited satisfactorily completing its financing arrangements.
- The construction contract being signed in the manner required by Kilowen Fiji Limited

### Deposits

All deposits must be paid to the solicitors trust account to be held on trust for investors until settlement of their Cottage purchase. These accounts will be audited. Details of the solicitors acting for the Kilowen Fiji Limited are contained in the Directory.

### Sales and allotment

All sales have to occur substantially on the basis of standard Sale, Purchase & Construction Agreement. Settlement will only occur when the first Cottages are complete and will occur at the same time in respect of both the Hotel Cottage Scheme and the Common Facilities Scheme.

### Conditions

Kilowen Fiji Limited is prohibited from settling the transfer of Shares in the Body Corporate unless a number of conditions to protect investors have been satisfied, and which are set out in the Sale, Purchase and Construction Agreement.

### Warranties

There are Warranties from Kilowen Fiji Limited and the Body Corporate as to their capacity to enter into the various agreements and compliance with applicable laws. There are also obligations on the part of the Body Corporate to:

- Maintain and insure the Cottages and the FF&E;
- Maximise returns to Cottage Owners and, if required, to appoint suitable replacement hotel operators if the Operating Agreement is cancelled;
- Provide information requested by the auditor;
- Account for money received in relation to the schemes;

### Statements and tax information

Each quarter the Body Corporate must provide Cottage Owners with a statement showing how payments received or payments made by that Cottage Owner are calculated. A quarterly report must also be provided to Cottage Owners on the operation of the Cottages. Not later than 3 months after the end of each financial year and half year, the Body Corporate must provide to Cottage Owners a copy of the financial statements of the Body Corporate and the Schemes. The annual accounts must be audited.

The Body Corporate is required to provide to each Cottage Owner information to enable Cottage Owners to prepare their income tax and VAT returns.

### Accounts and Reports

Annual and half-yearly accounts must be prepared and presented to the shareholders (audited in the case of annual accounts).

The Body Corporate is required to open and maintain various trust accounts and to operate those accounts in the prescribed manner.

### Pre-opening expenses and working capital

Kilowen Fiji Limited is required by the Operating Agreement to provide working capital of FJ\$50,000 and to meet pre-opening expenses of FJ\$2,000 per Cottage. The Body Corporate will repay these amounts by equal payments over 30 months with each monthly payment being limited to no more than 10% of the amount received in that month from the hotel operator.

### Cottage Owners

Cottage Owners are bound by the Deed of Participation and must comply with all the Transaction Documents.

No Cottage Owner may terminate or otherwise determine a Cottage Lease or exercise other stated powers except with certain approvals.

Each Cottage Owner is obliged to comply with the Rules of the Body Corporate and rules made by the hotel operator applying to hotel guests.

### Breach of rules

If a Cottage Owner is in breach of the Transaction Documents, then the Body Corporate can give written notice of that breach to Cottage Owner and the following provisions will apply:

- If the default relates to the payment of levies and the levies are unpaid for 21 days, then the cottage Owner in default can be charged interest rate, until paid;
- If any breach continues for 21 days after notice to remedy the breach is given, the Body Corporate is entitled to do anything, including paying money, necessary to

remedy the breach. The Body Corporate can recover from a defaulting Cottage Owner money which is owing by the Cottage Owner to the body Corporate;

- The Body Corporate can also decide that until the breach is remedied, the Cottage Owner is not entitled to occupy the cottage personally, participate in the Hotel Cottage Scheme, or receive rental from the Hotel Cottage Scheme.

### Sale of Cottage or breach

The Body Corporate may also take steps to forfeit the offending Cottage Owner's Cottage, Shares, Hotel Cottage Rights, Common Facilities Rights and Furniture Fitout relating to that Cottage and sell those assets and rights paying the moneys owed to the Body Corporate and paying the balance to the Cottage Owner.

### Cottage Scheme

The Body Corporate is authorised to enter into the Operating Agreement with the Hotel Operator, and to enter into a variation of that agreement provided that the approval of an extraordinary resolution of Cottage Owners is required if that variation would reduce the term of the Operating Agreement or reduce the Rental that would otherwise have been received by the Cottage Owners. The Body Corporate is also permitted to enter into a new Operating Agreement with the approval of an extraordinary resolution of Cottage Owners.

Cottage Owners are bound by the Operating Agreement, any new Operating Agreement and any variation of those agreements.

The Body Corporate is authorised to administer and enforce the Operating Agreement and each Cottage Owner will be bound by any decision made by the Body Corporate, or by the Body Corporate Representative in the exercise of a power delegated to that representative. Cottage Owners are prohibited from contacting the Hotel Operator with respect to the performance by the Hotel Operator of its obligations under the Operating Agreement other than through the Body Corporate.

Cottage Owners are required to make payments into the FF&E Reserve Account in proportion to their Cottage Entitlements. The Hotel Operator will deduct these amounts on behalf of Cottage Owners from the Operating Account.

### Licence

Each Cottage Owner grants the Body Corporate a licence to use and occupy their Cottage for the purpose of entering into an Operating Agreement with a hotel operator ("Licence").

The Licence is for the term of the operating agreement with a hotel operator and extends to any renewal or a new agreement with a new hotel operator.

### Cottage Owner's Rental

Under the Licence each Cottage Owner is entitled to receive Rental based on the Cottage Entitlement of their Cottage. The Rental is calculated by reference to the net income of the Body Corporate from the Cottage operation each Trading Year as determined by the Body Corporate after interest, depreciation, amortisation, repairs and maintenance and any non-deductible expenses (if any) of the Body corporate (such non-deductible expenses must be grossed up to allow for tax payable by the Body Corporate by reason of such non-deductible expenditure) but before tax.

