

AGENDA

TORRES STRAIT ISLAND REGIONAL COUNCIL

MARCH 2021

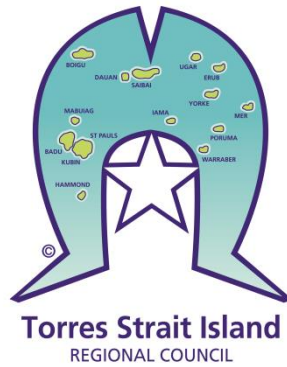
TRUSTEE MEETING

Wednesday 17th March 2021

Division 4 - Mabuiag

TRUSTEE MEETING
Wednesday 17th March 2021
Agenda Items

- | | | |
|-----|-------------------------|--|
| 1. | <u>9:00am - 9:03am</u> | <u>Opening Prayer and Welcome</u> |
| 2. | <u>9:03am – 9:05am</u> | <u>Apologies</u> |
| 3. | <u>9:05am - 9:10am</u> | <u>Declaration of Conflict of Interest (COI) Declarable and Prescribed</u> |
| 4. | <u>9:10am – 9:15am</u> | <u>Confirmation of Trustee Meeting held on 23rd February 2021</u> |
| 5. | <u>9:15am – 9:25am</u> | <u>Standing Agenda Item: (verbal update)</u> <ul style="list-style-type: none">• TRUSTEE – Undocumented commercial land occupation project |
| | | |
| 6. | <u>9:25am – 9:35am</u> | <u>LEGAL – Policy Review – Trustee Policy</u> |
| 7. | <u>9:35am – 9:45am</u> | <u>LEGAL – Defence Lease Boigu</u> |
| 8. | <u>9:45am – 9:55am</u> | <u>LEGAL – Saibai Health Lease F assignment to TCHHS</u> |
| 9. | <u>9:55am – 9:58am</u> | <u>Next meeting – 20th April 2021</u> |
| 10. | <u>9:58am – 10:00am</u> | <u>Closing Remarks and Prayer</u> |



MINUTES

TORRES STRAIT ISLAND REGIONAL COUNCIL

FEBRUARY 2021

TRUSTEE MEETING

Tuesday 23rd February 2021

Video Conference

TRUSTEE MEETING
Tuesday 23rd February 2021
Agenda Items

- | | | |
|----|-------------------------|--|
| 1. | <u>9:00am - 9:03am</u> | <u>Opening Prayer and Welcome</u> |
| 2. | <u>9:03am – 9:05am</u> | <u>Apologies</u> |
| 3. | <u>9:05am - 9:10am</u> | <u>Declaration of Conflict of Interest (COI) / Material Personal Interest (MPI)</u> |
| 4. | <u>9:10am – 9:15am</u> | <u>Confirmation of Trustee Meeting held on 20th January 2021</u> |
| 5. | <u>9:15am – 9:20am</u> | <u>Standing Agenda Item: (verbal update)</u> <ul style="list-style-type: none">• TRUSTEE – Undocumented commercial land occupation project |
| | | |
| 6. | <u>9:20am – 9:45am</u> | <u>LEGAL – Surrender of LHA – Masig – Lot 191</u> |
| 7. | <u>9:45am – 9:50am</u> | <u>Next meeting – 16th March 2021</u> |
| 8. | <u>9:50am – 10:00am</u> | <u>Closing Remarks and Prayer</u> |

Tuesday 23rd February 2021

Present

Cr Phillemon Mosby, Mayor (Poruma)
Cr Dimas Toby, Division 1 – Boigu
Cr Torenzo Elisala, Division 2 – Dauan
Cr Conwell Tabuai, Division 3 – Saibai
Cr Keith Fell, Division 4 – Mabuiag
Cr Laurie Nona, Division 5 – Badu
Cr Lama Trinkoon, Division 6 – Kubin, Mua Island
Cr John Levi, Division 7 – St Pauls, Mua Island
Cr Seriako Dorante, Division 8 – Kirriri
Cr Getano Lui Jnr, Division 9 – Iama
Cr Kabay Tamu, Division 10 – Warraber
Cr Francis Pearson, Division 11 – Poruma
Cr Hilda Mosby, Division 12 – Masig
Cr Rocky Stephen, Division 13 – Ugar
Cr Jimmy Gela, Division 14 – Erub
Cr Aven Noah, Division 15 – Mer

Mr Ilario Sabatino, Acting Chief Executive Officer (ACEO) (Cairns)
Ms Hollie Faithfull, Chief Financial Officer (CFO)
Ms Rachel Pierce, Acting Chief Operating Officer (COO) (Cairns)
Mr David Baldwin, Chief Engineer (CE)
Mr Peter Krebs, Senior Legal Counsel (SLC)
Mrs Ursula Nai, Senior Executive Assistant (SEA) (Kirriri)
Mrs Kathy Cochran – Secretariat Officer (SO)

Apologies

Nil

TRUSTEE MEETING
Tuesday 23rd February 2021
Agenda Items

1. **9:09am - 9:13am** **Opening Prayer and Welcome**

Mayor Mosby welcomed everyone to the meeting and paid respects and acknowledgement to;

- Heavenly Father
- Leadership team governance and administration
- Families in sorry business

Mayor invited Cr Pearson to open the Trustee meeting in prayer.

2. **9:13am – 9:14am** **Apologies**

No apology received.

9:14pm – Rachel Pierce, Acting Chief Operating Officer joins meeting.

3. **9:14am - 9:25am** **Declaration of Conflict of Interest (COI) / Material Personal Interest (MPI)**

- Cr Hilda Mosby declared a declarable conflict of interest as the parties are close relatives. Mayor put to Council how they would like the conflict dealt with. All Councillors in favour for Cr Hilda Mosby to remain in the room and participate in the discussion and vote.

9:20am – Cr Lui joined the meeting.

9:22am – Cr Tabuai joined the meeting.

4. **9:25am – 9:28am** **Confirmation of Trustee Meeting held on 20th January 2021**

RESOLUTION:

Moved: Cr Elisala; *Second:* Cr Pearson

That the minutes from the Trustee meeting held on the 20th January 2021, be adopted as a true and accurate record of that meeting.

5. **9:28am – 9:33am** **Standing Agenda Item: (verbal update)**

- TRUSTEE – Undocumented commercial land occupation project

Senior Legal Counsel, Mr Peter Krebs provide Council with a verbal update. Manager Legal Services is compiling a report to be tabled at the March 2021 Ordinary meeting with;

- List of CEQ occupation on each Division and their lease arrangement status
- List of Ergon occupation on each Division and their lease arrangement status

ACTION: Team to invite CEQ to our April Ordinary Meeting.

ACTION: Team to send current commercial rates formula to each Councillor for their individual Division as there seems to be inconsistency with the rates being charged.

6. **9:33am – 9:45am** **LEGAL – Surrender of LHA – Masig – Lot 191**

- Cr Hilda Mosby previously declared a declarable conflict of interest as the parties are her close relatives. All Councillors were in favour of Cr Hilda Mosby to remain in the room.

Senior Legal Counsel, Mr Peter Krebs spoke to the report. Cr Hilda Mosby supports the report.

RESOLUTION:

Moved: Cr Hilda Mosby; *Second:* Cr Tabuai

That pursuant to the Aboriginal and Torres Strait Islander Land Holding Act 2013 (Qld), the Council as Trustee consent to the partial surrender of the Land Holding Act (Katter) lease 715653318 over Lot 191 on SP277431 on Masig.

MOTION CARRIED

7. **9:45am – 9:50am** **Next meeting – 16th March 2021**

Next meeting date confirmed for Wednesday 17th March 2021.

8. **9:50am – 10:00am** **Closing Remarks and Prayer**

Mayor thanked everyone for their contribution and declared the Trustee meeting closed.

MEETING CLOSED – 9:41am

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Ilario Sabatino
Acting Chief Executive Officer
Torres Strait Island Regional Council
17th March 2021

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Phillemon Mosby
Mayor
Torres Strait Island Regional Council
17th March 2021

TORRES STRAIT ISLAND REGIONAL COUNCIL

TRUSTEE INFORMATION REPORT

TRUSTEE MEETING

DATE: March 2021
SUBJECT: Progress of undocumented commercial land occupation project
AUTHOR: Julia Maurus, Manager Legal Services

PERSONAL INTERESTS

Councillors are reminded to declare any personal interests.

RECOMMENDATION

That the Trustee note this report.

PURPOSE

The purpose of this report is to update the Trustee on the progress of Legal Services' undocumented commercial land occupation project.

BACKGROUND

There are various leases in place across the communities where Council holds land under a Deed of Grant in Trust.

This project has identified various agencies that have been occupying trust land for years without a registered lease or any agreement in place with the trustee regarding the use of the land. This has been identified as a trust revenue opportunity. Undocumented commercial land occupation is being addressed strategically based on legal advice from MacDonnells Law. **Attachment 1** is a summary of the project as it currently stands, for discussion and further directions from the Trustee.

OFFICE COMMENT

Attachment 1 excludes private homes, enterprise divestment sites and churches that require land tenure (registered legal interest).

CONSULTATION

- Legal Services Division
- Chief Executive Officer
- MacDonnells Law

LINKS WITH STRATEGIC PLANS

Corporate Plan

STATUTORY REQUIREMENTS

Torres Strait Islander Land Act 1991 (Qld)

Aboriginal Land Act 1991 (Qld)

Land Act 1994 (Qld)

FINANCE AND RISK

Capital Cost

NIL

Operating Cost

Trustee lease revenue is vital to ensuring the sustainability of the Trustee's functions. Council should consider sustainability from the perspective of both TSIRC and a potential future trustee. For example, the Badu PBC is bound to the terms of the leases that started when TSIRC was trustee and continued when the PBC became the trustee. The Badu PBC does not have the ability, under those leases, to increase the rent and thereby increase its revenue.

Risk Assessment

Formalising trustee leases addresses the legal uncertainty caused by undocumented land occupation.

SUSTAINABILITY


Trustee lease revenue is vital to ensuring the sustainability of the Trustee's functions.

CONCLUSION

As presented.



Ilario Sabatino
A/CEO



Julia Maurus
Manager Legal Services

ATTACHMENTS:

- 1. Status of undocumented commercial land occupation project as at January 2021**

Torres Strait Island Regional Council – MacDonnells Law Leasing Matters Handover memo 19 January 2021

Matter No	Matter Type	Matter Details	Person Acting	Status Update	Now with
180962	Lease	Lease with Department of Home Affairs – Kubin (Date opened – 30.07.18)	Ben Taylor	CATL and Lease has been drafted and provided to the Department, along with further comments on Rent following this being raised as an issue by the Department. Next Steps – Council to follow up with the Department for a response with a view to finalising lease terms. See Ben's email 16 Dec 2020 – Ben emailed Patrick 29 Oct 2020. Julia to follow up with Patrick.	Julia
181054	Licence	Licences for SES use of TSIRC premises (Date opened – 10.08.18)	Ben Taylor	We reviewed MOU and Schedule to same for SES and QFES use of Council owned land and have provided same to Council for its consideration. See Ben's email 17 October 2018. Next Steps – Council to follow up with QFES to set up a time to discuss issues with MOU and Schedule.	Julia
190229	Lease	AMSA occupation at Hammond Island (Date opened – 05.03.19) PRIORITY – NO PAYMENT AT PRESENT	Ben Taylor	CATL and Lease has been drafted and issued to AMSA. AMSA have requested Council provide their comment on a number of items raised by ASMA. Email from Ben Taylor to Julia on 20 October 2020 setting out our comments on those requested items of AMSA. Next Steps – Council to contact AMSA provide a response to their queries.	Julia
190465	Lease	Torres Strait Island Regional Council - Lease to TCHHS - Mabuiag Island	Ben Taylor	Council passed resolution to grant Lease to TCHHS. Lease has been emailed to Crown Law for	Julia

Matter No	Matter Type	Matter Details	Person Acting	Status Update	Now with
		(Date opened – 10.05.19)		execution by TCHHS. (Ben/Elene 28 October 2020) Next Steps – Council to follow up with Crown Law for executed Lease.	
190468	Lease	Community Enterprise Queensland (supermarkets) (Date opened – 13.05.19) PRIORITY – NO PAYMENT AT PRESENT	Ben Taylor	Council have provided our office with initial information on this matter. Next Steps – Council to progress discussions with CEQ.	Julia
190536	Lease	Ergon Energy power stations (Date opened – 29.05.19) PRIORITY – NO PAYMENT AT PRESENT	Ben Taylor	Ergon has provided draft Leases for 3 sites without formal occupation. Email from Ben Taylor to Julia on 31 August 2020 with advice on documents. Next Steps – Review documents with MacDonnells Law advice, obtain Trustee instructions and respond to Ergon.	Julia
190562	Lease	Department of Defence – Boigu (Date opened – 04.06.19)	Ben Taylor	Deed of Variation of lease entered into. CATL and Lease drafted and issued to Department's solicitor. Awaiting a response to the terms of same. In the interim, Council to consider Trustee resolution to grant Lease. Held over on commercial rent in the interim. Next Steps - follow up Department's solicitor and Trustee resolution.	Julia
190747	Lease	Tagai Accommodation at Masig – Lots 107, 108 & 109 SP277431 (Date opened – 15.07.19) PRIORITY – NO PAYMENT AT PRESENT	Ben Taylor	Council provided MacDonnells with preliminary information on matter. Next Steps – Council to progress discussions with Tagai.	Julia

Matter No	Matter Type	Matter Details	Person Acting	Status Update	Now with
190749	Lease	Tagai Campus at Masig – Lot 106 on SP277431 (Date opened – 15.07.19) PRIORITY – NO PAYMENT AT PRESENT	Ben Taylor	Council provided MacDonnells with preliminary information on matter. Next Steps – Council to progress discussions with Tagai.	Julia
190756	Lease	TSRA Lease of Lot 53 on SP270862, Poruma (Date opened – 15.07.19)	Ben Taylor	Council provided MacDonnells with preliminary information on matter. Next Steps – Council to progress discussions with TSRA.	Julia
190757	Lease	TSRA Lease of Lot 970 on SP723192, Mabuiag (Date opened – 15.07.19)	Ben Taylor	Council provided MacDonnells with preliminary information on matter. Next Steps – Council to progress discussions with TSRA.	Julia
200261	Property	TSIRC lease from DNRME – Divestment of Lot 27 on SP 116888, Thursday Island (workshop) (Date opened – 02.03.20)	Ben Taylor	TSIRC has requested divestment from DNRME. DNRME advised only a new Lease will be granted at a peppercorn. DNRME arranging for a site report prior to Lease being drafted. Interim holdover on terms of previous peppercorn lease. Ben followed up by email on 16 Dec 2020. Next Steps – follow up with Jacinta Ryan of DNRME.	Peter

TORRES STRAIT ISLAND REGIONAL COUNCIL

TRUSTEE REPORT

ORDINARY MEETING

DATE: March 2020
SUBJECT ITEM: Policy review: Trustee Policy
AUTHOR: Julia Maurus, Manager Legal Services

RECOMMENDATION

- 1. That the Trustee endorse the updated PO19 Trustee Policy, as presented.*
- 2. That the Trustee request the Department of Resources proceed with community consultation for the proposed Ugar land transfer and Saibai land transfer, and assist the Department as required to progress the land transfers.*

PURPOSE

The purpose of this report is to provide the new Council with an opportunity to review the Trustee Policy.

BACKGROUND

Council's Trustee Policy was originally adopted on 15 November 2018.

The updated Trustee Policy was endorsed by Council resolution in June 2019 (**Attachment 1**).

MLS spoke to the report; the purpose of the report is to present to Council, for endorsement, policies in the Legal Services area of responsibility that are due for review.

The following changes are recommended to bring this Policy up-to-date:

1. Paragraph 4(e): Amend to reflect the fact that where a template Infrastructure and Housing ILUA has been registered for the relevant community and applies to the relevant future act, Council must comply with that ILUA process. Council does not have the discretion, under the ILUA, to use an alternative future act validation process (such as section 24KA), unless Council first follows the ILUA process and the PBC does not provide its consent under the ILUA process.

2. Paragraph 9(c):

- a. Update to reflect the November 2018 delegation to the CEO to sign off on documents necessary to give effect to Katter leases.
- b. Update to include the decision-making process for the surrender of a Katter lease (which is proposed to be the same as for the transfer of a Katter lease).

Legal recommends setting a review date of 30 June 2021 for this Policy. However, if significant trustee policy decisions are made in the meantime, the Policy can be reviewed and updated earlier than that.

RESOLUTION:

Moved: Cr Nona; *Second:* Cr Akiba

That Council endorse the updated PO19 Trustee Policy, as presented, except for Hammond Island which is exempt.

MOTION CARRIED

The reference in the resolution to Hammond Island being “exempt” is in relation to the template Infrastructure and Housing ILUA, which does not apply at Hammond Island because there is no native title determination to date and therefore no PBC to opt in to the template ILUA.

OFFICER COMMENT

The proposed updated Trustee Policy is included as **Attachment 2** in mark-up. The proposed updates are as follows:

1. References to Mer PBC and Badu PBC in the introductory statement (paragraph 1), as directed by Council at the November 2020 workshop.
2. Paragraph 9 updated to include:

- a. steps required to resolve a Katter lease entitlement.
 - b. house prices for all types of leases (including the addition of a price for an eight-bedroom house, as requested by Council in June 2019) – see note below.
 - c. steps required for a 99-year home-ownership lease.
3. For Katter leases, it is proposed to remove the delegated authority for the CEO to execute documents to recommend the grant of a Katter lease (paragraph 9(e)). Since November 2018, the CEO has been signing off on LHA Advice & Recommendation Reports in consultation with the Mayor and the Divisional Councillor. However, in late 2020 the Trustee directed in relation to delegations that it wishes to reserve all land-related decision-making to the Council level. The November 2018 delegation would be inconsistent with the Trustee's direction and should therefore be removed, unless the Trustee explicitly decides to retain it. The proposed change to the Policy means that a Trustee resolution will be required for TSIRC to endorse the proposed grant of each new Katter lease on TSIRC DOGIT land.
 4. Paragraph 10 updated to include further details of the land transfer process. The Department of Resources has provided a paper on land transfers, included as **Attachment 3**.
 5. The signatory and the procedural cross-references have been updated.

Legal recommends setting a review date of 30 June 2022 for this Policy. However, if significant trustee policy decisions are made in the meantime, the Policy can be reviewed and updated earlier than that.

There is currently a Supreme Court legal proceeding underway that involves a community member (Alonza Ahwang) challenging the trustee's decision-making process (for St Pauls). When that legal proceeding concludes, Legal Services will consider whether any changes to the Trustee Policy are required.

The proposed changes to paragraph 9 (lease-making process) are consistent with the Trustee process used for Alonza Ahwang's lease application at St Pauls and are therefore not considered controversial in the context of the Supreme Court legal proceeding.

House prices

The house price methodology agreed between TSIRC and DHPW did not include one-bedroom detached houses, seven-bedroom detached houses or duplexes, although these types of houses exist in Council's social housing portfolio.

House prices for one-bedroom detached houses, seven-bedroom detached houses and duplexes house were adopted by Council in June 2019. The figures were calculated by the Management Accountant, proportionately to the price ranges for the dwellings in the existing methodology, and with reference to the market rent per fortnight set by the State Government for social housing, which Council is bound to apply as a housing provider.