### Payments

At the end of each quarter the Body Corporate, following receipt of the moneys available for payment, must calculate the Rental Payment payable to Cottage Owners.

Each quarter Cottage Owners will be entitled to receive an equal pro rata proportion of their Rental. This Rental Payment will be calculated by the Body Corporate and will be based on the cash sum received from the hotel operator and paid into the Body Corporate (after the amount required to be deducted by the hotel operator and paid in the FF&E Reserve account has been paid) less:

- The moneys required by the Body Corporate to meet what is called "Expenditure Provisions and Reserves";
- Any moneys owed by the Cottage Owner under the Transaction Documents; and
- Any money in respect of which the Body corporate has a right of set off under the Transaction Documents.

Expenditure, Provisions and Reserves are generally:

- The moneys required by the Body Corporate to meet costs to maintain the FF&E Reserve Account, or Buffer Account, and to reinstate the Cottages (if they have suffered damage);
- Contingency sums and working capital which the Body Corporate determines it needs;
- All costs and expenses incurred in operating the Cottages under the Operating Agreement;
- All costs and expenses incurred by the Body Corporate in administrating the Body Corporate and the Schemes;
- Repayment of any amount borrowed or moneys paid on behalf of the Body Corporate.

If the Rental paid exceeds the Rental due to a Cottage Owner, the Rental paid in the next quarter will be reduced or the Body Corporate can choose to pay that excess on account of Rental payable in the next Trading Year.

### Levies

If the Body Corporate becomes aware that there is, or is likely to be, a shortfall between the moneys received by the Body Corporate from the Cottage Scheme and the funds it needs, then the Body Corporate must give Cottage Owners an estimate of the shortfall and the amount payable by each Cottage Owner. Cottage Owners must pay that shortfall within 14 days of being requested to do so. This especially applies to owners who do not participate in the full lease back scheme in order to cover all authorised expenditure such as insurance, garden & cottage maintenance, security, etc.

### Register

The Body Corporate is required to maintain a detailed register that sets out details of Cottages, Cottage Owners, and the various Cottage Entitlements.

### Transfer and mortgages

Cottage Owners may not separately deal with or transfer their Cottage, the Shares in the Body Corporate relating to the Cottage, the Hotel Cottage Rights or the Common Facilities Rights as these rights are "stapled" and may not be dealt with other than in conjunction with each other.

On transfer of a Cottage, the Cottage Owner is deemed to have transferred the Common Facilities Rights and the Hotel Cottage Rights relating to that Cottage.

The consent of the Body Corporate is required for the transfer of a Cottage. In addition, various documents must be provided to the Body Corporate to enable the transfer to pro-

ceed including the consent of the Director of Lands to the extent that such consent is required.

No Cottage Owner may grant a security over his or her cottage unless the security is also granted over the other rights and interests which are "stapled". The Body Corporate can also require the security holder to sign an agreement agreeing to be bound by the Transaction Documents.

### **Body Corporate Representative**

The Body Corporate is required to appoint a Body Corporate Representative to perform functions required to be performed by the Body Corporate under the Operating Agreement. The Body Corporate may also appoint that Representative to carry out such other rights and duties of the Body Corporate as the Body Corporate elects to delegate.

Kilowen Fiji Limited is appointed as the initial Body Corporate Representative for a period of 2 years from the date of practical completion of the Cottages. The Deed of Participation deals with the appointment, remuneration and removal of the Body Corporate Representative. With respect however to remuneration, Kilowen Fiji Limited may only be remunerated on a time and attendance basis at hourly rates to be agreed with HLB Crosbie and Underhill, Fiji.

### **Indemnity to Body Corporate**

The Body Corporate Representative is entitled to be indemnified out of the assets of the Body Corporate and each Scheme against any loss it suffers in the performances of its duties unless such loss was caused by the Representative's gross negligence, bad faith or willful failure to comply with its obligations.

### **Winding up**

The Schemes may only be wound up if either Cottage Owners pass an extraordinary resolution and to do so is not in breach of the Operating Agreement, or the Head Lease is terminated or expires.

On the winding up of the Cottage Scheme, all the assets are to be realised and the proceeds distributed to the Cottage Owners in accordance with their Cottage Entitlement.

### **Sale of Marina Cottages**

If the Body Corporate and 75% of the Cottage Owners in terms of number and Cottage Owners in the Cottage Scheme agree, the Marina Cottages in the Scheme must be sold on the terms and conditions approved by the Cottage Owners. The new proceeds of sale of the assets must be divided amongst Cottage Owners in proportion to their respective Cottage Entitlements.

### **Meetings of Cottage Owners**

The procedures for convening and holding meetings of Cottage Owners are similar to those of meetings of shareholders in a limited liability company. Each Cottage Owner has that number of votes equivalent to the Cottage Entitlement of their Cottage.

### **Replacement operator**

In the event that the Hotel Operator ceases to be the operator of the Cottages under the Cottage Scheme then the Body Corporate will be required to take such action in relation to appointment of a replacement as is approved by an extraordinary resolution at a meeting of the Cottage Owners.

### Alternation to Deed of Participation

The Deed can only be changed with the consent of Cottage Owners given at a meeting of Cottage Owners held for that purpose. A majority of 75% in number and votes is required.

## 10) SALE, PURCHASE & CONSTRUCTION AGREEMENT

The standard Sale, Purchase & Construction Agreement ("SP&C Agreement") provides for-

- The sale by Kilowen Fiji Limited to the Purchaser of;
- The sub-lease of the Cottage
- The Furniture Fitout for that Cottage;
- Shares in the capital of the Body Corporate;
- The Hotel Cottage Rights of that Cottage.
- Kilowen Fiji Limited to procure the building of the Cottage for the Purchaser and the transfer of the Cottage Lease.

### Purchase Price

The purchase price will be stated in the SP&C Agreement and will be payable in Fiji dollars. A deposit of 10% is payable at the time of signing the SP&C Agreement with the balance payable on settlement.

The deposit paid will be held in a solicitor's trust account by the Vendor's solicitor as stakeholder for the Vendor and the Purchaser. Details of the Vendor's solicitors are set out in the Directory under the title "Solicitor to the Issuer". Interest on the deposit will be paid to the party entitled to receive the deposit from the stakeholder.

### Value Added Tax

Fijian value added tax ("VAT"), which is similar to UK VAT & New Zealand GST, is payable at the rate of 10% of the purchase price in addition to the purchase price.

All Purchasers who register for VAT are able to obtain a refund of the VAT paid.

Subject to certain conditions, the Vendor will obtain an offset of VAT payable by the Purchaser on the purchase price against VAT payable by the Vendor provided the Purchaser does all things necessary to enable the Vendor to claim the offset from the Fiji Commissioner of Inland Revenue.

### Conditions

The agreement is subject to the Purchaser obtaining the consent of the Director of Lands to the purchase of the Cottage. If the consents are not obtained within the times stated in the agreement, it can be cancelled.

### Construction

Kilowen Fiji Limited is required to procure the building contractor to build the Purchaser's Cottage and all the first 20 Cottages substantially in accordance with the plans and specifications as soon as possible with all due speed, subject to delays beyond the control of Kilowen Fiji Limited or the building contractor.

The Purchaser may not request variations to the designs or furnishing of their cottage.

Kilowen Fiji Limited is entitled to vary the plans and specifications provided that the Purchaser's consent must be obtained to any alternation which materially detracts from the layout or quality of the Cottage the Purchaser has agreed to purchase.

Kilowen Fiji Limited may substitute materials and finishes if equivalent or better materials are available at a better price or if materials or finishes are unavailable provided the substituted materials or finishes are of a value or quality as near as practicable to the specified material.

The Purchaser has a right of inspection of their Cottage before settlement.

Builders risk insurance must be in place.

Kilowen Fiji Limited must ensure that all maintenance work on the Cottage is carried out as notified to Kilowen Fiji Limited by the Purchaser before the expiry of 90 days after the Settlement Date.

The Purchaser is not permitted to refuse to pay the balance of the purchase price by reason of any defect or fault in the Cottage.

Kilowen Fiji Limited and its contractors may complete unfinished work following settlement without liability for damage or loss in value caused to the Cottages arising therefrom.

### **Title**

The form of sublease of the Purchaser's Cottage at the Office of the Register of Titles, Fiji cannot be registered until after the structure of the Cottages has been erected.

Kilowen Fiji Limited will proceed to obtain approval of the plan to enable registration of the Purchaser's Cottage Lease, implement consents, register the Cottage Lease and register the sublease of the Common Facilities in the name of the Body Corporate as promptly as possible.

No warranty is given by Kilowen Fiji Limited as to when the Lease Plan will be approved or the Purchaser's Cottage Lease registered.

Kilowen Fiji Limited reserves the right to grant or receive the benefit of easements, rights, or obligations necessary or desirable, and to vary the Lease Plan.

Measurements are subject to variation in the circumstances set out in the standard SP&C Agreement.

The Purchaser is not permitted to lodge a caveat over the land.

The Purchaser may object to or requisition any matter in the Lease Plan if it prevents the issue of a Cottage Lease for the Purchaser or the plan is not substantially in accordance with the SP&C Agreement.

If Kilowen Fiji Limited is unwilling to remove or comply with any or all of the objectives or requisitions then unless the Purchaser waives or accepts the requisitions the Vendor may cancel the agreement.

### **Body Corporate**

The Purchaser is entitled to and obliged to become a shareholder in the Body Corporate and to fulfil and perform the obligations of a member of the Body Corporate.

Kilowen Fiji Limited will procure the transfer on settlement of the number of Shares in the Body Corporate set out in the particulars of sale which is equivalent in number to the Cottage Entitlement of that Cottage.

Each Cottage Owner will grant a licence to the Body Corporate that entitles the Body Corporate to use and occupy the Cottage while any operating agreement is in force.

Kilowen Fiji Limited can amend the Body Corporate Rules prior to settlement.

### **Savusavu Marina Cottages Operating Agreement.**

By reason of the Transactions Documents, each Purchaser, on Settlement, will be bound by the Operating Agreement (although not a party to that agreement) and will have the rights and duties of a Cottage Owner under that agreement and will be required to permit the Body Corporate to administer that agreement.

### **Settlement and Possession**

The Purchaser will be required to pay the balance of the purchase price on the settlement date, which is the later of:

- 10 Business Days after a number of conditions stated in the standard SP&C Agreement have been satisfied including the issue by the project manager of a certificate of practical completion and either the opening date under the Operating Agreement has occurred or the Hotel Operator has irrevocably agreed to operate the Cottages from a future date; and
- 10 Business days after the Cottage Lease is available.

The project manager will be a chartered civil engineer engaged by Kilowen Fiji Limited.

If the Purchaser fails to settle on the due date, default interest is payable on the unpaid portion of the purchase price.

If Kilowen Fiji Limited fails to settle on the settlement date, the vendor must pay to the Purchaser a fair market rent for the Cottage until possession is offered subject to the Purchaser being ready to settle.