The house price for duplexes are calculated as 75% of the value of a detached house with the same number of bedrooms.

The figures were rounded to the nearest \$5,000 to keep it simple.

To ensure the house sale prices cover all social housing assets, a price for eight-bedroom detached houses has been calculated using the same methodology and has been added to the proposed updated Trustee Policy. The Management Accountant's supporting calculations are included as **Attachment 4**.

15. 11:35pm – 11:49pm

LEGAL – House Price Endorsement

Council Ordinary Meeting – 25-26 June 2019

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MLS spoke to this report. The purpose of the report provides an opportunity for Council to set a house price for one-bedroom detached houses, seven-bedroom detached houses and duplexes.

The house price methodology agreed between TSIRC and DHPW does not include one-bedroom detached houses; seven-bedroom detached houses or duplexes, although these types of houses exist in Council's social housing portfolio.

To ensure the house sale prices cover all social housing assets, Legal proposes a comprehensive methodology as presented in the report.

The figures were calculated by the Management Accountant, proportionately to the price ranges for the dwellings in the existing methodology, and with reference to the market rent per fortnight set by the State Government for social housing, which Council is bound to apply as a housing provider.

The house price for duplexes is calculated as 75% of the value of a detached house with the same number of bedrooms.

The highlighted figures have been rounded to the nearest \$5,000 to keep it simple.

The Management Accountant's supporting calculations are included as Attachment 1 to the report.

There is no proposed change to the house prices already agreed between TSIRC and DHPW.

RESOLUTION:

Moved: Cr Fell; *Second:* Cr Pearson

That Council, as Trustee for those communities for which Council holds a Deed of Grant in Trust, endorse the sale price for social housing on ordinary freehold land and home ownership (99-year) lease land for the purpose of sections 28R and 91–93 of the Torres Strait Islander Land Act 1991 (Qld) and sections 32R and 126–128 of the Aboriginal Land Act 1991 (Qld), as follows:

House type	New condition	Good condition	Fair condition
1-bedroom detached	\$55,000	\$40,000	\$30,000
2-bedroom detached	\$65,000	\$50,000	\$35,000
3-bedroom detached	\$75,000	\$60,000	\$45,000
4-bedroom detached	\$90,000	\$75,000	\$60,000
5-bedroom detached	\$100,000	\$85,000	\$67,000
6-bedroom detached	\$110,000	\$95,000	\$75,000
7-bedroom detached	\$120,000	\$100,000	\$80,000
2-bedroom duplex	\$50,000	\$40,000	\$25,000
3-bedroom duplex	\$55,000	\$45,000	\$35,000

Pricing is subject to review every three years based on the consumer price index.

MOTION CARRIED

CEO made mention of 5 times 8 bedroom houses in our Divisions.

ACTION: MLS to submit a report to the July OM to capture the 8 bedroom assets in the methodology.

Cr Nona asked about pricing for Mer and Badu. Mayor Gela suggests they could consult with Council and BAS.

CONSULTATION

- Legal Services Division
- Mayor
- CEO
- Culture, Arts, Land and Heritage Standing Committee (Feb 2021)

LINKS WITH STRATEGIC PLANS

TSIRC Corporate Plan 2020–2025

Delivery Pillar: Sustainability

Outcome 8: We manage council affairs responsibly for the benefit of our communities

- Effective management of DOGIT land as a trustee

STATUTORY REQUIREMENTS

Local Government Act 2009 (Qld)

Local Government Regulation 2012 (Qld)

Torres Strait Islander Land Act 1991 (Qld)

Torres Strait Islander Cultural Heritage Act 2003 (Qld)

Aboriginal Land Act 1991 (Qld)

Aboriginal Cultural Heritage Act 2003 (Qld)

Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984 (Qld)

Aboriginal and Torres Strait Islander Land Holding Act 2013 (Qld)

Native Title Act 1993 (Cth)

Land Act 1994 (Qld)

FINANCE AND RISK

Capital Cost

NIL

Operating Cost

NIL

Risk Assessment

- *Policies should be regularly reviewed to ensure statutory compliance and risk management.*

SUSTAINABILITY

Policies should be regularly reviewed to reflect Council's current operating model, any legislative changes and best practice.

CONCLUSION

As presented.



Ilario Sabatino

A/CEO

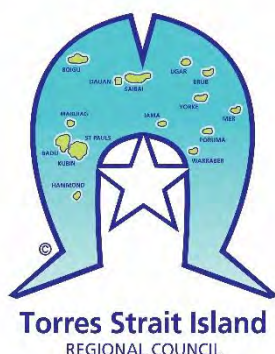


Julia Maurus

Manager Legal Services

ATTACHMENTS:

- 1. Existing PO19 Trustee Policy (June 2019)**
- 2. Proposed updated PO19 Trustee Policy**
- 3. Department of Resources paper on land transfers**
- 4. House price calculations**



TRUSTEE POLICY

PO 19

Responsible Manager:	Chief Executive Officer
Head of Power:	<i>Local Government Act 2009 (Qld)</i> <i>Local Government Regulation 2012 (Qld)</i> <i>Torres Strait Islander Land Act 1991 (Qld)</i> <i>Torres Strait Islander Cultural Heritage Act 2003 (Qld)</i> <i>Aboriginal Land Act 1991 (Qld)</i> <i>Aboriginal Cultural Heritage Act 2003 (Qld)</i> <i>Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984 (Qld)</i> <i>Aboriginal and Torres Strait Islander Land Holding Act 2013 (Qld)</i> <i>Native Title Act 1993 (Cth)</i> <i>Land Act 1994 (Qld)</i>
Authorised by:	Council resolution
Authorised on:	15 November 2018; updated 25 June 2019
Implemented from:	15 November 2018
Last Reviewed:	2019
Review History:	2019
Review Date:	30 June 2021
Corporate Plan:	<i>Art, Culture, People</i> Collective understanding of both Traditional and State Law ensuring a Safe Community Provide a legal framework for Torres Strait Communities within the Torres Strait Island Regional Council municipality which addresses both State and Traditional Lore requirements <i>Environment:</i>

Facilitate home ownership through active lobbying of State and Federal Government

Land-use planning for the Community in a controlled coordinated manner

Environmental and culturally significant landscapes are recorded, valued and protected

Economic Participation:

Full restoration of self-management and self-determination

1. POLICY STATEMENT

(a) Council is the Trustee of the Deed of Grant in Trust (DOGIT) for the following communities:

- Boigu Island
- Dauan Island
- Saibai Island
- Mabuiag Island
- Kubin Community, Moa Island
- St Pauls Community, Moa Island
- Kiririri (Hammond Island)
- Iama (Yam) Island
- Warraber (Sue) Island
- Poruma (Coconut) Island
- Masig (Yorke) Island
- Ugar (Stephens) Island
- Erub (Darnley) Island

(b) As Trustee, Council is committed to making land-related decisions for the benefit of islander inhabitants, taking into account Ailan Kastom.

(c) As a local government, Council is committed to providing a legal framework for Torres Strait Communities within the Torres Strait Island Regional Council municipality which addresses both State and Traditional Lore requirements.

2. SCOPE

This Policy applies to all local government employees, Councillors, contractors and agents of Council.

3. INTERPRETATION

Aboriginal Cultural Heritage has the same meaning as in the *Aboriginal Cultural Heritage Act 2003* (Qld)

Aboriginal Freehold means Aboriginal Land, transferred under Part 4 of the *Aboriginal Land Act 1991* (Qld)

Ailan Kastom and Ailan Lore (also known as Island custom) means, as defined in section 6 of the *Torres Strait Islander Land Act 1991* (Qld), the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships

Division means an electoral division of the Torres Strait Island Regional Council local government area, and Divisional has a corresponding meaning

DOGIT means Deed of Grant in Trust and has the same meaning as in the *Land Act 1994* (Qld)

Future Act has the same meaning as in the *Native Title Act 1993* (Cth)

ILUA means Indigenous Land Use Agreement and has the same meaning as in the *Native Title Act 1993* (Cth)

LHA/Land Holding Act/Katter Lease means a perpetual lease under the *Aboriginal and Torres Strait Islander Land Holding Act 2013* (Qld)

Ordinary Freehold means the freehold option referred to in Part 2A of the *Torres Strait Islander Land Act 1991* (Qld) and the *Aboriginal Land Act 1991* (Qld)

RNTBC means Registered Native Title Body Corporate (also known as the Prescribed Body Corporate or PBC) and has the same meaning as in the *Native Title Act 1993* (Cth)

Torres Strait Islander Cultural Heritage has the same meaning as in the *Torres Strait Islander Cultural Heritage Act 2003* (Qld)

Torres Strait Islander Freehold means Torres Strait Islander Land, transferred under Part 4 of the *Torres Strait Islander Land Act 1991* (Qld)

4. NATIVE TITLE

- (a) Council recognises and respects traditional ownership and Ailan Kastom. Native title and Deed of Grant in Trust co-exist.
- (b) Council is committed to ensuring compliance with native title laws.
- (c) Council is dedicated to working with Registered Native Title Bodies Corporate in native title matters.
- (d) Where a DOGIT lease is proposed, the Trustee shall be a party to the relevant Indigenous Land Use Agreement that validates the grant of the proposed Trustee lease. This reflects the Trustee's responsibility to ensure compliance with the *Native Title Act 1993* (Cth) when leasing land.
- (e) Where an Infrastructure and Housing Indigenous Land Use Agreement (ILUA) applies, Council will undertake Future Acts in accordance with that ILUA process.
- (f) Council will use section 24JAA of the *Native Title Act* for Future Act validation only as a last resort, where consent-based validation is not reasonably practicable in the opinion of the Divisional Councillor.

- (g) Council will use section 24KA, 24HA, and 24NA of the *Native Title Act* for Future Act validation only where supported by the Divisional Councillor.

5. CULTURAL HERITAGE

- (a) Council acknowledges the value of Torres Strait Islander Cultural Heritage, Aboriginal Cultural Heritage and culturally significant places and landscapes.
- (b) Council is committed to ensuring compliance with cultural heritage laws.
- (c) Council is dedicated to working with cultural heritage bodies in cultural heritage matters.
- (d) Council supports processes to record, recognise and protect Torres Strait Islander Cultural Heritage and Aboriginal Cultural Heritage.

6. TRUSTEE DECISION-MAKING

- (a) As Trustee, Council will fulfil its responsibilities in an informed and effective manner.
- (b) DOGIT Trustees are not required under the *Torres Strait Islander Land Act 1991* (Qld) or *Aboriginal Land Act 1991* (Qld) to consult with or notify the community when considering an expression of interest to lease trust land. However, each Divisional Councillor must have comprehensive knowledge about the values of, and appropriate uses for, the DOGIT land, existing interests in the land, and community opinion about proposed leases for that DOGIT.
- (c) The type of community engagement that is appropriate for a proposed project or lease will be determined at the discretion of the Divisional Councillor.
- (d) A proposed Trustee decision that affects a specific DOGIT will not be tabled for Council's consideration unless it has the support of the Divisional Councillor.
- (e) Where the Divisional Councillor has a conflict of interest or material personal interest, the matter will be referred to the Mayor or Deputy Mayor for direction regarding appropriate consultation, including consideration of a community ballot option to confirm support for the proposal.
- (f) A Trustee resolution that affects a specific DOGIT may only be passed if the Divisional Councillor for that DOGIT is present and does not vote against the resolution. If the Divisional Councillor abstains from voting, the failure to vote is counted as a vote against the resolution. However, the Divisional Councillor's vote is not required if the Divisional Councillor has left the room due to a personal interest in the matter.
- (g) Development applications made to Council as local government may only be passed if the Trustee supports the proposed development. For DOGIT communities, this requires a Trustee resolution. For Torres Strait Islander Freehold and Aboriginal Freehold communities (non-DOGIT communities), this requires verbal or written advice from the

trustee for the land confirming support for or requesting consent to the proposed development.

7. LEASING GENERALLY

- (a) Council will raise the awareness of potential lessees about leasing options and processes.
- (b) Where a DOGIT lease is proposed, the Trustee shall be a party to the relevant Indigenous Land Use Agreement that validates the grant of the proposed Trustee lease. This reflects the Trustee's responsibility to ensure compliance with the *Native Title Act 1993* (Cth) when leasing land.
- (c) DOGIT lease rent revenue is to be handled in accordance with PO 18 Reserve Policy and PR-PO4-15 General Reserve Procedure.

8. COMMERCIAL LEASING

- (a) Council, as owner of most of the buildings and houses in each community and as Trustee of DOGIT land, understands that long-term leases:
 - i. provide a suitable arrangement with the different organisations and businesses providing services within the communities;
 - ii. provide a revenue stream for Council; and
 - iii. provide certainty to Council and to the Lessee.
- (b) Council is committed to effective, equitable and efficient management of Council's assets and land which ensures appropriate returns and protects Council's interest while recognising the rights of organisations and businesses occupying these assets and land.

9. HOME OWNERSHIP

- (a) Council is committed to facilitating private home-ownership within the Torres Strait Island Regional Council municipality.
- (b) Council will work with the Department of Housing and Public Works, the Department of Aboriginal and Torres Strait Islander Partnerships and the Department of Natural Resources, Mines and Energy to facilitate private home-ownership and the resolution of *Land Holding Act* ("Katter") perpetual lease interests in the region.
- (c) Trustee decisions about *Land Holding Act* matters are to be made as follows:

Type of decision	How decision is to be made
Confirm the area or boundary of an LHA/Katter lease	Divisional Councillor (note clause 6(e))

Recommend the grant of an LHA/Katter lease	Chief Executive Officer (authority delegated by Council in November 2018 for the CEO to execute all documents necessary to give effect to Land Holding Act lease interests), with advice provided to the Mayor and the Divisional Councillor
Consent to a transfer or surrender of an LHA/Katter lease	Council resolution (note clause 6(e))
Consent to a sublease of an LHA/Katter lease	Council resolution (note clause 6(e))

- (d) Council will work with stakeholders to facilitate home-ownership leases.
- (e) Council, as Trustee of each Deed of Grant in Trust, will provide an opportunity for the community to consider whether it is appropriate to make Ordinary Freehold available in the community.

10. LAND TRANSFERS

- (a) Council is committed to supporting the full restoration of self-management and self-determination in the Torres Strait Island Regional Council local government area.
- (b) Council envisions the transfer of land currently held by Council under Deed of Grant in Trust to Torres Strait Islander Freehold or Aboriginal Freehold (as the case may be), on a community-by-community basis, when the time is right for each community.
- (c) Land transfers will be achieved through collaboration between Council, the State, communities, Registered Native Title Bodies Corporate and other stakeholder bodies to ensure that government interests in essential services, community infrastructure and social housing are secured and to ensure the continuation of vital services to each community.

11. PROCEDURE

This Policy shall be achieved with reference to the following:

- Queensland Government *Leasing Torres Strait Islander DOGIT Land: Manual for Trustees* and *Leasing Aboriginal DOGIT Land: Manual for Trustees*
- PO19-PR1 Native Title and Cultural Heritage Procedure
- PO19-PR2 Leasing Procedure
- PO 18 Reserve Policy
- PR-PO4-15 General Reserve Procedure

- Statement of Principles for Private Structures (Schedule A)
- PO2-PR1 Code of Conduct
- TSIRC Meeting Handbook

AUTHORISATION

This document was duly authorised by Council as the Torres Strait Island Regional Council Trustee Policy (PO 19) on 25 June 2019, and shall hereby supersede any previous policies of the same intent.

SCHEDULE A

STATEMENT OF PRINCIPLES FOR PRIVATE STRUCTURES (HOUSES, SHEDS AND ZAR-ZARS)

Note: these principles do not apply to social housing lots.

1. Council recognises and respects traditional ownership and Ailan Kastom. Native title and Deed of Grant in Trust co-exist.
2. Council has a duty to ensure the safety of all community members on local government–controlled areas. Local government–controlled areas include roads, foreshores, beaches, cemeteries, jetties and parks (but do not include residential lots, private commercial premises or government premises such as school reserves).
3. Beaches and foreshores are for everyone’s use. They cannot be privatised or owned exclusively. Nevertheless, where Ailan Kastom is observed, anyone accessing the beach or foreshore should acknowledge the traditional owner of the area.
4. It is up to the whole community to decide on where future development will happen. Council, as trustee for the land (except at Badu and Mer), is responsible for making decisions for the benefit of the community.
5. Where native title rights exist, Council recognises the rights of native title holders to build houses, sheds and zar-zars on the land. Other community members can also seek permission to build houses, sheds and zar-zars. However, before building anything, native title holders and community members should:
 - a. Apply to Council for a lease; and
 - b. Ask the PBC for a letter confirming permission to build there.

Council will then advise whether there are any legal restrictions on building in the particular area (for example because of coastal management, flood areas or road reserves).

6. Native title holders and community members who build houses, sheds and zar-zars are responsible for looking after them to make sure they do not create a safety risk to the community.
7. Following these principles will allow respect for traditional interests and provide a clear process for future development and private ownership.



TRUSTEE POLICY

PO 19

Responsible Manager:	Chief Executive Officer
Head of Power:	<p>Local Government Act 2009 (Qld) Local Government Regulation 2012 (Qld) Torres Strait Islander Land Act 1991 (Qld) Torres Strait Islander Cultural Heritage Act 2003 (Qld) Aboriginal Land Act 1991 (Qld) Aboriginal Cultural Heritage Act 2003 (Qld) Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984 (Qld) Aboriginal and Torres Strait Islander Land Holding Act 2013 (Qld) Native Title Act 1993 (Cth) Land Act 1994 (Qld)</p>
Authorised by:	Council resolution
Authorised on:	15 November 2018; updated 25 June 2019 <u>INSERT DATE</u>
Implemented from:	15 November 2018
Last Reviewed:	2019
Review History:	<u>25 June 2019; February 2021</u>
Review Date:	30 June 2021 <u>2022</u>
Corporate Plan:	<p>Art, Culture, People</p> <p>Collective understanding of both Traditional and State Law ensuring a Safe Community</p> <p>Provide a legal framework for Torres Strait Communities within the Torres Strait Island Regional Council municipality which addresses both State and Traditional Lore requirements</p> <p>Environment:</p>

Facilitate home ownership through active lobbying of State and Federal Government

Land-use planning for the Community in a controlled coordinated manner

Environmental and culturally significant landscapes are recorded, valued and protected

Economic Participation:

Full restoration of self-management and self-determination

1. POLICY STATEMENT

(a) Council is the Trustee of the Deed of Grant in Trust (DOGIT) for the following communities:

- Boigu Island
- Dauan Island
- Saibai Island
- Mabuiag Island
- Kubin Community, Moa Island
- St Pauls Community, Moa Island
- Kiririri (Hammond Island)
- Iama (Yam) Island
- Warraber (Sue) Island
- Poruma (Coconut) Island
- Masig (Yorke) Island
- Ugar (Stephens) Island
- Erub (Darnley) Island

(b) Torres Strait Islander freehold land at Mer (Murray Island) is held in trust by Mer Gedkem Le (Torres Strait Islanders) Corporation RNTBC.

(c) Torres Strait Islander freehold land at Badu Island is held in trust by Mura Badulgal (Torres Strait Islanders) Corporation RNTBC.

~~(b)~~(d) As Trustee, Council is committed to making land-related decisions for the benefit of islander inhabitants, taking into account Ailan Kastom.

~~(c)~~(e) As a local government, Council is committed to providing a legal framework for Torres Strait Communities within the Torres Strait Island Regional Council municipality which addresses both State and Traditional Lore requirements.

2. SCOPE

This Policy applies to all local government employees, Councillors, contractors and agents of Council.

3. INTERPRETATION

Aboriginal Cultural Heritage has the same meaning as in the *Aboriginal Cultural Heritage Act 2003* (Qld)

Aboriginal Freehold means Aboriginal Land, transferred under Part 4 of the *Aboriginal Land Act 1991* (Qld)

Ailan Kastom and Ailan Lore (also know as Island custom) means, as defined in section 6 of the *Torres Strait Islander Land Act 1991* (Qld), the body of customs, traditions, observances

and beliefs of Torres Strait Islanders generally or of a particular group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships

Division means an electoral division of the Torres Strait Island Regional Council local government area, and Divisional has a corresponding meaning

DOGIT means Deed of Grant in Trust and has the same meaning as in the *Land Act 1994* (Qld)

Future Act has the same meaning as in the *Native Title Act 1993* (Cth)

ILUA means Indigenous Land Use Agreement and has the same meaning as in the *Native Title Act 1993* (Cth)

LHA/Land Holding Act/Katter Lease means a perpetual lease under the *Aboriginal and Torres Strait Islander Land Holding Act 2013* (Qld)

Ordinary Freehold means the freehold option referred to in Part 2A of the *Torres Strait Islander Land Act 1991* (Qld) and the *Aboriginal Land Act 1991* (Qld)

RNTBC means Registered Native Title Body Corporate (also known as the Prescribed Body Corporate or PBC) and has the same meaning as in the *Native Title Act 1993* (Cth)

Torres Strait Islander Cultural Heritage has the same meaning as in the *Torres Strait Islander Cultural Heritage Act 2003* (Qld)

Torres Strait Islander Freehold means Torres Strait Islander Land, transferred under Part 4 of the *Torres Strait Islander Land Act 1991* (Qld)

4. NATIVE TITLE

- (a) Council recognises and respects traditional ownership and Ailan Kastom. Native title and Deed of Grant in Trust co-exist.
- (b) Council is committed to ensuring compliance with native title laws.
- (c) Council is dedicated to working with Registered Native Title Bodies Corporate in native title matters.
- (d) Where a DOGIT lease is proposed, the Trustee shall be a party to the relevant Indigenous Land Use Agreement that validates the grant of the proposed Trustee lease. This reflects the Trustee's responsibility to ensure compliance with the *Native Title Act 1993* (Cth) when leasing land.
- (e) Where an Infrastructure and Housing Indigenous Land Use Agreement (ILUA) applies, Council will undertake Future Acts in accordance with that ILUA process.

- (f) Council will use section 24JAA of the *Native Title Act* for Future Act validation only as a last resort, where consent-based validation is not reasonably practicable in the opinion of the Divisional Councillor.
- (g) Council will use section 24KA, 24HA, and 24NA of the *Native Title Act* for Future Act validation only where supported by the Divisional Councillor.

5. CULTURAL HERITAGE

- (a) Council acknowledges the value of Torres Strait Islander Cultural Heritage, Aboriginal Cultural Heritage and culturally significant places and landscapes.
- (b) Council is committed to ensuring compliance with cultural heritage laws.
- (c) Council is dedicated to working with cultural heritage bodies in cultural heritage matters.
- (d) Council supports processes to record, recognise and protect Torres Strait Islander Cultural Heritage and Aboriginal Cultural Heritage.

6. TRUSTEE DECISION-MAKING

- (a) As Trustee, Council will fulfil its responsibilities in an informed and effective manner.
- (b) DOGIT Trustees are not required under the *Torres Strait Islander Land Act 1991* (Qld) or *Aboriginal Land Act 1991* (Qld) to consult with or notify the community when considering an expression of interest to lease trust land. However, each Divisional Councillor must have comprehensive knowledge about the values of, and appropriate uses for, the DOGIT land, existing interests in the land, and community opinion about proposed leases for that DOGIT.
- (c) The type of community engagement that is appropriate for a proposed project or lease will be determined at the discretion of the Divisional Councillor.
- (d) A proposed Trustee decision that affects a specific DOGIT will not be tabled for Council's consideration unless it has the support of the Divisional Councillor.
- (e) Where the Divisional Councillor has a conflict of interest or material personal interest, the matter will be referred to the Mayor or Deputy Mayor for direction regarding appropriate consultation, including consideration of a community ballot option to confirm support for the proposal.
- (f) A Trustee resolution that affects a specific DOGIT may only be passed if the Divisional Councillor for that DOGIT is present and does not vote against the resolution. If the Divisional Councillor abstains from voting, the failure to vote is counted as a vote against the resolution. However, the Divisional Councillor's vote is not required if the Divisional Councillor has left the room due to a personal interest in the matter.
- (g) Development applications made to Council as local government may only be passed if the Trustee supports the proposed development. For DOGIT communities, this requires

a Trustee resolution. For Torres Strait Islander Freehold and Aboriginal Freehold communities (non-DOGIT communities), this requires verbal or written advice from the trustee for the land confirming support for or requesting consent to the proposed development.

7. LEASING GENERALLY

- (a) Council will raise the awareness of potential lessees about leasing options and processes.
- (b) Where a DOGIT lease is proposed, the Trustee shall be a party to the relevant Indigenous Land Use Agreement that validates the grant of the proposed Trustee lease. This reflects the Trustee's responsibility to ensure compliance with the *Native Title Act 1993* (Cth) when leasing land.
- (c) DOGIT lease rent revenue is to be handled in accordance with PO 18 Reserve Policy and PR-PO4-15 General Reserve Procedure.

8. COMMERCIAL LEASING

- (a) Council, as owner of most of the buildings and houses in each community and as Trustee of DOGIT land, understands that long-term leases:
 - i. provide a suitable arrangement with the different organisations and businesses providing services within the communities;
 - ii. provide a revenue stream for Council; and
 - iii. provide certainty to Council and to the Lessee.
- (b) Council is committed to effective, equitable and efficient management of Council's assets and land which ensures appropriate returns and protects Council's interest while recognising the rights of organisations and businesses occupying these assets and land.

9. HOME OWNERSHIP

(a) Council is committed to facilitating private home-ownership within the Torres Strait Island Regional Council municipality.

(b) Council will work with stakeholders to facilitate home-ownership leases.

(c) **Land Holding Act ("Katter") leases**

(c) Council will work with the Department of Housing and Public Works, the Department of Aboriginal and Torres Strait Islander Partnerships and the Department of Natural Resources, Mines and Energy to facilitate private home-ownership and the resolution of *Land Holding Act* ("Katter") perpetual lease interests in the region.

(d) The steps required for the resolution of a Katter lease entitlement are:

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- i. DATSIP consultation regarding home ownership responsibilities. Entitlement holder/beneficiary signs a letter confirming understanding of home ownership. (For either vacant land or house)
- ii. If the entitlement holder/beneficiary is not the current tenant of the house, it may be necessary to wait for the tenant to be relocated to another social house.
- iii. If there are no obstacles, DNRME will grant the lease to the entitlement holder, or beneficiary/beneficiaries. When the lease commences, TSIRC removes the house from its asset database and the general tenancy agreement terminates.
- iv. If the entitlement holder/beneficiary is the tenant of the LHA house, DHPW will inspect the house, identifying any maintenance required.
- v. Maintenance work undertaken by DHPW.
- vi. The entitlement holder/beneficiary signs a form confirming maintenance has been completed.
- vii. Agreement to Transfer Dwelling is executed or gazette notice is published (depending on the type of entitlement).
- ~~(b)~~viii. The house now belongs to the entitlement holder/beneficiary.
- ~~(e)~~(e) Trustee decisions about *Land Holding Act* matters are to be made as follows:

Type of decision	How decision is to be made
Confirm the area or boundary of an LHA/Katter lease	Divisional Councillor (note clause-paragraph 6(e) above)
Recommend the grant of an LHA/Katter lease	<u>Council resolution (note paragraph 6(e) above)</u> Chief Executive Officer (authority delegated by Council in November 2018 for the CEO to execute all documents necessary to give effect to <i>Land Holding Act</i> lease interests), with advice provided to the Mayor and the Divisional Councillor
Consent to a transfer or surrender of an LHA/Katter lease	Council resolution (note clause-paragraph 6(e) above)
Consent to a sublease of an LHA/Katter lease	Council resolution (note clause-paragraph 6(e) above)

(f) In November 2018, the CEO under delegated authority confirmed the peppercorn divestment of social housing assets for the purpose of resolving LHA lease entitlements.

~~(d)(e) Council will work with stakeholders to facilitate home ownership leases.~~

99-year home-ownership leases

(g) The steps required for a 99-year DOGIT lease are:

- i. Expression of Interest (Form 1) submitted to Trustee – form on DNRME website
- ii. Trustee assesses EOI – approved/not approved
- iii. Development application and survey required – DATSIP completes
- iv. Applicant submits loan application, requires preapproval – TSRA
- v. DHPW inspects the house and provides the sale price and list of maintenance
- vi. Trustee offers the applicant an Agreement to Lease
- vii. Applicant accepts and signs the Agreement to Lease
- viii. Agreement to Lease conditions must be met (includes native title compliance)
- ix. DHPW delivers maintenance on the house
- x. Lease signed and money paid to Trustee
- xi. Lease registered with Land Titles Office
- xii. Registered lessee is now a home-owner

Ordinary freehold option

(h) Council, as Trustee of each Deed of Grant in Trust, will provide an opportunity for the community to consider whether it is appropriate to make Ordinary Freehold available in the community.

House sale price

(i) In June 2019, the Trustee set the sale price for social housing on ordinary freehold land and home ownership (99-year) lease land for the purpose of sections 28R and 91–93 of the *Torres Strait Islander Land Act 1991* (Qld) and sections 32R and 126–128 of the *Aboriginal Land Act 1991* (Qld), as follows:

<u>House type</u>	<u>New condition</u>	<u>Good condition</u>	<u>Fair condition</u>
<u>1-bedroom detached</u>	<u>\$55,000</u>	<u>\$40,000</u>	<u>\$30,000</u>
<u>2-bedroom detached</u>	<u>\$65,000</u>	<u>\$50,000</u>	<u>\$35,000</u>
<u>3-bedroom detached</u>	<u>\$75,000</u>	<u>\$60,000</u>	<u>\$45,000</u>
<u>4-bedroom detached</u>	<u>\$90,000</u>	<u>\$75,000</u>	<u>\$60,000</u>
<u>5-bedroom detached</u>	<u>\$100,000</u>	<u>\$85,000</u>	<u>\$67,000</u>
<u>6-bedroom detached</u>	<u>\$110,000</u>	<u>\$95,000</u>	<u>\$75,000</u>

7-bedroom detached	\$120,000	\$100,000	\$80,000
8-bedroom detached	\$130,000	\$110,000	\$90,000
2-bedroom duplex	\$50,000	\$40,000	\$25,000
3-bedroom duplex	\$55,000	\$45,000	\$35,000

Pricing is subject to review every three years based on the consumer price index.

- (j) In November 2018, the CEO under delegated authority confirmed the peppercorn divestment of social housing assets for the purpose of resolving LHA lease entitlements.

10. LAND TRANSFERS

- (a) Council is committed to supporting the full restoration of self-management and self-determination in the Torres Strait Island Regional Council local government area.
- (b) Council envisions the transfer of land currently held by Council under Deed of Grant in Trust to Torres Strait Islander Freehold or Aboriginal Freehold (as the case may be), on a community-by-community basis, when the time is right for each community.
- (b)(c) The transfer of land recognises the spiritual, social, historical, cultural and economic importance of land to Torres Strait Islanders.
- (d) Under the Torres Strait Islander Land Act 1991 (Qld) and Aboriginal Land Act 1991 (Qld), land can be transferred to following entities:
- i. A Registered Native Title Body Corporate (RNTBC)
 - ii. A qualified corporation registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006
 - iii. An existing Land Trust
- (e) Each land transfer must ensure the continuation of vital services to the community and must secure government interests in essential services, community infrastructure and social housing.
- (f) The land transfer process is run by Queensland's Department of Resources. Council will assist the Department to progress it and transfers will be achieved through collaboration between Council, by participating in land transfer consultations with the State, communities, Registered Native Title Bodies Corporate and other stakeholder bodies, to ensure that government interests in essential services, community infrastructure and social housing are secured and to ensure the continuation of vital services to each community.
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11. PROCEDURE

This Policy shall be achieved with reference to the following:

- Queensland Government *Leasing Torres Strait Islander DOGIT Land: Manual for Trustees* and *-Leasing Aboriginal DOGIT Land: Manual for Trustees*
- PO~~1929~~-PR1 Native Title and Cultural Heritage Procedure
- PO~~1929~~-PR2 Leasing Procedure
- PO 18 Reserve Policy
- PR-PO4-15 General Reserve Procedure
- Statement of Principles for Private Structures (Schedule A)
- PO2-PR1 Code of Conduct
- ~~TSIRC Meeting Handbook~~Meeting Procedure Policy
- Standing Orders Policy

AUTHORISATION

This document was duly authorised by Council as the Torres Strait Island Regional Council Trustee Policy (PO 19) on ~~25 June 2019~~INSERT DATE, and shall hereby supersede any previous policies of the same intent.

Date:

Cr ~~Fred Gela~~Phillemon Mosby

Mayor

SCHEDULE A

STATEMENT OF PRINCIPLES FOR PRIVATE STRUCTURES (HOUSES, SHEDS AND ZAR-ZARS)

Note: these principles do not apply to social housing lots.

1. Council recognises and respects traditional ownership and Ailan Kastom. Native title and Deed of Grant in Trust co-exist.
2. Council has a duty to ensure the safety of all community members on local government-controlled areas. Local government-controlled areas include roads, foreshores, beaches, cemeteries, jetties and parks (but do not include residential lots, private commercial premises or government premises such as school reserves).
3. Beaches and foreshores are for everyone's use. They cannot be privatised or owned exclusively. Nevertheless, where Ailan Kastom is observed, anyone accessing the beach or foreshore should acknowledge the traditional owner of the area.
4. It is up to the whole community to decide on where future development will happen. Council, as trustee for the land (except at Badu and Mer), is responsible for making decisions for the benefit of the community.
5. Where native title rights exist, Council recognises the rights of native title holders to build houses, sheds and zar-zars on the land. Other community members can also seek permission to build houses, sheds and zar-zars. However, before building anything, native title holders and community members should:
 - a. Apply to Council for a lease; and
 - b. Ask the PBC for a letter confirming permission to build there.

Council will then advise whether there are any legal restrictions on building in the particular area (for example because of coastal management, flood areas or road reserves).

6. Native title holders and community members who build houses, sheds and zar-zars are responsible for looking after them to make sure they do not create a safety risk to the community.
7. Following these principles will allow respect for traditional interests and provide a clear process for future development and private ownership.

Land Transfer Process – *Torres Strait Islander Land Act 1991*

Legislative Provisions

The Department of Resources is responsible for administering the *Torres Strait Islander Land Act 1991* (TSILA).

The TSILA provides for the grant of inalienable freehold (ie. the land can't be sold) which is held in trust for the benefit of Torres Strait Islander people.

Under the TSILA the department is able to transfer the following 'types' of land to Torres Strait Islanders:-

- Deed of Grant in Trust land (DOGIT)
- Torres Strait Islander Reserve Land
- Available State land (declared to be transferable).

The transfer of land under the TSILA recognises the spiritual, social, historical, cultural and economic importance of land to Torres Strait Islanders.

Land Transfer Process

The TSILA allows land to be transferred to following entities:-

- A Registered Native Title Body Corporate (RNTBC)
- A qualified corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSIA)
- An existing Land Trust.

The transfer process under the TSILA is not about native title and does not affect native title.

Transfer of township and non-township areas require different considerations to be addressed.

Existing registered interests in the transferable lands continue post transfer e.g. social housing, local government/state infrastructure leases and any interests held by service providers.

The Minister needs to be reasonably satisfied that appropriate arrangements are in place to ensure a continued provision of services to communities on the land after it is transferred.

The transfer process has two components – **Administration** and **Consultation**.

The **Administrative** component requires undertaking an evaluation of the land proposed for transfer, and includes:-

- o identifying existing registered interests over the land such as trustee leases, leases to individuals or easements;
- o identifying any future requirements the local government may have for use of the land
- o establishing access to land and any survey requirements;
- o seeking views from relevant State and Commonwealth agencies and service providers in relation to their interests or future requirements for service provision.

The **Consultation** component requires that before making an appointment of a grantee for the subject land, the department, on behalf of the Minister must consult with and consider the views of Torres Strait Islander people particularly concerned with the land.

Consultation meetings will be arranged in consultation with representatives of the registered native title body corporate and Council.

When consulting, the Minister and his representatives must have regard to Torres Strait Islander traditions applicable to the land.

All views on the transfer will be taken into consideration.

Following community consultation:-

- Notice of the Minister's intention to appoint the nominated grantee is published in a local newspaper in which the land is located. It provides a 28 day period for Torres Strait Islanders particularly concerned with the land to make written representations regarding the proposed grantee appointment.
- Relevant information and views are collated from the consultation and provided to the Minister for consideration, as well as any representations received in response to the public notice.
- The Minister makes a decision to appoint a grantee to hold the land.
- Subject to the Minister's appointment of a grantee and directing that title issue for the land, the Governor in Council's approval of a deed will be sought and the grant of the land will occur thereafter.

Post Land Transfer

Council remains the local governing authority for the land.

The Grantee would still be subject to Local Government, State and Commonwealth laws in relation to the land.

The Grantee could issue leases or other interests, such as permits or licences to individuals or businesses over the land.

The Grantee would need to address native title for future acts over the land.

In dealing with the land, the Grantee must give consideration to the people for whom the land is held in benefit for, as Council currently does as trustee.

Going Forward

1. Get Council's support and views as trustee and local government in regards to the broad process prior to moving forward into community consultation.
2. Provide Council with a schedule of Saibai and Ugar DOGITs (lot/plan descriptions) proposed for transfer and seek Council's views on registered/non-registered interests, tenure options and roads.
3. Schedule separate and joint meetings with Council and RNTBC Directors for discussion on schedule of land and planning for community consultation.
4. Schedule community consultation meetings.

TSIRC

Proposed House Prices

House type	New condition	Good condition	Fair condition	Good Condition Scale %
1 bedroom detached	\$55,714	\$42,857	\$30,000	
2 bedroom detached	\$65,000	\$50,000	\$35,000	53%
3 bedroom detached	\$75,000	\$60,000	\$45,000	63%
4 bedroom detached	\$90,000	\$75,000	\$60,000	79%
5 bedroom detached	\$100,000	\$85,000	\$67,000	89%
6 bedroom detached	\$110,000	\$95,000	\$75,000	100%
7 bedroom detached	\$120,000	\$103,636	\$81,818	
8 bedroom detached (4)	\$128,333	\$110,833	\$87,500	
2-bedroom duplex (2)	\$48,750	\$37,500	\$26,250	
3-bedroom duplex (2)	\$56,250	\$45,000	\$33,750	

TSIRC Social Housing Tenant Information Booklet (1)	Qld Govt Market Rent per f/n	Scale % Qld Govt	Scale % TSIRC	Comparison (3)
1 bedroom	\$180	55%		1
2 bedroom	\$210	64%	53%	83% 2
3 bedroom	\$240	73%	63%	87% 3
4 bedroom	\$300	91%	79%	87% 4
5 bedroom	\$320	97%	89%	92% 5
6 bedroom	\$330	100%	100%	100% 6
7 bedroom	\$360	109%		7
8 bedroom (4)	\$385	117%		8

Notes

(1) Per page 7 of Booklet: "Market rent is set by the State Government and represents market rent value for all properties that have the same number of bedrooms, in a similar area of Queensland."