On settlement Kilowen Fiji Limited will deliver the registered Cottage Lease and a transfer to the Purchaser of the Shares in the Body Corporate.

### **Apportionment**

All outgoings and incomings in respect of the Cottage, the Shares, the Hotel Cottage Rights and the Common Facilities rights will be apportioned on settlement. The SP&C Agreement will set out the basis on which apportionment will be made which will reflect that the Body Corporate will owe Kilowen Fiji Limited FJ175,000 per cottage for the pre-opening expenses, the buffer account advance and working capital advanced by Kilowen Fiji Limited to the Body Corporate and repayable over three years at a nil interest rate.

### **Furniture Fitout**

Kilowen Fiji Limited warrants that, on settlement, the Purchaser will receive unencumbered title to the Furniture Fitout purchased.

Kilowen Fiji Limited gives no warranties and makes no representations as to fitness for purpose or suitability in respect of the Furniture Fitout.

### **Risk**

The Cottage Remains at the risk of Kilowen Fiji Limited until settlement.

If the Cottage is destroyed then, subject to the rights of any mortgage, the insurance money may be applied by Kilowen Fiji Limited towards reinstatement.

### **Vendor's Warranties and Undertakings**

Kilowen Fiji Limited gives warranties as to unencumbered title of the assets to the Purchaser and other warranties usually found in an agreement of its type.

### **Default**

If the sale is not settled on the settlement date one party may serve on the other party a settlement notice requiring the other party to settle.

If the Purchaser does not comply with the settlement notice then Kilowen Fiji Limited in addition to all legal remedies available can sue the Purchaser for specific performance, or cancel the agreement and retain the deposit and sue the Purchaser for damages.

If Kilowen Fiji Limited does not comply with a settlement notice then the Purchaser, in addition to all legal remedies available, can sue Kilowen Fiji Limited for specific performance or cancel the agreement, require repayment of the deposit and sue for damages.

### **Force Majeure**

Kilowen Fiji Limited may cancel the SP&C Agreement if a force majeure event beyond the reasonable control of Kilowen Fiji Limited prevents Kilowen Fiji Limited from continuing construction of the Marina Cottages.

### **Sales of Cottages generally**

The Purchaser may not object to the method employed by Kilowen Fiji Limited to sell or lease other Cottages including the placement of signs in or on the Common Facilities area and maintenance of a sales office in the grounds.

### **Transaction Documents**

The Purchaser must comply with all the Transaction Documents to which the Purchaser will become a party on settlement.

## **11) REPRESENTATIVE AGREEMENT**

The agreement sets out the terms on which the Body Corporate appoints Kilowen Fiji Limited to be the Body Corporate Representative, for a term of two years from completion of the Cottages.

### **Duties under Operating Agreement**

Kilowen Fiji Limited Investments must use all reasonable endeavours to perform the role of the Body Corporate Representative under the Operating Agreement including:

- approving contracts in respect of which the Hotel Operator is required to obtain the approval of the Body Corporate;
- inspecting the books and records of the Hotel Operator in relation to the Cottages;
- advising the Body Corporate if Kilowen Fiji Limited considers a management report or audit is required and implementing the same;
- reviewing the draft business plan and submitting it to the board of the Body Corporate;
- resolving in consultation with the board of the Body Corporate any disagreement with the Hotel Operator relating to the business plan;
- meeting with the Hotel Operator's representative and resolving any disagreement;
- appointing Body Corporate signatories to the FF&E Reserve Account;
- seeking from the Body Corporate funds to meet a shortfall;
- conferring with the Hotel Operator concerning capital expenditure deferral if necessary;
- providing assistance to the Hotel Operator as required by the Operating Agreement;
- advising the Body Corporate of any additional insurance required by the Hotel Operator; and
- liaising with the Body Corporate on any matter involving the dispute resolution

process under the Operating Agreement.

### **Other Transaction Documents**

Kilowen Fiji Limited must use all reasonable endeavours to perform or, where the circumstances require performance by the Body Corporate, assist the Body Corporate to perform the Body Corporate's obligations under the following:

- a) Head Lease;
- b) Cottage Lease;
- c) Articles and Memorandum;
- d) Rules;

### **Employment of Staff**

The Body Corporate Representative is permitted to engage or employ on behalf of the Body Corporate suitably qualified persons to perform the Body Corporate Representative duties under the Representatives Agreement. The Body Corporate must pay the wages, salaries, benefits and entitlements of its employees and costs, charges and entitlements of its contractors.

### **Expenditure**

The Body Corporate Representative is entitled to incur expenses on behalf of the Body Corporate of up to FJ\$10,000 for any one item. Expenses above that limit must be approved by the Body Corporate unless there is an emergency. The Body Corporate must reimburse the Body Corporate Representative for expenses incurred.

### **Supervision**

The Body Corporate Representative must supervise the Body Corporate employees and contractors.

### **Remuneration**

Kilowen Fiji Limited will be paid on a time and attendance basis at rates to be agreed upon between HLB Crosbie & Underhill and Kilowen Fiji Limited.

### **Termination**

The Body Corporate or Kilowen Fiji Limited may terminate Kilowen Fiji Limited's appointment 2 years after the completion of construction of the Cottages.

## **3.0 STATUTORY INFORMATION**

### **3.1 Statutory Information**

To comply with the First Schedules of the Capital Market Development Authority (CMDA) (Securities Issues) Regulations 1999.