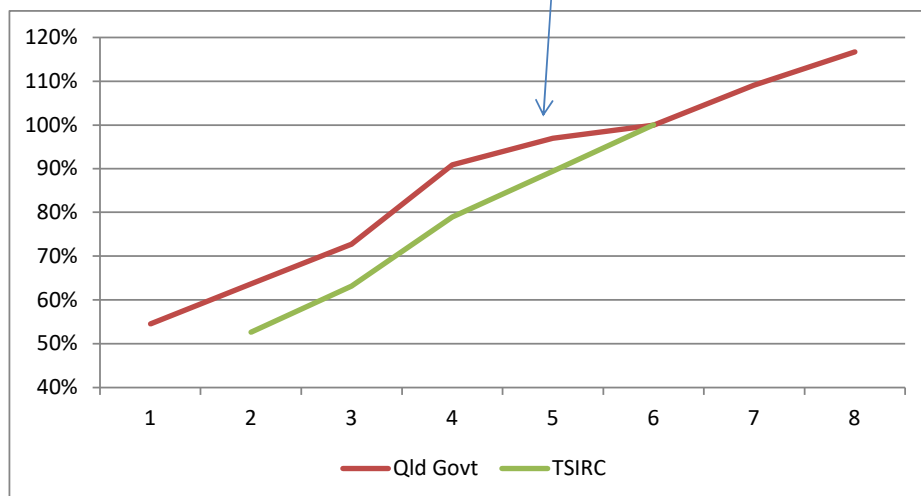
(2) Duplex discount factor (vs detached) 75%

(3) Comparing against the Qld Govt rates, the proposed TSIRC property purchase rates are:

- quite similar in terms of relative prices per number of bed rooms
- 5 & 6 bedroom homes are relatively more expensive using TSIRC proposed prices

(ie where green line catches up to red line in below chart)

(4) 8 bedroom homes are not included in the booklet, so have arrived at figure by extrapolation



TORRES STRAIT ISLAND REGIONAL COUNCIL

TRUSTEE REPORT

COUNCIL ORDINARY MEETING

DATE: March 2021

SUBJECT: Department of Defence lease Boigu (Lot 125 on SP273190)

AUTHOR: Julia Maurus, Manager Legal Services

PERSONAL INTERESTS

Councillors are reminded to declare any personal interests relating to:

- Department of Defence
- Traditional owner interests

RECOMMENDATION

That the Trustee, pursuant to the Torres Strait Islander Land Act 1991 (Qld), grant a standard lease for 30 years with 3 x 10-years options (total lease of 60 years including options) to the Commonwealth of Australia represented by the Estate & Infrastructure Group the Department of Defence over Lot 125 on SP273190 (Boigu) for the purpose of operating a Department of Defence depot and base, subject to native title future act validation through an Indigenous Land Use Agreement to which Council is a party, and delegate to the Chief Executive Officer the power to conclude the terms of this lease and execute the lease and lease options.

BACKGROUND

Under the *Torres Strait Islander Land Act 1991* (Qld) and the *Aboriginal Land Act 1991* (Qld), Council (as Trustee) has the power to grant leases of up to 99 years.

In May 2018, Council as Trustee for the various Deeds of Grant in Trust (including Poruma) set a rent methodology of \$10.80 per square metre per annum (starting rent subject to CPI) for commercial/government leases, with a minimum charge of \$6,000 per annum.

The Department of Defence has a depot located at Boigu (Lot 125 on SP273190). The previous 10-year lease (No. 708072646) with the Boigu Island Council expired in May 2019 (**Attachment 1**). The old lease is currently held

over as a monthly tenancy at the trustee rent of \$8,553.60 per year until a new lease can be registered (**Attachment 2**).

The Department of Defence previously constructed two buildings on site: housing office and storage facilities with site fully fenced.

The Department of Defence has applied for a lease of 30 years with 3 x 10-years options (total lease of 60 years including options) for the site (**Attachment 3 EOI**). Lot 125 is 792m².

The Department of Defence wishes to secure occupancy of the Defence Depot utilised for 51 FNQR (Far North Queensland Regiment). Security of the tenure will allow Defence the ability to maintain a permanent Defence Operating Base in Australia's northern most island adjacent to Papua New Guinea and to ensure continued infrastructure support to the conduct of ADF operations and engagement of activities in the far north of Australia and the Torres Strait.



OFFICER COMMENT

Council's planning consultant (Ian Doust at RPS) has confirmed that because the lot-on-plan boundaries have already been created, development approval is not required for the proposed lease.

Native title future act validation will be required before Council can grant a lease. Therefore, the proposed resolution provides only conditional approval.

The proposed Boigu Infrastructure and Housing ILUA is currently at consultation stage. If that ILUA is registered, the Department of Defence could opt in to that ILUA to validate the proposed lease, because the Defence depot site is included in the ILUA area.

As example of the regional/template ILUA is included as **Attachment 4**.

Note that in December 2018, Council passed a resolution delegating to the CEO decision-making and executory power relating to the Regional ILUA:

19. LEGAL – Regional ILUA

MPI: All Councillors and the Mayor have declared a material personal interest due to potential to receive a direct or indirect financial benefit of compensation through the ILUA arising from traditional land interests. No quorum established so Council discussed options on how to deal with the matter.

RESOLUTION:

Moved: Cr Nona; *Second:* Cr Elisala

That Council delegate deciding the matter to the Chief Executive Officer under section 257 of the Local Government Act 2009 (Qld), due to the majority of Councillors informing the meeting that they have a potential personal interest and or a material personal interest in the matter.

MOTION CARRIED

CONSULTATION

- Cr Dimas Toby
- CEO
- Department of Defence
- Planning consultant (RPS)
- Legal Services Division
- MacDonnells Law

LINKS WITH STRATEGIC PLANS

Corporate Plan

STATUTORY REQUIREMENTS

Torres Strait Islander Land Act 1991 (Qld)
Native Title Act 1993 (Cth)

FINANCE AND RISK

Capital Cost

NIL

Operating Cost

NIL

Risk Assessment

NIL

SUSTAINABILITY

Trustee lease revenue is vital to ensuring the sustainability of the Trustee's functions and improvement of the DOGIT.

CONCLUSION

As presented.



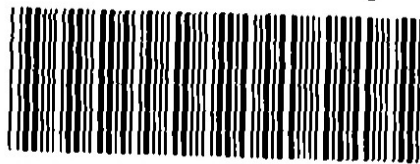
Ilario Sabatino
A/CEO



Julia Maurus
Manager Legal Services

ATTACHMENTS

1. Expired lease
2. Deed of Variation executed by Department of Defence
3. Expression of Interest form dated 2 March 2020
4. Example of regional/template ILUA



708072646

SEENSLAND

\$105.60

21/09/2004 15:04

BE 500

1. Lessor

Boigu Island Council

Lodger Name, address and phone number
002Roberts Leu & North, Solicitors
Level 8, 61-73 Sturt Street, TownsvilleContact Phone: (07) 4721 3413 File Reference
WJM:PJM970749

Lodger Code

2. Description of Lot

County

Parish

Title Reference

Lot 4 on TS 159

Torres

Orman

21296127

3. Lessee

Given Names

Surname/Company Name

(include tenancy if more than one)

Commonwealth of Australia

4. Interest being leased

Deed of Grant in Trust

5. Description of premises being leased

The whole of the land in Lot A on SP 106209

6. Term of Lease/Sublease

Commencement Date 01/06/1999
Expiry Date 31/05/2019

7. Rental/Consideration

See attached schedule

8. Grant/Execution

The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in: the attached schedule and acknowledges the debt or liability secured by this lease.

Witnessing Officer

Execution Date

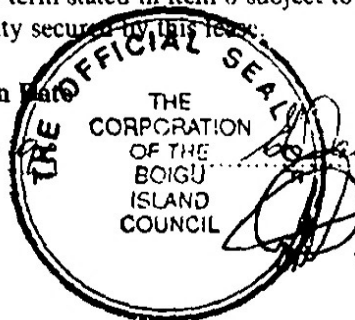
Lessor's Signature

..... signature

..... full name

..... qualification

as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C Dec)

APPROVED pursuant to Section 57 of the Land Act 1994
Dated at Brisbane this 10..... day of FEBRUARY.. 19 2000

the delegate of the Minister for Natural Resources

Title Reference

QUEENSLAND

LEASE OF DEED OF GRANT IN TRUST UNDER SECTION 57
OF THE LAND ACT 1994

RECITALS:

- A. This lease is a trustee lease under Section 57(1) of the *Land Act 1994*.
- B. The land referred to in Item 2 of the Form 7 comprises a Deed of Grant in Trust to the **Boigu Island Council** in Trust for the benefit of Islander Inhabitants and for no other purpose whatsoever as from 17 October 1985.

1. INTERPRETATION

In the lease, unless it does not make sense, the word/s:-

"**Ailan Kastom**" means the body of traditions, observances, customs and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes those traditions, observances, customs and beliefs relating to particular persons, areas, sites, objects or relationships.

"**Approvals**" means any consents or approvals required by law and includes where necessary the approval of the Minister for Natural Resources and the approval of the Minister administering the *Torres Strait Islander Land Act 1991*.

"**End Date**" means the date on which this lease, or any period of holding over, expires or is lawfully terminated.

"**Improvements**" means all improvements, fixtures and fittings as constructed on the Premises from time to time, and includes (where applicable) the Initial Improvements.

"**Initial Improvements**" means the improvements and fixtures and fittings as shown in the plans attached as Annexure "A".

"**Landlord**" means the person or entity named at Item 1 of the Form 7 and includes the legal successors of that person or entity;

"**Minister**" means the Minister appointed by the Government of Queensland to administer the *Land Act 1994* and/or the Minister appointed by the Government of Queensland to administer the *Torres Strait Islander Land Act 1991* (if applicable).

"**Native title claimants**" means either:-

- (a) those persons who, by virtue of Ailan kastom, are traditional land owners of the premises and who are represented by the Senior members who have signed the Lease as a consenting party and who claim to be the common law holders of native title in the Premises; or
- (b) in circumstances where a body corporate is subsequently declared to be the Native Title Holder in accordance with section 56 of the *Native Title Act 1993 (Commonwealth)* or corresponding State legislation, that body corporate.

"**Premises**" means the part of the Site described at Item 5 of the Form 7;

"**Rent**" means the amount of ONE DOLLAR (\$1.00) per annum;

"**Site**" means the land described at Item 2 of the Form 7;

Title Reference

"Tenant" means the Commonwealth of Australia as named at Item 3 of the Form 7;

"Tenant's Employees" means the employees, contractors, agents, customers, clients, and visitors who may be upon the Premises;

"Tenant's Purposes" means the purposes listed at clause 4 of this lease.

"Term" means the period from the Commencement Date to the Expiry Date shown at Item 6 of the Form 7, or a period of 30 years from the Commencement Date, whichever is the shorter;

"Torres Strait Islander" means a person who is a member of the Torres Strait Islander race of Australia.

2. GRANT OF LEASE

- (a) The Landlord leases the Premises to the Tenant for the term stated in this lease and the Tenant accepts this lease subject to the covenants and conditions contained in it.
- (b) If the consent of the Minister or any other person is required to be obtained before this lease lawfully commences then the Commencement Date is the later of:
- (i) the date specified in Item 6 of Form 7; and
 - (ii) the date on which all necessary consents have been obtained.

3. RENT

During the Term if payment is requested the Tenant must pay the Rent to the Landlord

4. USE OF THE PREMISES

The Tenant may use the Premises for purposes of equipment storage, training, accommodation, vehicle servicing and other purposes related to these but must not use the Premises for any other purpose.

5. OUTGOINGS

The Tenant must pay all rates, taxes (other than land tax) and other costs payable in respect of the Premises and the costs for all services supplied to the Premises.

6. CLEANING

The Tenant must at its expense keep the Premises clean and tidy.

7. ALTERATIONS REQUIRED BY THE TENANT

- (a) The Tenant may:-
- (i) construct the Initial Improvements on the Premises;
 - (ii) modify or extend the Initial Improvements from time to time in order to meet the requirements of the Tenant; and
 - (iii) construct other Improvements to replace the Initial Improvements (or any part of them) in the event of destruction of the Initial Improvements (or any part of them).

Title Reference

- (b) Before constructing any Improvements the Tenant must obtain any applicable Approvals.
- (c) The Tenant must pay the costs of any Improvements it constructs.

8. IMPROVEMENTS

- (a) All Improvements remain the property of the Tenant throughout the Term.
- (b) Subject to clause 8(c), after the End Date, all Improvements are to remain on the Premises and shall, without consideration, vest in the Landlord.
- (c)
 - (i) The Landlord may by notice in writing (a "Clause 8 Removal Notice") require the Tenant to remove Improvements.
 - (ii) To be valid, a Clause 8 Removal Notice must be served within thirty (30) days of the End Date.
 - (iii) A Clause 8 Removal Notice may refer to all or some of the Improvements ("Removal Improvements").
 - (iv) If a valid Clause 8 Removal Notice is served:
 - (A) the Tenant must remove the Removal Improvements within the time agreed upon by the Parties or failing agreement within ninety (90) days; and
 - (B) following the removal of the Removal Improvements the Tenant must restore the Premises to substantially the same condition they were in prior to the Commencement Date, subject to the continued presence of any Improvements other than the Removal Improvements.
 - (v) If the Tenant fails to comply with clause 8(c)(iv), then the Landlord may without further notice to the Tenant remove the Removal Improvements and any costs incurred by the Landlord are payable by the Tenant.

9. QUIET ENJOYMENT

If the Tenant pays the Rent and observes and performs promptly the covenants and conditions under this lease the Tenant may occupy and enjoy the Premises during the Term without interruption by the Landlord or by any person rightfully claiming through, under or in trust for the Landlord.

10. HOLDING OVER

If the Landlord and the Tenant agree that the Tenant may remain in occupation of the Premises after the Term, unless another agreement has been entered into, then:-

- (a) the terms of this lease continue to apply; and
- (b) the Landlord can terminate the agreement by giving one month's notice; and
- (c) the monthly tenancy so created shall be for a maximum period of three (3) months only.

11. COSTS

The Tenant agrees to pay all reasonable costs associated with the preparation and execution of this lease.

Title Reference

12. **CONSENTS AND APPROVALS**

This lease is entered into subject to the written approval of the Minister for Natural Resources (and if necessary, the Minister administering the *Torres Strait Islander Land Act 1991*), being obtained and endorsed on this lease. This lease is not valid until that approval is obtained.

13. **LEGISLATION**

The Tenant must comply with all applicable laws relating to its use of the Premises and any Improvements.

14. **INDEMNITY**

The Tenant agrees to indemnify and keep the Landlord and the native title holders, the Minister for Natural Resources and the Crown in right of the State of Queensland indemnified against all claims, including claims for personal injury and property damage, for which the Landlord, the native title holders, the Minister for Natural Resources or the Crown in right of the State of Queensland may become liable because of the Tenant's use of the Premises and caused by the Tenant or the Tenant's Employees.

15. **REPAIR BY TENANT**

The Tenant must carry out all repairs and maintenance in respect of the Improvements.

16. **ENTRY TO PREMISES BY LANDLORD**

The Landlord shall only be permitted to enter the Premises upon giving the tenant reasonable notice and where such entry is to ensure that the tenant is abiding by the terms of this lease. Such entry by the Landlord must be accompanied by a representative of the Tenant.

17. **ACCESS TO PREMISES BY TENANT**

- (a) The Landlord gives the Tenant the right to cross over the Landlord's land for the purpose of gaining access to the Premises throughout the Term.
- (b) Access under clause 17(a) must be along such route as may be agreed between the parties from time to time.
- (c) In the absence of agreement under clause 17(b), such access may be along a route that is:-
 - (i) the most direct practical route; and
 - (ii) is culturally appropriate,but the Landlord cannot deny access on the basis that no route is culturally appropriate.

18. **WARRANTIES**

The Landlord gives no warranty as to the suitability of the Premises or the use to which the Premises may be put. The Tenant shall be deemed to have accepted this lease with full knowledge of and subject to any prohibitions or restrictions on the use of the Premises from time to time or in pursuance of any laws or any requirements.

19. **END OF LEASE**

- (a) If the Improvements are destroyed or so damaged as to be unsuitable for the Tenant's Purposes (other than because of a breach of the Tenant's obligations to repair and maintain), then:-

Title Reference

- (i) the Tenant is not obliged to pay the Rent or any other costs for the period in which the Improvements remain unsuitable;
 - (ii) despite any other provision of this lease, the Tenant may terminate this lease by notice in writing to the Landlord at any time within ninety (90) days of the damage or destruction; and
 - (iii) the Tenant's obligations to repair and maintain the Improvements are suspended for a period of 90 days or until the Landlord gives notice under clause 19(a)(ii), whichever comes first.
- (b) Where:
- (i) clause 19(a) applies; and
 - (ii) the Tenant has not terminated this lease under clause 19(a)(ii); and
 - (iii) the state of the Improvements is such that they are dangerous or unsightly,
- then the Landlord may issue a notice in writing to the Tenant ("**Clause 19 Removal Notice**") requiring that the Improvements be removed from the Premises within ninety (90) days of the date of the notice, unless the Improvements are made safe within that time.
- (c) The Landlord must comply with a Clause 19 Removal Notice unless the Improvements are made safe within the time provided for in clause 19(b).
 - (d) A reference in this clause to "Improvements" means the Improvements or what remains of them after the destruction or damage and a reference to "made safe" means the Improvements being re-instated, replaced or otherwise dealt with such that the Improvements are no longer dangerous or unsightly.
 - (e) The Landlord may terminate this lease pursuant to Section 65(1) of the *Land Act 1994* if the Tenant does not comply with this lease.
 - (f) The Minister for Natural Resources may terminate this lease pursuant to Section 65(2) of the *Land Act 1994* if the Tenant does not comply with this lease, or if the Minister is satisfied that cancellation is in the public interest.

20. **TWENTY-EIGHT DAYS GRACE**

Where the Landlord gives the Tenant a notice requiring the Tenant to do anything the Tenant must do under this lease, the Tenant has a period of twenty-eight (28) days from the date it receives the notice to do that thing.

21. **NOTICES**

All notices must be in writing. Notices must be sent to the correct address to be effective.

The Landlord's address is:-

Boigu Island Council
BOIGU ISLAND QLD 4875

Telephone No. (07) 4069 4066
Facsimile No. (07) 4069 4079

The Tenant's address is:-

COMMONWEALTH OF AUSTRALIA
C/- Knight Frank Price Waterhouse
PO Box 2474
BRISBANE QLD 40001

Title Reference

Telephone No. (07) 3239 4000
Facsimile No. (07) 3239 4010

22. PREMISES HELD ON CONDITIONS

The Tenant holds the Premises subject to the reservations and conditions contained in the original deed of grant in trust. The tenant also holds the premises subject to the terms and conditions contained in the *Land Act 1994* and any regulations made to that Act.

23. VARIATION OR CANCELLATION OF DEED OF GRANT IN TRUST

If an Act of Parliament is made pursuant to Section 43 of the *Land Act 1994* which deletes land from or cancels the deed of grant in trust, this lease shall terminate on the day that the deletion or cancellation comes into effect. If this lease is terminate because of this clause 23, the Tenant shall have no right to claim any compensation but may remove Improvements pursuant to clause 8.

24. NATIVE TITLE

The Parties acknowledge that this lease is not intended to extinguish any customary or native title as may exist in relation to the Premises immediately before the Commencement Date.

25. TORRES STRAIT ISLANDER LAND ACT

The Landlord and the Tenant declare that, in their opinion, the creation of the interest in the Site evidenced by this lease is for the benefit of Torres Strait Islanders particularly concerned with the land.

26. RESCISSION OF TITLE

If the Land is acquired by the Crown or the Landlord's title to it is rescinded or amended by legislation or proclamation of any superior authority so as to divest the Landlord's title then this lease is immediately terminated. The Tenant is not entitled to be compensated by the Landlord but retains all rights to compensation which the Tenant has against any other person (including any governmental body or authority but excluding the Landlord).

27. NO WAIVER

Should there be any delay or indulgence on the part of the Landlord in the exercise by it of its rights, powers or remedies under this lease, such delay or indulgence shall not be deemed to be a waiver of such rights powers or remedies by the Landlord except where specifically communicated to the Tenant in writing.

28. SURRENDER

The Tenant may at any time during the continuance of this lease and upon giving six (6) months written notice to the Landlord, surrender its interest in this lease provided that any such surrender shall not affect, defeat or prejudice any claim, action or other remedy that any of the Parties may have for a breach of a covenant or agreement on the part of another Party prior to such surrender nor shall such surrender entitle the Tenant to a refund of any part of any rent or premium paid hereunder with such surrender to be registered in the Titles Office.

29. The Native Title Claimants agree to the terms and conditions contained in the Lease and consent to the granting of the Lease by the Lessor to the Lessee and have executed the lease as a consenting party.

The persons whose names and signatures appear on the Schedule to this Lease represent those persons who may have a native title interest in the Premises and who, by virtue of their signatures acknowledge and consent to the terms and

Title Reference

conditions of this lease.

Title Reference

APPROVAL UNDER THE LAND ACT 1994

I, _____ the Minister administering *the Land Act*
1994 hereby certify that on the _____ day of

1999 consent was given under Section _____ of the Act to this lease and the terms, conditions and duration of it.

SIGNED for and on behalf of)
The NATIVE TITLE CLAIMANTS)
In the presence of:)

.....
Aggie P. Mathew
.....

Paul Hays
.....

Title Reference

Annexure "A"

(insert plans of Improvements to be constructed)

Approximate location
of Lease A

Power
Station

4
TS159

5
TS159
SL
1.36ha

6

CP894534

RE

FH

6.36ha

6630ha

STANDARD MAP NUMBER
7378-42231



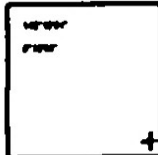
BLINMAP

An External Product of the
Basic Land Information Network
Based upon an extraction from the
Digital Cadastral Data Base



NATURAL

MAP WINDOW POSITION



NEAREST LOCALITY



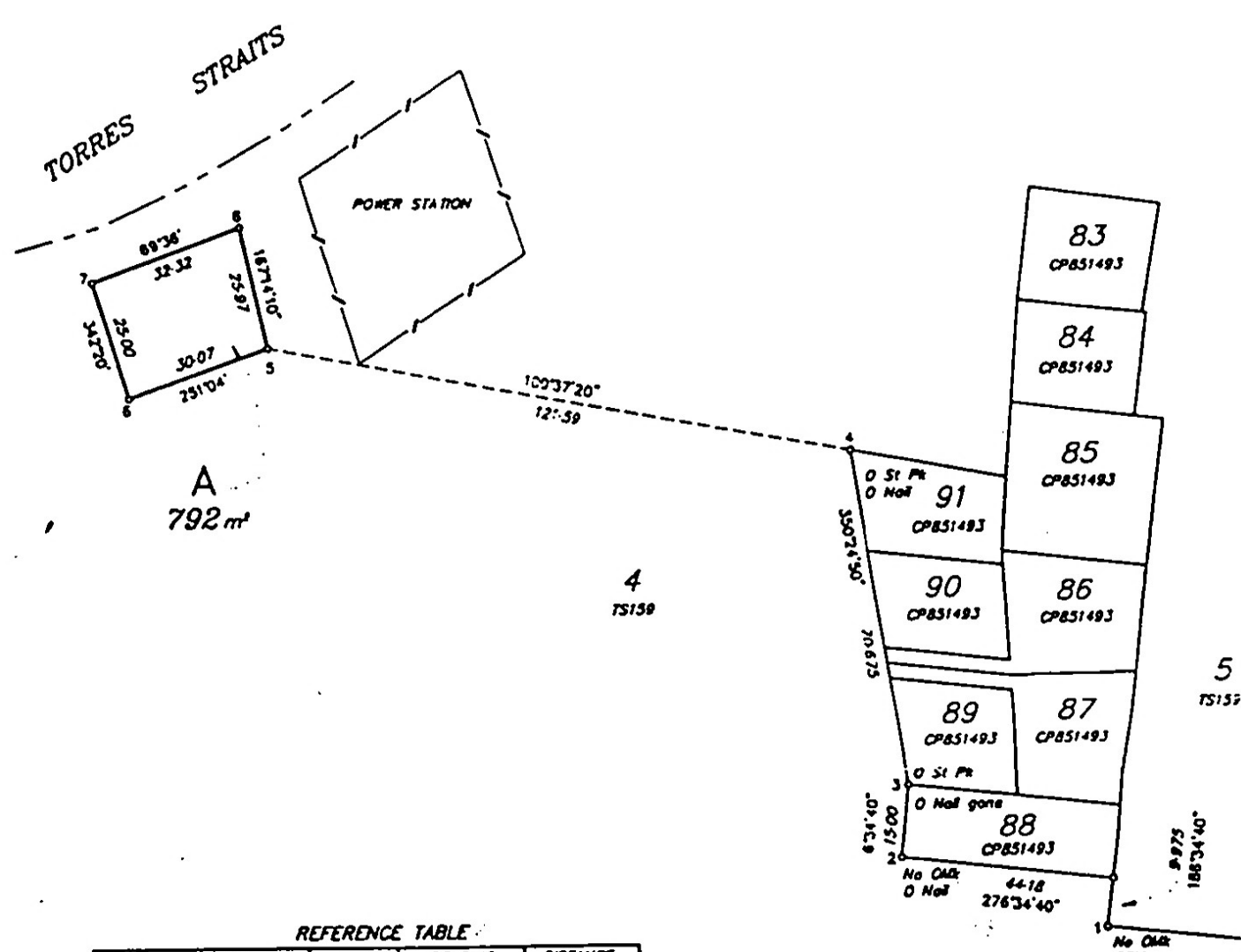
SUBJECT PARCEL DESCRIPTION

DCDB	No Lot/Plan Selected.
Lot/Plan	No Lot/Plan Selected.
Area	No Lot/Plan Selected.
Tenure	No Lot/Plan Selected.
Local Government	No Lot/Plan Selected.
Locality	No Lot/Plan Selected.
Parish	No Lot/Plan Selected.
County	No Lot/Plan Selected.
Parcel/Segment	No Lot/Plan Selected.

CLIENT SERVICE STANDARDS

PRINTED (yymm) 1998/2/12
Important Notice: The information
herein is NOT an OFFICIAL RECORD and
its ACCURACY is NOT GUARANTEED
DCDB 1998/2/1
For symbology see the BLIN Abbreviations
Sheet.

LEGEND



REFERENCE TABLE

STN	TO	REMARKS	BEARING	DISTANCE
2	O Nail in Monument	CP851493	133°38'	14.52
3	O Nail in Conc	CP851493	308°02'	23.15
4	O Nail in Conc	CP851493	73°27'	1.185
8	Nail in Conc		50°27'	16.08

NOTE
 Star Pickets placed at stations 5 to 8

PERMANENT MARKS

STN	TO	NUMBER	BEARING	DISTANCE	REMARK
1	OPM	103737	346°34'	1.17	CP851493

... Bendable Surveys Pty Ltd (ACN 010 025 280) ...
 hereby certify that the Certificate has been prepared and completed in this plan by ...
PRELIMINARY COPY ONLY
 Ben Peter Harrison
 Licensed Surveyor/
 Draftsman

0m 10m 50m 100m 150m Scale every 10m

PLAN OF
LEASE A
 IN LOT 4 ON TS159

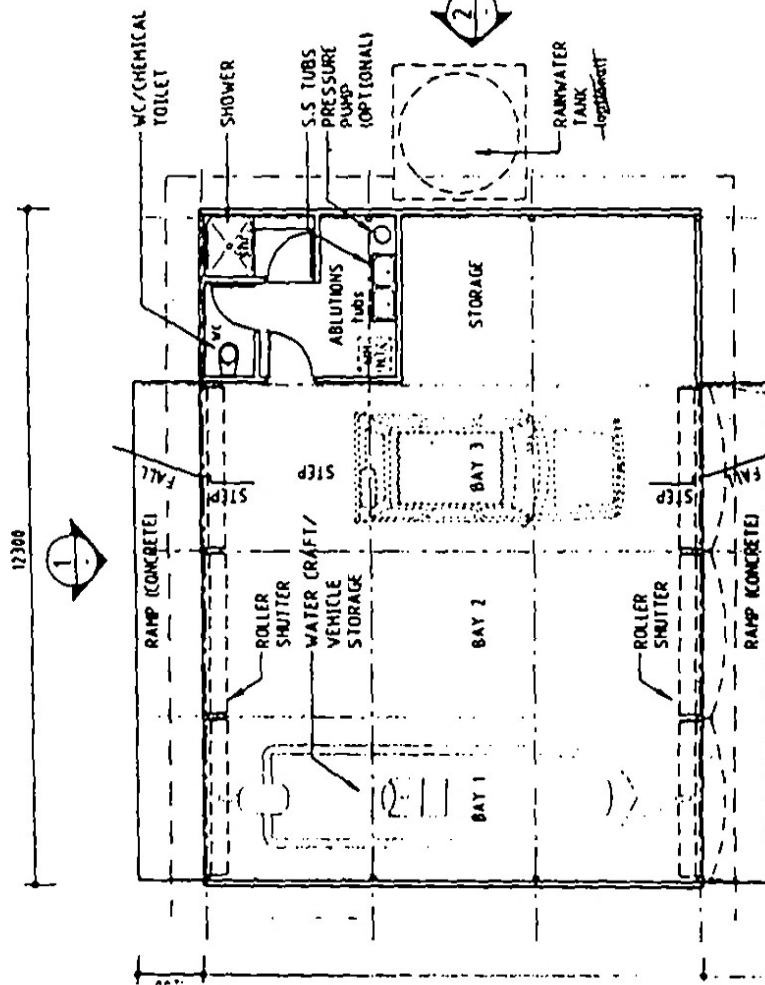
Scale: 1 : 100
 Format: Standard

40650/3/1

PARISH: ORMAN COUNTY: TORRES

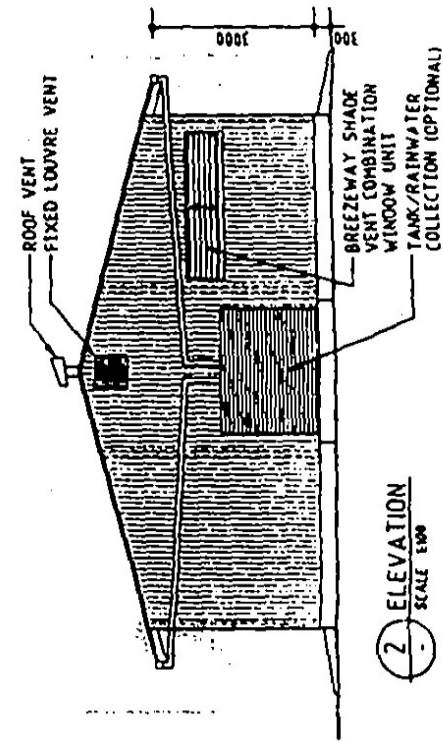
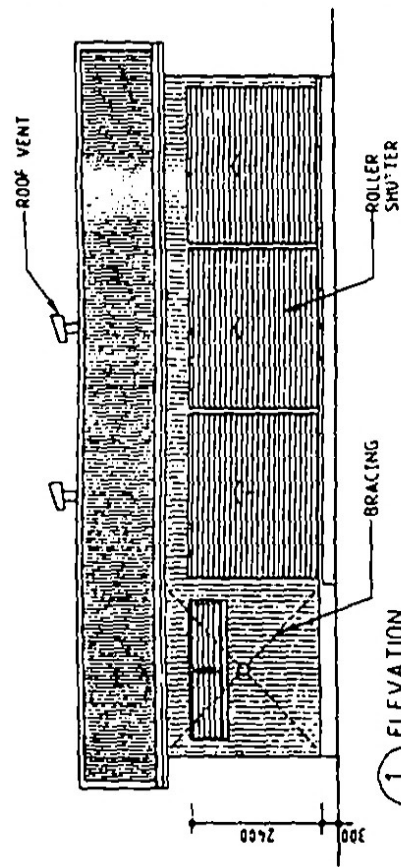
Plan Status:

DRAFT



1 ELEVATION
SCALE 1:100

2 ELEVATION
SCALE 1:100



FLOOR PLAN
SCALE 1:100

OPTION 'A'
FECA (fully enclosed area) = 108.9 sqm
Total Slab Area = 113.16 sqm
Area under roof = 34.04 sqm

Title Reference

9. Acceptance

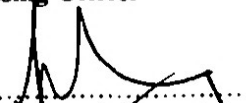
The Lessee accepts the lease and acknowledges the amount paid or other considerations for the lease.

FOR AND ON BEHALF OF THE
COMMONWEALTH OF AUSTRALIA
BY A DELEGATE OF THE MINISTER
FOR DEFENCE AND ADMINISTRATION

Witnessing Officer

Execution Date

Lessee's Signature

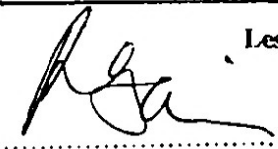

..... signature

GRAHAM WILKES LACEY
..... full name

JUSTICE OF THE PEACE (NSW)
..... qualification

as per Schedule 1 of Land Title Act 1994 (as Legal Practitioner, JP, C Dec)

23, 8, 99.


Assistant Secretary
Property Management
Department of Defence

21 September 2004

Registrar of Titles
Brisbane Titles Registration Office
Level 7, AXA Centre
144 Edward Street
BRISBANE QLD 4000

Attention: - Mr Ross Fry

Dear Sir

Re: Registration of Lease between Commonwealth of Australia and Boigu Island Council

We manage the leased property portfolio for the Department of Defence, which in this instance is the Commonwealth agency for the abovementioned lease. The DNR office in Cairns has recently brought to our attention that the lease was never lodged for Registration and has asked that we now do so.

I understand that you have been liaising with Mr Peter Beard of our Sydney office in this regard and accordingly enclose an original copy of the executed lease document for your attention to its registration.

Thank you for your assistance in this matter.

Yours faithfully



David Kruger
Senior Property Manager
Email: David.Kruger@unitedkfpw.com.au

Deed of Variation of Lease

Date of Deed

Parties

Landlord	Name	Torres Strait Island Regional Council (Deed of grant in trust - the grantee to hold the said land in trust for the benefit of islander inhabitants and for no other purpose whatsoever)
	Address	PO Box 7336 Cairns QLD 4870
	Telephone	07 40 832 001
	Fax	07 4034 5750
	Email	info@TSIRC.qld.gov.au
Tenant	Name	Commonwealth of Australia
	Address	C/- JLL PO BOX 150 Paddington QLD 4064
	Telephone	07 3369 2277
	Fax	07 3368 1411
	Email	domesticleasing.enquiries@defence.gov.au domesticleasing.notices@defence.gov.au

It is agreed**1. Interpretation**

- 1.1. In this Deed, unless otherwise indicated by the context:
- (a) *Lease* means registered Lease No. 708072646 between the Landlord and the Tenant commencing on 01/06/1999; and
 - (b) *Premises* means Lease A on SP106209 in Lot 125 on SP 273190.
- 1.2. This Deed is in addition to the Lease and is to be interpreted with and having regard to the provisions of the Lease.
- 1.3. The provisions of this Deed are intended to bind and to enure in favour of the Landlord, the Tenant and their respective successors and assigns.

2. Variation of Lease

- 2.1. The provisions of the Lease are varied in the following respects:
- (a) by deleting clause 10 and replacing it with the following:

"10. HOLDING OVER

- (a) *If the Landlord and the Tenant agree that the Tenant may remain in occupation of the Premises after the Term, unless another agreement has been entered into, this Lease continues as a monthly tenancy on the same conditions.*
- (b) *The monthly tenancy is determinable at any time by either party giving one months' written notice to the other."*;
- (b) by deleting the definition of Rent under clause 1 and replacing it with the words *"means the amount of \$8,553.60 per annum plus GST"*;
- (c) by deleting clause 3 and replacing it with the following:

"3. PAYMENT OF RENT

- (a) *Rent is payable monthly in advance on the first day of each month by instalments each being one-twelfth (to the next whole cent) of the Rent for that year.*
- (b) *If the Term commences on a day other than the first day of a month or expires on a day other than the last day of a month, the Tenant must pay to the Landlord Rent for the broken period calculated at a daily rate proportionate to the monthly Rent, and payable on the first day of the broken period.*
- (c) *If this Lease ends at a time other than a day that is on the anniversary of the Commencement Date, the Tenant must pay to the Landlord prior to the end of this Lease the proportion of the Rent due at that time and the parties must pay any moneys owing to the other under this clause (subject to any right of set-off) within one month of the Lease ending."*;
- (d) by amending clause 21 such that:
 - (i) the Landlord's telephone number is amended to be "07 4034 7563";
 - (ii) the Landlord's address is amended to insert the words "Email Address. records@tsirc.qld.gov.au" under the Facsimile No.; and
 - (iii) the Tenant's address is amended to insert the words "Email Address. domesticleasing.enquiries@defence.gov.au" under the Facsimile No.

2.2. The variations of the Lease described under clause 2.1 of this Deed are to take effect on and from 1 June 2019.

2.3. In addition to the variations of the Lease described under clause 2.1, the Tenant hereby undertakes and covenants to the Landlord to commence negotiations immediately for native title future act validation for a proposed new lease of the Premises between the Landlord and the Tenant.

- 2.4. The variation of the Lease does not prejudice any rights, claims or causes of action the Landlord now has or at any time may have against the Tenant in respect of anything arising under the Lease or this Deed on or before the later of the date the variations take effect and the date of this Deed.

3. Costs of this variation

- 3.1. Each party must pay its own costs, charges and expenses in connection with the preparation, negotiation and execution of this Deed, except for any stamp duty which is payable by the Tenant.

4. Notices

- 4.1. Clause 21 Notices of the Lease applies to this Deed with the following exception:
- (a) the address for service of the Landlord and Tenant is the address set out in this Deed or such other address as either party notifies the other in writing during the Term and any held over period.