#### **Main terms of offer**

For the purposes of the CMDA security issues 1999 the securities offered are:

- i) the cottage lease
- ii) the cottage building on the sub-leased land & fit out furniture within
- iii) the shares in the Body Corporate
- iv) the right to participate in the scheme for operation of the Cottages as accommodation units (Cottage Scheme)

The offeror of the securities is the Body Corporate. The shares will be issued progressively. The manager of the scheme in respect of the Hotel Cottage Rights will be the Body Corporate. The registered office of the Body Corporate will be situated at the offices of HLB Crosbie and Underhill at the FNPF Place, Victoria Parade, Suva.

The maximum number of cottages being offered for sale at this stage is 119 but the offeror reserves the right to increase this.

The maximum number of shares to be transferred to investors is listed on pages tabled on page 27 to 29.

The maximum number of Common Facilities Rights offered is 119. The maximum number of Hotel Cottage Rights offered is 119, but there are some options to not join, or partially join, the Hotel Cottage Scheme.

The Shares, Hotel Cottage Rights and Common Facilities Rights are offered in conjunction with the sale of each Cottage and will not be sold separately.

The prices for the Cottages will be set by Kilowen Fiji Limited from time to time in the price list to be published. A price list is available on the Internet at [www.marinavillagefiji.com](http://www.marinavillagefiji.com) and at the company offices in Savusavu.

#### **Name and Address of offeror**

Kilowen Fiji Limited, Box 186, Savusavu.  
Telephone: Fiji (679) 850543  
Fax: Fiji (679) 850422  
e mail: [savumari@is.com.fj](mailto:savumari@is.com.fj)

#### **Previous allotment of shares**

The shares will be allotted to Kilowen Fiji Limited on incorporation of the company, being \$1 for this original allotment.

#### **Incorporation**

The Body Corporate will be incorporated in Fiji under the Companies Act . A copy of the incorporation will be kept at the Companies Office in Suva.

#### **Subsidiaries**

It is not intended for the Body Corporate to have any subsidiaries

#### **Restriction on director's powers**

There are to be no restrictions on the powers of the board of the Body Corporate imposed by the constitution of the Body Corporate. The rules of the Body Corporate will prevent the Body Corporate from borrowing more than FJ\$ \$250,000 without the approval of an ordinary resolution of the Cottage Owners in general meeting.

#### **Substantial equity security holder of the Body Corporate**

The only shareholder of the Body Corporate is Kilowen Fiji Limited which holds all the shares (which will be transferred two years after sale of the last cottage.).

Kilowen Fiji Limited will not undertake any liability in respect of the issue of these shares.

#### **Description of the activities of the Body Corporate and Schemes**

The Schemes are described in detail in the summary of the Deed of Participation on pages 86 to 89.

The Body Corporate will not participate in any activities other than to enter into the agreements described in this Prospectus to which it is a party. The Body Corporate will not com-

mence business activities until the first 29 cottages are have been completed and the first settlement occurred.

Kilowen Fiji Limited has commenced work on preparing the site for development of the Cottages. The site has been surveyed and the architect has prepared full plans. Zoning approval has been obtained from the Director of Town and Country Planning.

The fixed assets that relate to the Schemes are the Cottages, the Cottage Leases, the lease of the Common Facilities and the FF&E.

### Directorate

The initial directors of the Body Corporate are:

Robin Irwin of Matalaqere, Savusavu.

Siteri Irwin of Matalaqere, Savusavu

Neither has been declared bankrupt.

### Advisers

Details of legal and accounting advisers to the issuer and the Schemes are set out on page 76.

### Securities Register

The Body Corporate will keep the register of shareholders/Cottage Owners. The register will be available for inspection at the registered office of the Body Corporate.

### Subscriber's Liability

Under the Deed of Participation the Cottage Owners will be liable to meet the costs and liabilities incurred in operating the Cottages including the costs of repairs and maintenance, insurance, other usual outgoings and fees payable to the Hotel Operator under the Operating Agreement. Where in any quarter the income from the operation is not sufficient to cover these amounts Cottage Owners will be required to pay a proportionate share of the shortfall.

The same obligations to meet a shortfall where the expenditure exceeds the resources of the FF&E Reserve Account. This shortfall will first be recovered out of income and thereafter may result in Cottage Owners being levied to meet the liability.

Certain charges will be incurred by the Body Corporate in the course of administration of the Schemes. The Body Corporate will deduct from the income received under the Operating Agreement such charges which shall include:

- i) the land rent payable to the Director of lands under the Head Lease of the site;
- ii) the auditor's fees;
- iii) the fees payable to the Body Corporate Representative;
- iv) any other costs relating to the Cottages or the Common Facilities.

If in any quarter these costs exceed the income paid to the Body Corporate, each Cottage Owner will be required to pay a proportionate share of the shortfall to the Body Corporate.

If a Cottage Owner does not pay as required, the Body Corporate can take action to recover the amount due, including eventually selling the relevant Cottage and applying the proceeds to pay the debt. In the unlikely event that the proceeds were insufficient to meet such a liability, then the shortfall would be a cost to the Body Corporate. As this cost would indirectly effect other Cottage Owners, in this limited respect there is an element of partnership to the arrangement between all Cottage Owners.

## Financials Statements

Clauses 23 to 38 of the First Schedule and clauses 21 to 26 of the Third Schedule are not applicable as the Body Corporate and the Schemes will not have commenced business prior to the date of registration of this Prospectus.