5. Governing law and jurisdiction

- 5.1. This Deed is governed by the laws of Queensland.
- 5.2. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.

6. Counterparts

- 6.1. This Deed may be executed in any number of counterparts each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document and the date of this Deed will be the date on which a counterpart is executed by the last party.
- 6.2. The exchange of executed counterparts by email or fax will create a binding deed.

Signing Page

Executed as a Deed.

EXECUTED for and on behalf of **TORRES STRAIT ISLAND REGIONAL COUNCIL**
in the presence of:

Signature of Witness

Name of Witness

Signature

Name of Signatory

Position of Signatory

EXECUTED for and on behalf
COMMONWEALTH OF AUSTRALIA in the
presence of:

anne.mcinnnes1 Digitally signed by
anne.mcinnnes1
Date: 2020.01.31 12:42:04
+11'00'

Signature of Witness

Anne McInnes

Name of Witness

Melissa.Felton Digitally signed by Melissa.Felton
Date: 2020.01.31 12:28:12 +11'00'

Signature of Authorised Officer

Melissa Felton

Name of Signatory

607461

Position Number

A/Director PALA

Position Name
Defence Estate & Infrastructure Group

Expression of Interest (EOI) for a lease of Torres Strait Islander land

Form 2 — Standard Lease including Commercial purposes

Applicant details	
Full name/company name of applicant The Commonwealth of Australia represented by the Estate & Infrastructure Group the Department of Defence ABN 68 706 814 312	
Lodger name (i.e. if lodged by agent/solicitor): Department of Defence /c JLL	
Postal address: Department of Defence, c/ JLL GPO Box 2068 Canberra ACT 2601 Local: Department of Defence c/ JLL PO Box 150 Paddington QLD 4064	
Phone: 07 3369 2277 - JLL Brisbane Office	Fax:
Mobile:	
Email: domesticleasing.enquiries@defence.gov.au; domesticleasing.notices@defence.gov.au	
Land description	
Provide a description of the land proposed to be leased	
Where is the lease proposed to be located? (provide a street address, map, drawing, aerial photograph, town plan, etc so that the location of the land proposed to be leased is clear).	
..... Lot 125 Army Street, Boigu Island	
Identify the size of the area proposed to be leased in hectares or square metres. If the lease is over part of a building provide details of the space required (eg. Ground level – shop 1, 45m2)	
..... 792 sqm	
If the lease is over an entire lot or there is a survey plan for the proposed lease area please specify the plan number (e.g. Lot 1 on SP123456) Lot A on SP 106209 in Lot 125 on SP 273190	
Provide any further details of the land proposed to be leased (such as buildings, structures, fences etc and any encumbrances e.g. other leases, easements, permits, etc in the immediate vicinity).	
..... Defence has constructed two buildings on site housing office and storage facilities with site fully fenced	

Purpose of lease	
<p>Provide a description of the lease purpose and activities you wish to undertake eg. Commercial lease to operate a retail store. Include any relevant documentation to support your application. If insufficient room additional documentation may be attached to the form.</p> <p>Secure occupancy of the Defence Depot utilised for 51 FNQR (Far North Queensland Regiment). Security of the tenure will allow Defence the ability to maintain a permanent Defence Operating Base in Australia's northern most island adjacent to Papua New Guinea and to ensure continued infrastructure support to the conduct of ADF operations and engagement of activities in the far north of Australia and the Torres Strait.</p>	
Duration of the lease	
<p>Describe the period of time, in years, that you seek for the duration of the lease up to 99 years.</p> <p>.....30 years with a further 3 x 10 years. Total Tenure of 60 years.</p>	
Lessee obligations	
<p>The following information is to alert you to important obligations associated with a lease for commercial purposes. You should read this section carefully and tick each box once you understand the information. Additional obligations will also apply according to the provisions of the lease.</p> <p>You may be required to undertake additional actions before the lease is granted, such as:</p> <ul style="list-style-type: none"> • The negotiation of an Indigenous Land Use Agreement (ILUA). <input checked="" type="checkbox"/> • Survey of the land proposed to be leased. <input checked="" type="checkbox"/> • A development application to the local Council for the reconfiguration of a lot if the lease for a term greater than 10 years over part of a larger lot. <input type="checkbox"/> N/A • Costs associated with the lease application, such as registration of the lease, ILUA, surveying and development approval are the responsibility of the applicant if applicable to the lease. <input checked="" type="checkbox"/> • You must comply with the conditions of the lease or the lease could be forfeited. <input checked="" type="checkbox"/> 	

Important information

- Your EOI will not be considered properly made unless all parts of this form are completed fully and correctly. If the form is not completed properly it will be returned to you for completion.
- All applications will be processed having regard to the requirements of the *Torres Strait Islander Land Act 1991* and related legislation as amended from time to time.
- Information in this form is collected to process and assess your EOI under the *Torres Strait Islander Land Act 1991*. The consideration of your application may involve consultation with another party and, if so, information in your application may be disclosed to that party.
- Before submitting your EOI you must read and confirm you understand the lessee obligations.

Declaration

- I declare that the information I have provided in this form is true and accurate.
- I understand all of the information contained within this form.
- I have ticked each relevant box.

Name of applicant or agent of applicant

**The Commonwealth of Australia represented by the Estate & Infrastructure Group
the Department of Defence ABN 68 706 814 312**

Signature of applicant or agent of applicant:

Melissa Felton

Date ..02../03../2020

To apply submit the completed Expression of Interest form to:

- the relevant Regional Council in its capacity as the Trustee of Torres Strait Islander Deed of Grant in Trust land; or
- the relevant Land Trustee of Torres Strait Islander Freehold land.

**Moa Infrastructure Housing Indigenous Land Use
Agreement
(Body Corporate Agreement)**

Parties:

Mualgal Torres Strait Islanders Corporation RNTBC ICN 3369 "Body Corporate"

Torres Strait Island Regional Council "TSIRC"

Torres Strait Regional Authority "TSRA"

State of Queensland acting through any Department of the Queensland Government "State"

Template Torres Strait Region Infrastructure and Housing ILUA

This **template indigenous land use agreement** ("ILUA") is intended for use by registered native title body corporates in the Torres Strait region, the Torres Strait Regional Authority, the State of Queensland and proponents as a means of enabling consent for future acts relating to proposed infrastructure and housing projects and compliance for cultural heritage for those projects.

The following points provide context:

1. This template ILUA has primarily been developed just for the Torres Strait region for infrastructure facilities including those constructed under the *Major Infrastructure Program* and/or any successor program of the same intent ("*MIP*") and certain housing projects.
2. The MIP provides for environmental health infrastructure in the Torres Strait's 15 outer Island communities, as well as the Northern Peninsula Area, Bamaga and Seisia. It is jointly funded by the Australian Government and the Queensland Government.
3. The Torres Strait Regional Authority ("TSRA") oversees the MIP and holds MIP funding in trust. The Torres Strait Island Regional Council ("TSIRC") is the beneficiary (grantee) of MIP funding and undertakes MIP projects. They may also participate in housing projects covered by this ILUA. TSIRC may also participate in transfer-related projects of various kinds. TSRA and TSIRC are therefore included as parties in this template.
4. The State of Queensland ("State") may act as a proponent and funder of non-MIP projects, housing projects and transfer-related projects also covered by this ILUA. The State is therefore also included as a party in this template.
5. The *consent* provided for in this template covers certain infrastructure-related, housing-related and transfer-related future acts included in *classes*, rather than particular future acts. For most *classes*, the consent is however subject to the *condition* that a project consent certificate for the project is given by the *Body Corporate*. Where this condition applies, the consent for any future acts relating to the project is not provided until this condition is satisfied.
6. This template is intended to be adopted as a body corporate ILUA by individual Island-based Registered Native Title Bodies Corporate (RNTBCs).
7. Where an ILUA area includes areas for which there is not an RNTBC, an area agreement ILUA based on this template may be used where the Parties so agree.

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INDIGENOUS LAND USE AGREEMENT

Mualgal Torres Strait Islanders Corporation RNTBC ICN 3369	"Body Corporate"
Torres Strait Island Regional Council	"TSIRC"
Torres Strait Regional Authority	"TSRA"
State of Queensland acting through any Department of the Queensland Government	"State"

Background:

- A. This *Agreement* is an indigenous land use agreement (body corporate agreement) under Part 2 Division 3 Subdivision B of the *Native Title Act*. It relates to certain infrastructure-related, housing-related and transfer-related *Activities* which may be undertaken anywhere in the *ILUA Area* and contains a means of achieving native title compliance and cultural heritage compliance for those *Activities*.
- B. The *Body Corporate* performs the functions of a body corporate under the *Native Title Act* and the *Native Title (Prescribed Bodies Corporate) Regulations*, as an agent or representative of the *Mualgal People*.
- C. The *Body Corporate* is, under the *Native Title Act*, a *Registered Native Title Body Corporate* in relation to the *ILUA Area*. It is:-
- (a) the only *Registered Native Title Body Corporate* for the *ILUA Area*; and
 - (b) a Torres Strait Islander party for the *ILUA Area* for purposes of the *Torres Strait Islander Cultural Heritage Act*.
- D. *TSIRC* is a local government under the *Local Government Act* and the *ILUA Area* is located entirely within *TSIRC's* local government area. *TSIRC* may be a *Proponent* of infrastructure-related, housing-related or transfer-related projects to be located anywhere within the *ILUA Area* and which involve *Future Acts* falling within the following classes:-
- (a) *Class 1 MIP Future Acts*;
 - (b) *Class 2 Non-MIP Future Acts*;
 - (c) *Class 3 Housing – Home Ownership Future Acts*;
 - (d) *Class 4 Housing – Renovation Acts*; and
 - (e) *Class 5 Transfer-Related Future Acts* (being *Future Acts* involved in projects undertaken in connection with a proposed grant of transferable land in fee simple to the *Body Corporate* under the *TSILA*).
- E. The *TSRA* is a corporate entity established under the *Aboriginal and Torres Strait Islander Act* and is a *Party* to this *Agreement* other than in its capacity as a *Native Title Representative Body*. The *TSRA's* Planned Outcome Statement is contained in the Torres Strait Development Plan 2009-2013 and is as follows:-

"Progress towards closing the gap for Torres Strait Islander and Aboriginal people living in the Torres Strait Region through development planning, coordination, sustainable resource management and the preservation and promotion of Indigenous culture."

- F. For purposes of this *Agreement*, the *TSRA*:-
- (a) has a Memorandum of Understanding ("MOU") with the State in relation to the provision and management of MIP funding on a MIP program by program basis;
 - (b) engages, in accordance with the MOU, a Program Manager under a Program Management Agreement to develop and manage the delivery of each MIP program; and
 - (c) is the trustee of a MIP Program Trust Fund into which MIP funding is deposited prior to its distribution in accordance with the MOU for particular projects involving *Class 1 MIP Future Acts*.
- G. The *State* may be a *Proponent* of infrastructure-related, housing-related or transfer-related projects to be located anywhere within the *ILUA Area* and which involve *Future Acts* falling within the following classes:-
- (a) *Class 1 MIP Future Acts*;
 - (b) *Class 2 Non-MIP Future Acts*;
 - (c) *Class 3 Housing – Home Ownership Future Acts*;
 - (d) *Class 4 Housing – Renovation Acts*; and
 - (e) *Class 5 Transfer-Related Future Acts* (being *Future Acts* involved in projects undertaken in connection with a proposed grant of transferable land in fee simple to the Body Corporate under the *TSILA*).
- H. Subject to the provisions of this *Agreement*, a person other than *TSIRC* or the *State*, called under this *Agreement* an *Opt-in Party*, may be a *Proponent* of a particular infrastructure-related, housing-related or transfer-related project to be located anywhere within the *ILUA Area* and which involve *Future Acts* falling within the following classes:-
- (a) *Class 1 MIP Future Acts*;
 - (b) *Class 2 Non-MIP Future Acts*;
 - (c) *Class 3 Housing – Home Ownership Future Acts*;
 - (d) *Class 4 Housing – Renovation Acts*; and
 - (e) *Class 5 Transfer-Related Future Acts* (being *Future Acts* involved in a project undertaken in connection with a proposed grant of transferable land in fee simple to the Body Corporate under the *TSILA*).
- I. In relation to the *Native Title Act* and the *Torres Strait Islander Cultural Heritage Act* this *Agreement* provides a means by which projects can comply with certain statutory requirements. However in all other respects every project must separately comply with all other *Laws* and this *Agreement* does not deliver compliance for that purpose.
- J. The *Parties* acknowledge that the provision of any public infrastructure covered by this *Agreement* is not compensation for any *Future Acts*. The *Parties* nonetheless welcome the provision of further public infrastructure for the community of Moa.

- K. The *Parties* wish to work cooperatively to ensure the effective implementation of this *Agreement* and achieve a reasonable balance between protecting *Torres Strait Islander Cultural Heritage* and undertaking *Activities* for the community benefit.

Part 1 - Preliminary

Introduction – Part 1 contains provisions of a preliminary kind in relation to the following:-

- The structure of the *Agreement*.
- Defined words and phrases.
- The term of the *Agreement*.

1. Structure and Definitions

1.1 To assist the *Parties* in their understanding and implementation of this *Agreement*, it is divided into four *Parts*:-

- (a) Part 1 – Preliminary – This Part contains clauses which relate to the operation of this *Agreement* as a whole and put the *Agreement* into context.
- (b) Part 2 – Native Title Compliance – This Part contains classes of *Activities* covered by this *Agreement* in relation to which consent is given, for purposes of compliance with the *Native Title Act*. For some classes the consent to particular *Activities* is subject to the condition that the *Body Corporate* gives a *Project Consent Certificate*.
- (c) Part 3 – Cultural Heritage Compliance – This Part contains classes of *Activities* covered by this *Agreement* in relation to which a *Cultural Heritage Clearance Procedure* may be required to avoid or otherwise reasonably minimise *Harm* to *Torres Strait Islander Cultural Heritage* and provisions which otherwise ensure compliance for particular *Activities* with the *Torres Strait Island Cultural Heritage Act*.
- (d) Part 4 – Technical – This Part contains clauses required by the *Native Title Act* and other technical clauses relating to the interpretation and operation of this *Agreement*.

1.2 This *Agreement* contains fifteen schedules and they all form part of this *Agreement*.

1.3 Schedule 1 contains a dictionary setting out the meanings of words and phrases used in this *Agreement*. The defined words and phrases are shown in *italics* throughout this *Agreement*.

Note: Clause 19 also contains some other provisions about how this *Agreement* is to be interpreted.

2. Nature of Agreement and Area Covered

2.1 This *Agreement* is:-

- (a) upon *Registration*, an indigenous land use agreement (body corporate agreement) under Subdivision B of Division 3 of Part 2 of the *Native Title Act*; and
- (b) from the *Execution Date*:
 - (i) an agreement to which *Torres Strait Islander Cultural Heritage* is subject for the purposes of Sections 23(3)(a)(iii), 24(2)(a)(iii),

25(2)(a)(iii) and 26(2)(a)(iii) of the *Torres Strait Islander Cultural Heritage Act*; and

- (ii) a contractually binding agreement between the *Parties*.

2.2 This *Agreement* covers the *ILUA Area*.

3. Duration

3.1 This *Agreement* commences:-

- (a) from the *Execution Date* in relation to Parts 1, 3 and 4 of the *Agreement*; and
- (b) from the *Registration Date* in relation to Part 2 of the *Agreement*.

3.2 Subject to it being earlier *Terminated*, this *Agreement* continues on an indefinite basis.

3.3 This *Agreement* may be *Terminated* at any time by agreement in writing between the *Parties*.

3.4 The following provisions apply in respect of the periodic review of this *Agreement* and specify the capacity of the *Parties* or any one or more of them to *Terminate* the *Agreement* following such review:-

- (a) any *Party* may give written notice to the other *Parties* requesting that this agreement be reviewed within 90 days of each Review Date;
- (b) after a written request by one *Party* to the other *Parties* in accordance with clause 3.4(a), the *Parties* will meet to review this *Agreement*, assess its operation and consider any alterations to improve the operation of this *Agreement* on an agreed date which falls within 12 months of the written request;
- (c) any review meeting requested and held in accordance with clauses 3.4(a) and 3.4(b) may, with the agreement of the *Parties*, be undertaken in conjunction with a review of other similar indigenous land use agreements; and
- (d) following any review meeting requested and held in accordance with clauses 3.4(a) and 3.4(b):-
 - (i) unless clause 3.4(d)(ii), clause 3.4(d)(iii) or clause 3.4(d)(iv) applies, this *Agreement* will continue in force without amendment;
 - (ii) the *Parties* may agree to amend this *Agreement*;
 - (iii) the *Parties* may agree to *Terminate* this *Agreement*; or
 - (iv) one or more of the *Parties* may, within four calendar months of the date of the review meeting, give notice to the other *Parties* that this *Agreement* will be *Terminated* on a date which is not less than six weeks after the date of the notice.

3.5 Where this *Agreement* is *Terminated*:-

- (a) anything already done under this *Agreement* continues to have the benefit of being done under this *Agreement*;
- (b) without limiting clause 3.5(a), any consent given to a *Future Act* under clause 8 prior to this *Agreement* being *Terminated* will remain effective despite this *Agreement* being *Terminated*;

- (c) any liabilities already incurred under this *Agreement* are unaffected; and
- (d) a *Party* entitled to a remedy under this *Agreement* can still pursue the remedy as if this *Agreement* had not been *Terminated* or as if the *Party* continues to be bound by this *Agreement*.

4. Review

- 4.1 Despite clause 3.4, the *Parties* may agree to review the *Agreement* at any time.
- 4.2 Where the *Parties* meet for the purposes of review under clause 4.1, then unless otherwise agreed, they must:-
 - (a) review this *Agreement* to identify what works effectively, what could be improved and whether agreement can be reached on any amendments to this *Agreement* suggested by a *Party*;
 - (b) consider whether any changes should be made to improve the fairness and efficiency of operation of this *Agreement* including in relation to the fee for service arrangements, the remuneration arrangements for the *Cultural Heritage Clearance Procedure* and the consent consideration amounts provided for in this *Agreement*;
 - (c) consider whether a further review mechanism for this *Agreement* would be appropriate;
 - (d) formalise any arrangements for a further review mechanism if one is agreed (for example, by amending this *Agreement* or entering into another agreement providing for a further review); and
 - (e) minute the discussion and decisions made and distribute the minutes to the *Parties*.
- 4.3 Where the *Parties* propose to change this *Agreement* they will jointly consider the following:-
 - (a) whether the change can best be made by amending this *Agreement*;
 - (b) whether the change can best be made by entering into another agreement; and
 - (c) the requirements of any *Law* at the time of the change, particularly in relation to any consequential need to change the *Registration* of this *Agreement* and whether an application (for example, any relevant application under the *Native Title Act*), is required for the *Registration* of any changes made to this *Agreement* and how any such application would be made.

5. Implementation of this Agreement

- 5.1 The *Parties* intend that implementation of the requirements of Part 2 and Part 3 of this *Agreement* be as practicable and efficient as possible and that any processes to enable implementation be flexible to meet the needs of particular projects.
- 5.2 For the purposes of clause 5.1, the *Parties* may, to assist with implementation of this *Agreement* generally or for specific projects:-
 - (a) develop one or more protocols (or guides) containing processes that can be followed in relation to implementation of this *Agreement*; and
 - (b) form a coordinating committee consisting of representatives of the *Parties*, representatives of any *Registered Native Title Bodies Corporate* in the Torres

Strait region and a project management representative to oversee implementation of this *Agreement*.

- 5.3 Any protocol of the kind referred to in clause 5.2 must be consistent with the terms of this *Agreement* including the timeframes specified in Clause 9.
- 5.4 For clarification, the content of such protocols can be changed or adapted at any time particularly with a view to achieving ongoing improvements to the practicability and efficiency with which this *Agreement* is implemented.

Part 2 – Native Title Compliance

Introduction – In general terms *Future Acts* are *Activities* which affect *Native Title*. In order to comply with the *Native Title Act* (i.e. achieve native title compliance), *Future Acts* which permit or are involved in the construction, operation, use, maintenance or repair of infrastructure facilities (and any other types of *Future Acts*) must be covered by one of the provisions in Part 2 Division 3 of that legislation.

They include the provisions of Part 2 Division 3 Subdivision B which, together with s.24AA(3), cover *Future Acts* included in classes to which the parties to a body corporate indigenous land use agreement have given their consent. Where an indigenous land use agreement is proposed, it needs to cover the *Future Act*.

Under s.24BB(a) an indigenous land use agreement can provide for, as is here the case, *Future Acts* covered by the agreement to be done subject to conditions.

The *Future Acts* dealt with in this Part of this *Agreement* relate to certain projects concerning *Infrastructure Facilities* and in some cases *Ancillary Project Area Infrastructure* located in or to be located in the *ILUA Area*. Generally, to be covered by this *Agreement* any particular proposed *Future Acts* must be done after the *Registration Date* and, except for *Class 4 Housing – Renovation Acts*, after the condition that the *Body Corporate* has issued a *Project Consent Certificate* has been satisfied.

However, *Future Acts* will also be covered by this *Agreement* if the *Future Acts* are done after the *Proponent* gives an *Initial Project Notice* but prior to the *Registration Date* or the giving of a *Project Consent Certificate* if this *Agreement* is subsequently *Registered* and a *Project Consent Certificate* is given after the *Future Acts* are done.

6. Technicalities for Future Acts

- 6.1 The *Non-Extinguishment Principle* applies to any *Future Acts* that are covered by this *Agreement*.
- 6.2 Part 2 Division 3 Subdivision P of the *Native Title Act* (which relates to the right to negotiate), does not apply to any *Future Acts* covered by this *Agreement*.

7. Future Acts covered under this Agreement and ability of Opt-in Party to be a Proponent

- 7.1 Particular *Future Acts* which relate to a *Project Area* and any *Ancillary Project Area* are covered by this *Agreement* where they are included in one of the classes of *Future Acts* set out in clause 8.
- 7.2 Clause 7.1 does not apply after a *Proponent* gives *Notice* under clause 9.6.
- 7.3 Where clause 7.2 applies, this *Agreement* does not apply to the *Future Acts* specified in the *Notice* and the *Proponent* may proceed with the *Future Acts* in a way that is valid under the *Native Title Act*.
- 7.4 An *Opt-in Party* may be the *Proponent* of a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Class 3 Housing – Home Ownership Future Acts*, *Class 4 Housing – Renovation Acts* or *Class 5 Transfer-Related Future Acts*.

8. Consent for the purposes of the Native Title Act

Purpose of clause 8

- 8.1 The purpose of clause 8 is to provide the consent of the *Parties* for the purposes of the *Native Title Act* to the doing subject to conditions of *Future Acts* included in classes. The classes of *Future Acts* are set out in clause 8.2. The conditions of the consent are set out in clauses 8.3, 8.4, 8.5, 8.6, 8.7, and 8.8 respectively.

Classes of Future Acts

- 8.2 The *Parties* agree that the classes of *Future Acts* are as follows:

- (a) *Class 1 MIP Future Acts* are *Future Acts* which meet all of the following criteria:
 - (i) they are undertaken by a *Proponent*;
 - (ii) they are completely or substantially funded through the joint State and Commonwealth of Australia program known as the Major Infrastructure Program and/or any successor program of the same intent; and
 - (iii) they are undertaken in a *Project Area* of up to 30,000m² in size, not including any *Ancillary Project Area*; and
 - (iv) they permit, require or consist of the construction, operation, use, maintenance or repair of an *Infrastructure Facility* in the *Project Area*;
 - (v) they may involve access being gained to the *Project Area* by the *Proponent* through one or more *Ancillary Project Area*;
 - (vi) they may involve the construction, operation, use, maintenance or repair by the *Proponent* of *Ancillary Project Area Infrastructure* in one or more *Ancillary Project Area*; and
 - (vii) they do not involve the grant of *Freehold Title*.
- (b) *Class 2 Non-MIP Future Acts* are *Future Acts* which meet all of the following criteria:
 - (i) they are undertaken by a *Proponent*;
 - (ii) they are not *Future Acts* covered by clauses 8.2(a), 8.2(c), 8.2(d) or 8.2(e);
 - (iii) they are undertaken in a *Project Area* of up to 30,000m² in size, not including any *Ancillary Project Area*;
 - (iv) they permit, require or consist of the construction, operation, use, maintenance or repair of an *Infrastructure Facility* in the *Project Area*;
 - (v) they may involve access being gained to the *Project Area* by the *Proponent* through one or more *Ancillary Project Areas*;
 - (vi) they may involve the construction, operation, use, maintenance or repair by the *Proponent* of *Ancillary Project Area Infrastructure* in one or more *Ancillary Project Areas*; and
 - (vii) they do not involve the grant of *Freehold Title*.

- (c) *Class 3 Housing – Home Ownership Future Acts* are *Future Acts* which meet all of the following criteria:
 - (i) they are undertaken by a *Proponent*;
 - (ii) they are undertaken in a *Project Area* of up to 30,000m² in size; and
 - (iii) they involve the grant of one or more leases for a term of more than 30 years but not more than 99 years for private residential purposes.
- (d) *Class 4 Housing – Renovation Acts* are acts which meet all of the following criteria:
 - (i) they are undertaken by a *Proponent*;
 - (ii) they are undertaken in a *Project Area* of up to 30,000m² in size; and
 - (iii) they involve the maintenance, repair, renovation, refurbishment or *Extension* of one or more dwelling houses in the *Project Area* –
 - A. that is or are *Social Houses*; or
 - B. that has or have been the subject of a project involving *Class 3 Housing - Home Ownership Future Acts* consented to under this *Agreement*.
- (e) *Class 5 Transfer-Related Future Acts* are *Future Acts* which meet all of the following criteria:-
 - (i) they are undertaken by a *Proponent*;
 - (ii) they are undertaken in a *Project Area* of any size (it being acknowledged that the *Project Area* must be wholly within the *Agreement Area*);
 - (iii) they permit, require or consist of the construction, operation, use, maintenance or repair of one or more *Infrastructure Facility* in the *Project Area*;
 - (iv) they are undertaken in connection with a proposed grant of transferable land in fee simple to the *Body Corporate* under *TSILA*;
 - (v) they are undertaken for the purpose of satisfying the Minister under *TSILA* in respect of the proposed grant of transferable land in fee simple to the *Body Corporate* under *TSILA* that arrangements are in place to ensure *TSIRC* can continue to provide local government services to communities on the land after it is granted; and
 - (vi) they do not involve the grant of *Freehold Title*.

Consent and Conditions

- 8.3 Subject to the issue of a *Project Consent Certificate* under clause 9.1(d), the *Parties* consent to the doing of any *Class 1 MIP Future Acts* to which this *Agreement* applies.
- 8.4 Subject to the issue of a *Project Consent Certificate* under clause 9.1(d), the *Parties* consent to the doing any *Class 2 Non-MIP Future Acts* to which this *Agreement* applies.

- 8.5 Subject to the issue of a *Project Consent Certificate* under clause 9.1(d), the *Parties* consent to the doing of any *Class 3 Housing – Home Ownership Future Acts* to which this *Agreement* applies.
- 8.6 Subject to the issue of a *Final Project Notice* under clause 9.1(c), the *Parties* consent to the doing of any *Class 4 Housing – Renovation Acts* to which this *Agreement* applies to the extent that those acts are *Future Acts*.
- 8.7 For clarification, a *Project Consent Certificate* is not required for the doing of, and is not a condition of consent to, any *Class 4 Housing - Renovation Acts*, however the issue of the *Final Project Notice* referred to in the immediately preceding sub-clause is a condition of such consent.
- 8.8 Subject to the issue of a *Project Consent Certificate* under clause 9.1(d), the *Parties* consent to the doing any *Class 5 Transfer-Related Future Acts* to which this *Agreement* applies.
- 8.9 For clarification, the consents provided for in, respectively, 8.3, 8.4, 8.5, 8.6, 8.7 and 8.8 relate to the relevant *Future Acts* in the:-
- (a) *Project Area*; and
 - (b) *Ancillary Project Area*, if any,
- described in the *Final Project Notice* for the particular project.
- 8.10 The *Parties* agree to the validating under clause 8.11 of any *Future Act* covered by this *Agreement*, where that *Future Act* is done by a *Proponent*:-
- (a) prior to the *Registration Date*; and
 - (b) after the date the *Proponent* gives an *Initial Project Notice* under clause 9.1(a) but prior to the *Body Corporate* giving a *Project Consent Certificate* under 9.1(d).
- 8.11 A *Future Act* of the kind referred to in clause 8.10 is validated for *Native Title* purposes (even if already done invalidly for *Native Title* purposes) on the condition that:-
- (a) *Registration* occurs; and
 - (b) the *Project Consent Certificate* for the *Future Act* is given.
- 8.12 Despite anything else in this *Agreement*, where the conditions on consent under clause 8.3 or clause 8.4 to any *Future Acts* –
- (a) which are included in the *Class 1 MIP Future Acts* or the *Class 2 Non-MIP Future Acts*; and
 - (b) involve the construction by *TSIRC* of an *Infrastructure Facility*; and
 - (c) do not involve the grant to *TSIRC* of a lease for purposes of the *Infrastructure Facility*,
- are satisfied, the following additional conditions apply to those *Future Acts*:-
- (d) the *Body Corporate* may in its discretion give a *Notice* to *TSIRC* requiring *TSIRC* to remove the *Infrastructure Facility* within a reasonable time after the end of the *Useful Life* of the *Infrastructure Facility*; and
 - (e) upon such *Notice* being given to *TSIRC*, the consent ends and *TSIRC* will:-

- (i) remove the *Infrastructure Facility* from the land on which it is located and will as soon as reasonably possible restore the land to as close to the condition it was in before the *Infrastructure Facility* was built; and
- (ii) do whatever is reasonably required to cancel, surrender or otherwise remove anything which permits or requires the *Infrastructure Facility* to be located on the land.

9. Procedures, Timeframes and Clarifications

Procedures

9.1 The *Parties* agree that where a proposed project will involve *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts* taken, the following procedures will apply:

- (a) the *Proponent* must give to the *Body Corporate* an *Initial Project Notice*. In addition to including in the *Initial Project Notice* the other information specified by the template notice in Schedule 9, any *Initial Project Notice* provided by *TSIRC* in respect of *Class 1 MIP Future Acts* or *Class 2 Non-MIP Future Acts* which involve the construction of an *Infrastructure Facility* and that does not involve the grant of a lease, must specify the period in years which *TSIRC* reasonably considers to be the *Useful Life* of the *Infrastructure Facility*;
- (b) the *Body Corporate* and the *Proponent* must consult in relation to how the project described in the *Initial Project Notice* is to be covered by Part 2, Part 3 or both of these Parts and about the extent of any *Useful Life* proposed by *TSIRC* in an *Initial Project Notice*;
- (c) where the *Proponent* determines in its discretion that the proposed project can proceed, the *Proponent* must give to the *Body Corporate* a *Final Project Notice*;
- (d) where –
 - (i) the *Proponent* gives to the *Body Corporate* a *Final Project Notice* under clause 9.1(c); and
 - (ii) the *Body Corporate* determines in its discretion that the proposed project can proceed,the *Body Corporate* must give the *Proponent* a *Project Consent Certificate* in relation to the *Final Project Notice*;
- (e) where –
 - (i) the *Proponent* gives to the *Body Corporate* a *Final Project Notice* under clause 9.1(c); and
 - (ii) the *Body Corporate* determines that the proposed project can proceed under clause 9.1(d); and
 - (iii) *Activities* in a particular *Project Area* and *Ancillary Project Area*, if any, have a *High Cultural Heritage Impact*,

the *Proponent* and the *Body Corporate* must also complete the *Cultural Heritage Clearance Procedure* in respect of those *Activities* (under Part 3 of this *Agreement*).

Timeframes

- 9.2 Where the *Proponent* determines in accordance with clause 9.1(c) that the proposed project can proceed, the *Proponent* must not give to the *Body Corporate* a *Final Project Notice* earlier than the date 40 *Business Days* after the date upon which it gave the *Initial Project Notice* to the *Body Corporate*.
- 9.3 Where the *Proponent* determines that the proposed project cannot proceed, the *Proponent* must as soon as reasonably practicable give *Notice* to the *Body Corporate* stating that the project cannot proceed and that the *Initial Project Notice* is withdrawn, in which event the project will be at an end and neither the *Proponent* or the *Body Corporate* will take any further steps under this *Agreement* in relation to the *Initial Project Notice*.
- 9.4 The giving of *Notice* in accordance with clause 9.3 does not prevent the *Proponent* in its discretion giving to the *Body Corporate* a new *Initial Project Notice* in relation to the proposed project.
- 9.5 Where the steps in clauses 9.1(a) and 9.1(b) are completed and the *Proponent* has given the *Body Corporate* a *Final Project Notice* in accordance with clauses 9.1(c) and 9.2, the *Body Corporate* must within 28 *Business Days* after the *Body Corporate* receives the *Final Project Notice* either -
- (a) if the *Body Corporate* determines in its discretion that the proposed project can proceed, provide a *Project Consent Certificate* in relation to the *Final Project Notice*; or
 - (b) if the *Body Corporate* determines in its discretion that the proposed project cannot proceed, give *Notice* to the *Proponent* stating that the project cannot proceed and that the *Final Project Notice* is rejected, in which event the project will be at an end and neither the *Proponent* nor the *Body Corporate* will take any further steps under this *Agreement* in relation to the *Final Project Notice*.
- 9.6 Where the *Body Corporate* –
- (a) fails to comply with clause 9.5; or
 - (b) gives *Notice* to the *Proponent* under clause 9.5(b),
- the *Proponent* may subject to it having complied with the procedures in clauses 9.1(a) and 9.1(b) give *Notice* to the *Body Corporate* that the particular *Future Acts* proposed are not covered by this *Agreement* and specifying how such *Future Acts* will otherwise be done in a way that is valid under the *Native Title Act*.
- 9.7 The *Parties* agree that the *Proponent's* right to give *Notice* under clause 9.6 is the only remedy available to the *Proponent* where the *Body Corporate* fails to comply with clause 9.5.
- 9.8 Completion of the *Cultural Heritage Clearance Procedure*, where it applies, may be done before or after the giving of a *Final Project Notice* or a *Project Consent Certificate*.

Clarifications

- 9.9 For clarification, the *Parties* agree that:-
- (a) an *Infrastructure Facility* must be located or constructed in a *Project Area*;
 - (b) where a project involves the grant of tenure, the –
 - (i) total area of the tenure; and

- (ii) *Project Area* described in the *Final Project Notice* for the project, must be one and the same;
- (c) any *Ancillary Project Area Infrastructure* must be constructed in an *Ancillary Project Area*;
- (d) any *Ancillary Project Area Infrastructure* must be notified in conjunction with the project involving *Class 1 MIP Future Acts* or *Class 2 Non-MIP Future Acts* to which it relates;
- (e) it may be that not all projects involving *Class 1 MIP Future Acts* or *Class 2 Non-MIP Future Acts* will have an *Ancillary Project Area*;
- (f) it may be that a particular project involving *Class 1 MIP Future Acts* or *Class 2 Non-MIP Future Acts* will have *Ancillary Project Area Infrastructure* involving more than one *Ancillary Project Area*;
- (g) where a particular project involving *Class 1 MIP Future Acts* or *Class 2 Non-MIP Future Acts* has *Ancillary Project Area Infrastructure* involving one or more *Ancillary Project Area*, the *Proponent* is not entitled to, nor required to, take a lease over the relevant *Ancillary Project Area*;
- (h) subject to the provisions of this *Agreement*, *Class 5 Transfer-Related Future Acts* may be undertaken before or after the proposed grant of transferable land in fee simple to the *Body Corporate* under *TSILA* to which the *Class 5 Transfer-Related Future Acts* relate.

10. Compensation Entitlement

- 10.1 The *Parties* agree and acknowledge that the *Compensation Entitlement* is paid by the *Proponent* to the *Body Corporate* on behalf, and for the benefit of, the common law holders of *Native Title* in the *ILUA Area* and that it is a matter for the *Body Corporate* and the common law holders of *Native Title* in the *ILUA Area* to determine the further application or treatment of the compensation after it has been paid or otherwise provided to the *Body Corporate*.
- 10.2 The *Body Corporate* agrees that the *Compensation Entitlement* is in full and final satisfaction of any right or entitlement to compensation, monetary or otherwise, for the purposes of section 24EB(4) of the *Native Title Act* for the doing of the *Future Acts* covered under this *Agreement*.
- 10.3 In relation to any *Class 3 Housing – Home Ownership Future Acts*, *Class 4 Housing – Renovation Acts* or *Class 5 Transfer-Related Future Acts* to which this *Agreement* applies, there is no compensation for the purposes of section 24EB(4) of the *Native Title Act*.
- 10.4 In relation to any *Class 1 MIP Future Acts* and *Class 2 Non-MIP Future Acts* to which this *Agreement* applies, the following applies:-
 - (a) the *Proponent* must pay to the *Body Corporate* within 30 *Business Days* (or, where the parties agree, within another time period or periods) of the issue of a *Project Consent Certificate* under clause 9.1(d) an amount of compensation in respect of each particular *Project Area* calculated in accordance with clause 10.4(a)(i) which has been agreed by the *Parties* on the basis of the principles set out in clause 10.4(a)(ii):-
 - (i) the consent consideration amount = (Primary Amount + Secondary Amount + Additional Special Value) x Occupation Term Loading

Where:-

'Primary Amount' is the amount shown in the following table in the column headed 'Primary Amount' and in the row corresponding to the Project Area Size (for the avoidance of doubt, 'not applicable' means there is no Primary Amount);

'Secondary Amount' is the amount calculated in accordance with the formula shown in the following table in the column headed 'Secondary Amount' and in the row corresponding to the Project Area Size;

'Additional Special Value' is the greater of either -

- the amount calculated in accordance with the following formula –
(Primary Amount + Secondary Amount) multiplied by 12.5%; or
- \$20,000.