## Summary of Financial Statements

No financial statements are provided in respect of the Body Corporate or the Schemes as neither the Body Corporate nor the Schemes have commenced business prior to the date of registration of this prospectus. Actions to be taken by the taken by the Body Corporate prior to the registration of this Prospectus are as follows:

- i) issue of Shares to Kilowen Fiji Limited
- ii) entry into the material contracts mentioned in the Summary of Legal Documents on page listed on page 33 and detailed in pages 34 to 57 to which it is a party. The Body Corporate's obligations under those contracts are dependent upon this offer proceeding following receipt of the minimum subscription required for the purpose.

## Plans, Prospects, Forecasts and Feasibility Study

Plans, prospects, forecasts and a feasibility study for the Hotel Cottage Scheme are set out on page 25 & in the accompanying 'Design Brochure'. Certain pre-opening costs will be paid by Kilowen Fiji Limited and reimbursed to it once the schemes have commenced.

## Provisions relating to initial flotation

The Body Corporate or the Schemes will not receive the proceeds of the first offer of securities.

## Acquisitions of Business, Subsidiary or Equity Securities

There will be acquisitions in the period up to final settlement and sale of cottages and the shares transferred to the cottage owners.

## Securities paid up otherwise than cash

No securities will be issued by the Body Corporate other than in cash.

## Options to Subscribe for securities

No options will be granted over any of the Cottages or any other securities offered under this Prospectus.

## Minimum subscription

The minimum amount that, in the opinion of the directors of the Body Corporate and the Manager, must be raised by the offer of securities is US\$ 5,362,500 (excluding VAT) being the amount that will be raised by the sale of 23 Cottages (20 at a discount) in the first phase release (The Look Out & The Ratlings). This will allow the full scheme to commence with infrastructure for the rest of the 119 cottages, the marina, hotel, club, offices and shops.

## Appointment and Retirement of Directors

A description of the manner of appointment of directors, any rules relating to retirement age of directors and whether any person (other than the members in general meeting or the directors filling a casual vacancy) can appoint directors will be included in the summary of the constitution of the Body Corporate.

### Directors' interests

In their capacity as the directors of the Body Corporate the initial directors (Robin Irwin and Siteri Irwin) have no interest other than:

- a) the payment of director's fees (if any); and
- b) Kilowen Fiji Limited as Body Corporate Representative is entitled to receive fees under the Representative agreement

### Manager's interests

It is not intended that the Body Corporate will be remunerated for services provided to Cottage Owners. The Body Corporate is required to appoint a Representative to fulfill its day to day function. That appointee will be remunerated on an agreed basis that will not be dependant upon or related to the profitability of the Schemes.

There is no other transaction that has been or is to be entered into on behalf of the Scheme.

### Promoter's interests

The full names of every promoter (and directors where applicable) are as follows:

Kilowen Fiji Limited  
Robin Irwin, Siteri Irwin Graham Oldreive, Patrick Paul

### A profile of the directors of Kilowen Fiji Limited.

Robin Irwin (62). Managing Director. Mr. Irwin has been associated with Fiji for 26 years and is a citizen of Fiji. He worked for the Fiji Government as a British Government development officer for seven years and is an ocean yachtsman whose yacht circumnavigated the world. He has resided in Savusavu over 10 years and has developed this concept. He has previously developed residential, restaurant, hotel and marine associated facilities in the United Kingdom and France.

### A profile of the non director promoters are

Patrick Paul (55). Mr Paul is a private investor with extensive interest in the United Kingdom and United States of America. He has developed from 'greenfield' status companies capitalised in excess of \$US 1/4 billion.

Graham Oldreive (54). Mr Oldreive is an executive who was engaged in the management of telecommunications companies internationally and latterly in the South Pacific. He has extensive contacts in the region and considerable experience in project development and has been resident in Fiji five years.

All directors are engaged in selling the cottages under the cottage scheme.

The only transactions between the Body Corporate and the promoters are:

- a) Kilowen Fiji Limited agreed to loan or pay on behalf of the Body Corporate FJ\$50,000 for working capital and \$FJ2,000 per cottage for pre-opening expenses that joins the Cottage Scheme.
- b) The issue of the Body Corporate shares to Kilowen Fiji Limited. These Shares will be transferred to the Cottage Owners on settlement of the sale of the Cottages.
- c) The directors & investors, either directly or indirectly, propose to buy four cottages from Kilowen Fiji Limited on terms commensurate with the terms on which other Cottages are offered for sale to investors at market prices.

Kilowen Fiji Limited is responsible for the completion and fit out of the Cottages. It is only on completion of construction and settlement with Cottage Owners that the Body

Corporate's responsibilities commence and the Body Corporate is not required to make any payment to Kilowen Fiji Limited or any other promoter in this regard.

### **Material Contracts**

These will be listed and added as concluded and all contracts will be lodged, and available for inspection, at the Companies Office in Suva.

### **Pending proceedings and litigation**

Kilowen Fiji Limited is not engaged in any litigation or arbitration proceedings and is not aware of any litigation or claim pending or threatened by or against it or the Schemes.

### **Issue expenses**

Expenses relating to the issue of the securities under this Prospectus including legal and accounting fees, printing costs, advertising expenses and auditor's costs are estimated to be Fiji \$70,000. All issue expenses are to be paid by Kilowen Fiji Limited. The issue expenses are associated with the construction of the Cottages themselves. Commissions will be paid to selling agents at rates of up to 3.5% of the sale price of a Cottage. Any commissions payable to the selling agents will be the responsibility of Kilowen Fiji Limited. The Cottage Owners will bear no liability for the commissions payable to the selling agents,

### **Preliminary expenses**

Kilowen Fiji Limited will pay, on behalf of the Body Corporate, pre-opening expenses of FJ\$2,000 per cottage associated with financially and operationally preparing the Marina Cottages for opening including marketing and promotion of the Cottages. The Body Corporate must reimburse Kilowen Fiji Limited for this expenditure.

### **Restrictions on Body Corporate**

There are no restrictions on the ability of the Body Corporate to distribute profits which results from any undertaking given or contract or deed entered into by the Body Corporate, however it is not intended that the Body Corporate will make any profits. There are restrictions on the ability of the Body Corporate to borrow in the constitution.

### **Terms of Deed of Participation**

The Deed of Participation is summarised on pages ? to ?.

### **Other terms of offer and securities**

All terms of the securities being offered are set out in this Prospectus which includes each application form, except those implied by law and those contained in the Deed of Participation.

### **Consents**

Details of the consents received before registration of this Prospectus will be set out.

### **Places of inspection of documents**

The following documents will be available for inspection at any time during normal business hours on any day (excluding Saturdays, Sundays and Public Holidays) at the offices of the Solicitors for Kilowen Fiji Limited (whose details are provided in the directory) free of charge and at the Registrar of Companies, Suva upon payment of a nominal fee:

- a) the constitutional documents of the Body Corporate and the Deed of Participation;
- b) the material contracts referred to above;

- c) the Auditor's statement referred to above; and
- d) the consent of the experts
- e) a copy of other documents.
- f) Financial statements in respect of the Body Corporate and the Schemes registered in accordance with the Financial Reporting Act.

The documents listed in (b) to (d) above will be attached to or accompany the copy of the Prospectus to be registered at the Companies Office.

### **Directors Statement**

The directors of Kilowen Fiji Limited and the Body Corporate will state that after due inquiry by them in relation to the period between the date of the financial statements referred to in this Prospectus and the date of registration of this prospectus, in their opinion, no circumstances have arisen that materially adversely affect the trading or profitability of Marina Cottages Limited, or the value of its assets, or its ability to pay its liabilities due within the next 12 months.

### **Managers Statements**

The Directors of Kilowen Fiji Limited and the Body Corporate will state that after due inquiry by them in relation to the period between the date of the financial statement referred to in this prospectus and the date of this Prospectus, in their opinion, no circumstances have arisen that materially adversely affect the profitability or activities of the Schemes, or the value of their assets, or their ability to pay their liabilities due within the next 12 months.

### **Other material matters**

Other than matters set out elsewhere in this Prospectus and contracts entered into in the ordinary course of business of the company, there are no material matters relating to the offer of the securities.

### **Independent Accountants'/Auditors' report**

The Independent Accountant's report is be set out on pages ? to ?

### **Listing**

Listing of the securities offered under this Prospectus is not being sought.

### **Exemptions**

Application will be made to the Fiji Capital Markets Development Authority for an exemption enabling offers to be made under this prospectus for a period of 9 months from the date of a certificate from the directors of the issuer subject to compliance with the conditions which will be set out in that exemption notice. A copy of that exemption, if granted, will be available for inspection at the offices of the Solicitors for the issuer.

### **Directors Statement**

This will be available after incorporation.

### **Independent Auditors Report**

To be inserted after the incorporation of the Body Corporate.

## INDEX FOR CAPITAL MARKETS DEVELOPMENT AUTHORITY (SECURITY ISSUES) REGULATIONS 1999

For the purposes of CMDA Regulation 1999 in regard to the issuing of a registered prospectus, the matters to be addressed for equity securities are as listed in the First Schedule.

### First Schedule

#### General requirements

<i>Clause</i>	<i>Matter</i>	<i>Page</i>
1.	Main terms of offer	57
2.	Details of incorporation of issuer	57
3.	Principal subsidiaries of issuer	58
4.	Directorate and advisers	58-59
5.	Restrictions on director's powers	58
6.	Substantial equity security holders of Issuer	58
7.	Description of activities of issuing group	58
8.	Summary of financial statements	N/A
9.	Prospects and forecasts	60
10.	Provisions relating to initial flotations	60
11.	Acquisition of business or subsidiary	60
12.	Securities paid up otherwise than in cash	60
13.	Options to subscribe for securities of issuing group	60
14.	Appointment and retirement of directors	60
15.	Directors' interests	60
16.	Promoters' interests	61
17.	Material contracts	61
18.	Pending proceedings	61
19.	Preliminary and issue expenses	61
20.	Restrictions on issuing gGroup	62
21.	Other terms of offer and securities	62
22.	Requirements in respect of financial statements	61
23.	Places of inspection of documents	62
24.	Other material matters	None
25.	Directors' statement	63
26.	Auditor's report	63

## 3.2 FIJI

### STATUTORY INFORMATION TO COMPLY WITH s377 OF, AND THE FOURTH SCHEDULE TO THE FIJI COMPANIES ACT 1983

#### Particulars of the Company

The Body Corporate will be incorporated in Fiji under the Companies Acts. The Body Corporate is governed by its constitution.

#### Constitution of Body Corporate

A summary of the constitution will be given. This document will fulfil the same role as the Articles of Association of a company under the Fiji Companies Act 1983.

#### Place on inspection of Constitution

A copy of the constitution and the Fiji Companies Act will be available for inspection at any time during normal business hours on any day (excluding Saturdays, Sundays and public holidays) at the offices of HLB Crosbie and Underhill, Level 7, FNPF Building, Victoria Parade, Suva.

#### Body Corporate's place of business

The Body Corporate's place of business in Fiji will be Vuniyasawa, Savusavu.

#### Body Corporate's Share Capital

There will be no founders, management or deferred shares in the Body Corporate.

On incorporation, the issued share capital of the Body Corporate will be equivalent to the voting entitlements on page ? to ?. The Shares will be allotted by the Body Corporate to Kilowen Fiji Limited ("Offeror"), on incorporation. The net consideration received by the Body Corporate in respect of the original allotment of the shares will be Fiji \$1.00 in total.

#### Remuneration and other benefits of Directors

The Constitution provides that the board of the Body Corporate may not authorise any payment of remuneration or other benefit of the kind set out in the section 161 of the Companies Act 1993 to any director without the prior approval of an ordinary resolution (i.e. 50% or over) of shareholders. At the date of this Prospectus, no such remuneration or benefits have been or are intended to be approved by shareholders.

There is no minimum shareholding qualification for directors provided for in the constitution of the Body Corporate.

#### Directors of the Body Corporate

The first directors of the Body Corporate will be:

Robin Irwin

Siteri Irwin

The initial directors of the Body Corporate will be appointed by Kilowen Fiji Limited. Cottage Owners will vote on their own appointments, to replace the initial directors, at the first annual meeting of the Body Corporate held two years after settlement.

There is no minimum shareholding requirement for directors of the Body Corporate.

#### Offer Period

This Prospectus is dated..... and registered with the Register of Companies at Suva on ..... The "opening of subscription lists" for the purposes of the Fiji Companies Act 1983 will be 3 days after the later of those dates.

### Amount payable on application and allotment

No amount is payable on application or allotment of the Shares which is separately applicable to the shares which are only available together with the offer under this Prospectus of:

- a) the Cottage Lease;
- b) the Cottage Building and the Furniture Fitout in it;
- c) the right to participate in the scheme for operation of the Cottages as accommodation units ("Hotel Cottage Rights").

The Shares, the Hotel Cottage Rights and the Common Facilities Rights are being offered in conjunction with the sale of each Cottage and will not be sold separately.

The price of the Cottages will be as set by Kilowen Fiji Limited in the price list to be published from time to time during the Offer Period. Details of selling agents who can provide such price list can be obtained from Kilowen Fiji Limited which can be contacted at the address set out in the Directory.

### Subscriber's liability

An investor in relation to the Shares, which will be issued to each investor fully paid, incurs no liability. Certain liabilities may arise in relation to the associated rights to be received by investors. A summary of these is included in the discussion of the Deed of Participation.

### Options to subscribe for Shares

No options will be granted over any of the Cottages or Shares offered under this Prospectus.

### Shares paid up otherwise than in cash

None of the Shares have been issued by the Body Corporate for anything but cash.

### Property of Body Corporate

The Body Corporate does not intend to apply any of the proceeds of this issue in the acquisition of property. Its role is to administer the Schemes. Subsequent to the transfer of the Shares to investors, the Body Corporate may acquire assets necessary for its operations as the board of directors determine. The Body Corporate will hold the assets comprising the Common Facilities.

### Issue expenses

Expense relating to the offer of the Cottages, Common Facilities Rights, Hotel Cottage Rights and Shares under this Prospectus including legal and accounting fees, printing costs, advertising expenses, auditor's costs and Statutory Supervisor's costs are estimated to be Fiji \$40,000. All preliminary issue expenses are to be paid by Kilowen Fiji Limited. The preliminary issue expenses do not include any costs and expenses associated with the construction of Cottages themselves. Commissions will be paid by Kilowen Fiji Limited to selling agents at rates up to 3.5% of the sale price of a Cottage.

### Promoter's interests

The full name of every promoter (and directors where applicable) is set out.

The only transaction between the Body Corporate and the promoters which is material will be the issue by the Body Corporate of 100,000 ordinary Shares to Kilowen Fiji Limited for a total consideration of Fiji \$1.00. These shares will be transferred to Cottage Owners on settlement of the sale of the Cottage.

Kilowen Fiji Limited is responsible for completion and fit out of the Cottages. It is only on completion of construction and settlement with Cottage Owners that the Body Corporate's responsibilities commence and the Body Corporate is not required to make any payment to Kilowen Fiji Limited or any other promoter in this regard.

#### **Material Contracts**

Details of every material contracts to be entered into the Body Corporate or in relation to the Schemes will be listed and copies will be lodged with the Fiji Companies register and attached to this Prospectus.

#### **Auditors**

The auditors of the Body Corporate will HLB Crosbie and Underhill of Fiji, contact details for who are set out in the Directory.

#### **Directors' interests**

In their capacity as the directors of the Body Corporate the directors (Robin and Siteri Irwin) have no interest other than:

- a) The payment of director's fees (if any); and
- b) Kilowen Fiji Limited as Body Corporate Representative is entitled to receive fees under the Representative Agreement.

#### **Description of activities of Body Corporate**

On incorporation the activities of the Body Corporate will be limited to entering into the material contracts to which it is a party. The Body Corporate will not commence activities until the Cottages have been completed and the first settlement occurs.

#### **Consents**

Details of the consents received before registration of this Prospectus will be set out.

Independent Accountants' / Auditor's Report

**The report of the Auditors will be set out.**

### **3.3 EXPERTS**

HLB Crosbie and Underhill will give subject to inspection its written consent to the distribution of this Prospectus with its Independent Accountant's Report. It will be lodged with the Registrar of Companies in Suva.

No expert is intended to be a director, officer or employee of either of Kilowen Fiji Limited or Marina Cottages Limited.

#### **SIGNATURES**

This Prospectus will be signed by Kilowen Fiji Limited and each of its directors, Marina Cottages Limited and each of its directors and each of the Promoters as detailed or a person authorised in writing by them to sign this Prospectus on that persons behalf.