'Project Area Size' is the total number of square metres of the *Project Area* as shown on a *Project Plan* for the particular project involving the *Class 1 MIP Future Acts* or *Class 2 Non-MIP Future Acts*;

Project Area Size	Primary Amount	Secondary Amount
1m ² to 14m ²	Not Applicable	\$1,000
15m ² to 999m ²	Not Applicable	\$70 subject to <i>CPI Increase</i> where 30 June 2014 is the relevant date for each m ² of the <i>Project Area Size</i>
1000m ² to 1999m ²	\$70,000.00 subject to <i>CPI Increase</i> where 30 June 2014 is the relevant date	\$25 subject to <i>CPI Increase</i> where 30 June 2014 is the relevant date for each m ² of the <i>Project Area Size</i> over 1000 m ² and up to 1999m ²
2000m ² to 3999m ²	\$95,000.00 subject to <i>CPI Increase</i> where 30 June 2014 is the relevant date	\$10 subject to <i>CPI Increase</i> where 30 June 2014 is the relevant date for each m ² of the <i>Project Area Size</i> over 2000 m ² and up to 3999m ²
4000m ² to 9999m ²	\$115,000.00 subject to <i>CPI Increase</i> where 30 June 2014 is the relevant date	\$10 subject to <i>CPI Increase</i> where 30 June 2014 is the relevant date for each m ² of the <i>Project Area Size</i> over 4000 m ² and up to 9999m ²
10000m ² to 19999m ²	\$175,000.00 subject to <i>CPI Increase</i> where 30 June 2014 is the relevant date	\$5 subject to <i>CPI Increase</i> where 30 June 2014 is the relevant date for each m ² of the <i>Project Area Size</i> over 10000 m ² and up to 19999m ²
20000 m ² to	\$225,000.00	\$2.50 subject to <i>CPI Increase</i>

30000 m ²	subject to <i>CPI Increase</i> where 30 June 2014 is the relevant date	where 30 June 2014 is the relevant date for each m ² of the <i>Project Area</i> Size over 20000m ² and up to 30000m ²
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And where:-

'Occupation Term Loading' is the loading shown in the following table in the column headed 'Occupation Term Loading' which is determined having regard to the criteria shown in the column headed 'Occupation Term Loading Criteria'.

Occupation Term Loading Criteria	Occupation Term Loading
<p>Any <i>Future Acts</i> included in the <i>Class 1 MIP Future Acts</i> or the <i>Class 2 Non-MIP Future Acts</i> which involve the construction by TSIRC of an <i>Infrastructure Facility</i> with a <i>Useful Life</i> equal to or greater than 40 years that does not involve the grant of a lease.</p> <p>For example, by applying the applicable formula the construction of a building with a <i>Useful Life</i> of 50 years by TSIRC on land controlled by it in its capacity as the trustee of a Deed of Grant in Trust would attract an Occupation Term Loading of 1.0.</p> <p>Note: This criteria does not imply that it is necessarily lawful for <i>Future Acts</i> other than the grant and acceptance of any tenure to be undertaken without such a grant of tenure having first been made.</p>	1.0
<p>Any <i>Future Acts</i> included in the <i>Class 1 MIP Future Acts</i> or the <i>Class 2 Non-MIP Future Acts</i> which involve the grant of a lease where the term and any option to renew are in total equal to or greater than 40 years.</p> <p>For example, a lease from TSIRC to the State acting through the Department of Education, Training and Employment as <i>Proponent</i> which permits or requires the construction, operation, use, maintenance or repair of a pre-prep facility with an initial term of 40 years and an option to renew of 40 years would attract an Occupation Term Loading of 1.0.</p>	1.0
<p>Any <i>Future Acts</i> included in the <i>Class 1 MIP Future Acts</i> or the <i>Class 2 Non-MIP Future Acts</i> which involve</p> <ul style="list-style-type: none"> the grant of a lease where the term and any option to renew are in total less than 40 years; or the construction of an <i>Infrastructure Facility</i> by TSIRC with a <i>Useful Life</i> of less than 40 years that does not involve 	<p>The amount calculated for variable C in the following formula:</p> $\frac{A}{B} = C$ <p>Where:-</p> <p>A is the lease term including any option or <i>Useful Life</i> (as</p>

<p>the grant of a lease.</p> <p>For example, by applying the applicable formula a lease from <i>TSIRC</i> to the <i>State</i> acting through the Department of Housing and Public Works as <i>Proponent</i> which permits or requires the construction, operation, use, maintenance or repair of a works depot with an initial term of 5 years and an option to renew of 5 years would attract a Occupation Term Loading of 0.25.</p> <p>For example, by applying the applicable formula the construction of a playground with <i>Useful Life</i> of 5 years by <i>TSIRC</i> on land controlled by it in its capacity as the trustee of a Deed of Grant in Trust would attract an Occupation Term Loading of 0.125.</p>	<p>applicable); and</p> <p>B is the number 40.</p>
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- (ii) the *Parties* agree that the amount calculated in accordance with clause 10.4(a)(i) has been negotiated by the *Parties* as the amount which the *Parties* agree should be paid pursuant to this *Agreement*, having regard to, a number of factors including but not limited to the State's policy 'Guideline for Negotiating Indigenous Land Use Agreements for the delivery of public infrastructure (other than public housing) on Indigenous land, version 1' and the typical transaction costs associated with the delivery of infrastructure where an Indigenous land use agreement is required; and

- (b) the *Proponent* must pay to the *Body Corporate* within 30 *Business Days* (or, where the parties agree, within another time period or periods) of the issue of a *Project Consent Certificate* under clause 9.1(d) an amount of compensation in respect of any *Ancillary Project Area* calculated in accordance with the following formula:-

The consent consideration amount = Ancillary Project Area Size x Base Amount

Where:-

Ancillary Project Area Size = the number of square metres of the *Ancillary Project Area* as shown on the *Project Plan*.

Base Amount = whichever of the following applies:-

- Where the commencement of construction of the particular project involving the *Class 1 MIP Future Acts* or *Class 2 Non-MIP Future Acts* will occur on or before 30 June 2014, an amount of \$10.
- Where the commencement of construction of the particular project involving the *Class 1 MIP Future Acts* or *Class 2 Non-MIP Future Acts* will occur after 30 June 2014, an amount derived by applying a *CPI Increase* to an amount of \$10 where 30 June 2014 is the relevant date.

- 10.5 For clarification in respect of the compensation provisions, this *Agreement* and the *Compensation Entitlement* in particular, does not relate to or affect the compensation entitlements of the *Body Corporate* or any common law holders of *Native Title* in respect

of any past act or intermediate period act of the kind referred to in the *Native Title Act* or any *Future Acts* other than those that are specifically covered by this *Agreement*.

10.6 Without limiting the general waiver provided for under clause 30.1, the *Parties* acknowledge –

- (a) that the *Body Corporate* may in its absolute discretion waive the obligation of the *Proponent* to make some or all of the payments provided for under this clause 10 by giving a *Notice* to that effect to the *Proponent* of the particular project; and
- (b) that if any such waiver is given by the *Body Corporate* then the relevant *Compensation Entitlement* is reduced accordingly.

11. Body Corporate Fee for Service

11.1 Under section 60AB of the *Native Title Act*, a *Body Corporate* may charge a fee for the costs it incurs when negotiating indigenous land use agreements or where provided for by regulations made under that section and, in that regard, the *Parties* agree as follows:-

- (a) where consent for *Native Title* compliance under Part 2 of this *Agreement* is required, the *Body Corporate* may charge a fee for the services it provides under this *Agreement*;
- (b) negotiations and consultations relating to:-
 - (i) the *Body Corporate's* response to an *Initial Project Notice* initiating a process to obtain consent for *Native Title* compliance under Part 2 of this *Agreement*; and
 - (ii) the provision by the *Body Corporate* of a *Project Consent Certificate* providing consent for *Native Title* compliance under Part 2 of this *Agreement*,

are the negotiations and consultations for this indigenous land use agreement in relation to which a fee for the *Body Corporate's* reasonable costs is appropriate;

- (c) where consent for *Native Title* compliance under Part 2 of this *Agreement* is required, the fees for the *Body Corporate's* costs are to be calculated:
 - (i) in accordance with the rates referred to in Schedule 8 or by reference to the *Capped Amount* in Schedule 8; or
 - (ii) in accordance with the rates in any *Fee for Service Guidelines*, where the *Body Corporate* determines in its absolute discretion such guidelines are to apply and gives *Notice* of this to the *Proponent*.

11.2 Subject to clause 11.1(c)(ii), the *Body Corporate* will, after it receives an *Initial Project Notice* initiating a process to obtain consent for *Native Title* compliance under Part 2 of this *Agreement*, propose whether the fees are calculated in accordance with the rates or are a *Capped Amount*. Where it proposes that the costs are calculated in accordance with the rates ("rates based total"):-

- (a) the *Body Corporate* and the *Proponent* must agree on the amount of the rates based total where it exceeds the *Capped Amount*; and
- (b) the *Proponent* will not withhold its agreement where the tasks which the *Body Corporate* proposes, and the time it proposes that they will take to implement, are reasonable.

- 11.3 Where consent for *Native Title* compliance under Part 2 of this Agreement is required, the *Proponent* must reimburse the *Body Corporate* for any disbursements reasonably incurred by the *Body Corporate*'s nominees, as identified in:
- (a) items 1(a) (which contemplates one nominee) and 1(b) (which contemplates a maximum of two nominees) of Schedule 8, in accordance with the rates referred to in Schedule 8; or
 - (b) where the *Body Corporate* has given Notice under clause 11.1(c)(ii), any *Fee for Service Guidelines*; and
- within a reasonable time after the *Body Corporate* provides evidence of those disbursements to the *Proponent*.
- 11.4 So that the *Proponent* can check the reasonableness of the fees and disbursements and the accuracy of the calculation, the *Body Corporate* will, where requested in writing by the *Proponent*, provide reasonable particulars of the tasks which the *Body Corporate* proposes and a broad estimate of the time that may be involved in undertaking and implementing them.
- 11.5 The *Body Corporate* will provide the *Proponent* with a *Tax Invoice* for all fees and disbursements, regardless of whether they are calculated in accordance with the rates referred to in Schedule 8 or by reference to the *Capped Amount* in Schedule 8 or any *Fee for Service Guidelines*.
- 11.6 Despite clause 11.2, the rates based total will not under any circumstances exceed the *Capped Amount* in Schedule 8 by more than 40%.
- 11.7 Despite clauses 11.1 to 11.6 and Schedule 8 and any *Fee for Service Guidelines*, the *Body Corporate* is not entitled to receive any fees or disbursements in relation to a project involving *Class 4 Housing – Renovation Acts*.
- 11.8 For the avoidance of doubt, Notice cannot be given by the *Body Corporate* under clause 11.1(c)(ii) unless and until fee for service guidelines are agreed between the State and the Queensland Representative Body Alliance and become State policy.

12. Provision of Information by Proponent

The *Proponent* of a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts* or *Housing Future Acts* will provide such information as is reasonably requested by, or necessary for, the *Body Corporate* to enable it to account for the receipt of, and maintain an up to date record of, any *Compensation Entitlement*, fee for service under clause 11 or remuneration for implementation of the *Cultural Heritage Clearance Procedure* under clause 18.

13. Proponent to restore and keep clean and tidy any Ancillary Project Area

If a *Proponent* installs *Ancillary Project Area Infrastructure* in an *Ancillary Project Area*, the *Proponent* must restore the surface of the land within the *Ancillary Project Area* to substantially the same condition that it was in prior to the installation of the *Ancillary Project Area Infrastructure* and otherwise keep the surface of the land within the *Ancillary Project Area* clean and tidy while the *Ancillary Project Area Infrastructure* is being operated, used, maintained or repaired by the *Proponent*.

14. Body Corporate to comply with regulations

The *Body Corporate* must ensure that the requirements of the *Native Title (Prescribed Bodies Corporate) Regulations* are satisfied in relation to the doing of any particular *Future Act* covered by this Agreement.

15. Consultation with Particular Common Law Holder

In relation to a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* and *Class 5 Transfer-Related Future Acts*, upon receiving an *Initial Project Notice* the *Body Corporate* will inform the *Particular Common Law Holder* for any particular *Project Area* and any *Ancillary Project Area* and keep them informed about the doing of the *Future Acts*.

Part 3 – Torres Strait Islander Cultural Heritage Compliance

Introduction – *Torres Strait Islander Cultural Heritage* is protected by the *Torres Strait Islander Cultural Heritage Act*. It sets out requirements for what must be done to ensure that *Activities* which could harm *Torres Strait Islander Cultural Heritage* satisfy the "cultural heritage duty of care". The *Torres Strait Islander Cultural Heritage Act* provides the following options:

- An *Activity* can proceed lawfully if it is done under a registered indigenous land use agreement. The parties to an indigenous land use agreement can include in the agreement their own procedures to ensure that *Activities* avoid, or otherwise reasonably minimise, harm to *Torres Strait Islander Cultural Heritage*.
- An *Activity* can also proceed lawfully if it is otherwise covered by certain provisions in the *Torres Strait Islander Cultural Heritage Act* (namely sections 23(3), 24(2), 25(2) and 26(2) of the *Torres Strait Islander Cultural Heritage Act*).

Schedule 6 contains certain agreed procedures (called the "*Cultural Heritage Clearance Procedure*"). They are intended to avoid, or otherwise reasonably minimise, harm to *Torres Strait Islander Cultural Heritage* where the *Body Corporate* is given an *Initial Project Notice* notifying of *Activities* which have a potentially *High Cultural Heritage Impact*.

The procedures under this Part of the *Agreement* have been negotiated exclusively between the *Parties* as part of the package of outcomes contained in this *Agreement*.

It should be noted that, under section 86 of the *Torres Strait Island Cultural Heritage Act*, a project covered by a registered indigenous land use agreement does not require a Cultural Heritage Management Plan even if such a plan would otherwise be mandatory for the project under that legislation.

16. Activities Covered by this Agreement

- 16.1 Subject to the requirements of this Part being met, this *Agreement* covers all *Activities* by or on behalf of *TSIRC*, the *TSRA*, the *State* or other *Proponent* of particular *Activities* in a particular *Project Area* and any *Ancillary Project Area* for projects involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts* for the purposes of *Torres Strait Island Cultural Heritage*.
- 16.2 No *Torres Strait Islander Cultural Heritage* is excluded from this *Agreement*.
- 16.3 Where any of the timeframes in Schedule 6 for the carrying out of the *Cultural Heritage Clearance Procedure* have not been complied with by the *Body Corporate*, a *Proponent* may seek to ensure that its *Activities* are undertaken in a way that is compliant with the *Torres Strait Islander Cultural Heritage Act* using any other means which that legislation provides.

17. Cultural Heritage Compliance

- 17.1 The *Body Corporate* warrants that it is the *Torres Strait Islander Party* for the *ILUA Area*.
- 17.2 For the purpose of this *Agreement* and for the purpose of complying with the *Torres Strait Islander Cultural Heritage Act*, any *Activities* in a particular *Project Area* and any *Ancillary Project Area* are deemed compliant where they are covered by either of the following:
- (a) the *Activities* are:
 - (i) neither *Low Cultural Heritage Impact Activities* nor *High Cultural Heritage Impact Activities*; or

- (ii) located entirely in an area which was previously *Cleared*; or
- (b) the *Activities* are covered by either of the classes in the following table, subject to the satisfaction of all requirements specified for each class in the table for each proposed *Activity*:-

Categories and Requirements		
Short Description of Class	Definition of Each Class and Some Examples	Cultural Heritage Requirements
Activities which have a <i>Low Cultural Heritage Impact</i> .	<p>All of the types of <i>Activities</i> set out in detail in Schedule 4 under the short descriptions:-</p> <ul style="list-style-type: none"> • Maintenance. • Pest Control. • Access and Site Investigation. • <i>Activities</i> on a <i>Disturbed Area</i>. • Emergency. • Low Impact <i>Activities</i>. 	<p>1. The <i>Body Corporate</i> is given an <i>Initial Project Notice</i> stating that the <i>Activities</i> have been assessed as having a <i>Low Cultural Heritage Impact</i>.</p>
Activities which have a <i>High Cultural Heritage Impact</i> .	<p>All of the types of <i>Activities</i> set out in detail in Schedule 5 under the short descriptions:-</p> <ul style="list-style-type: none"> • Certain <i>Activities</i> on an <i>Established Cultural Heritage Area</i>. • Certain <i>Activities</i> where a <i>Cultural Heritage Find</i> is made. • Certain <i>Activities</i> on an <i>Undisturbed Area</i>. 	<p>1. The <i>Body Corporate</i> is given an <i>Initial Project Notice</i> notifying of <i>Activities</i> which have a potentially <i>High Cultural Heritage Impact</i>.</p> <p>2. The balance of the <i>Cultural Heritage Clearance Procedure</i> is completed before the proposed <i>Activities</i> which have a potentially <i>High Cultural Heritage Impact</i> commence.</p>

- 17.3 Where the *Proponent* of *Activities* in a particular *Project Area* and any *Ancillary Project Area* or any person acting on the *Proponent's* behalf makes a *Cultural Heritage Find*, it must immediately cease any *Activities* in the vicinity of the *Cultural Heritage Find* and inform the *Body Corporate* whereupon the *Proponent* and the *Body Corporate* will then take the measures set out in Step 6 of Schedule 6.

18. Remuneration for Cultural Heritage Clearance Procedure

- 18.1 The *Parties* acknowledge and agree that where *Activities* in a particular *Project Area* and any *Ancillary Project Area* necessary for a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, or *Housing Future Acts* or *Class 5 Transfer-Related*

Future Acts which have potentially *High Cultural Heritage Impact* are notified under an *Initial Project Notice*:-

- (a) it is appropriate for relevant nominees of the *Body Corporate* who participate in implementation of the *Cultural Heritage Clearance Procedure* to be reasonably remunerated for their skills, time and effort;
- (b) the *Body Corporate* will administer remuneration and other logistical aspects of the *Cultural Heritage Clearance Procedure*;
- (c) the nature and extent of the remuneration arrangements under this *Agreement* is exclusive to the *Parties* and has been negotiated to take into account the whole package of outcomes under this *Agreement*;
- (d) the agreed remuneration arrangements for the *Cultural Heritage Clearance Procedure*, are contained in Schedule 7;
- (e) the *Body Corporate's* remuneration and costs are to be calculated in accordance with the rates referred to in Schedule 7 or will be the relevant *Capped Amount*;
- (f) the *Body Corporate* will, after it receives the *Initial Project Notice*, propose whether the remuneration and costs are calculated in accordance with the rates or are a *Capped Amount*. Where it proposes that the costs are calculated in accordance with the rates ("rates based total"):-
 - (i) the *Body Corporate* and the *Proponent* must agree on the amount of the rates based total where it exceeds the *Capped Amount*; and
 - (ii) the *Proponent* will not withhold its agreement where the tasks which the *Body Corporate* proposes and the time it proposes that they take to implement, are reasonable having regard to the factors referred to in paragraph 2.12 of the cultural heritage management plan guidelines gazetted under the *Torres Strait Islander Cultural Heritage Act*;
- (g) the *Proponent* must reimburse the *Body Corporate* for any disbursements reasonably incurred by the *Body Corporate's* nominees, as identified in items 1(a) (which contemplates one nominee) and 1(b) (which contemplates a maximum of two nominees) of Schedule 7, in accordance with the rates referred to in Schedule 7 and within a reasonable time after the *Body Corporate* provides evidence of those disbursements to the *Proponent*;
- (h) so that the *Proponent* can check the reasonableness of the remuneration and the disbursements and the accuracy of the calculation, the *Body Corporate* will, where requested in writing by the *Proponent*, provide reasonable particulars of the tasks which the *Body Corporate* proposes and a broad estimate of the time that may be involved in undertaking and implementing them;
- (i) the *Body Corporate* will provide the *Proponent* with a Tax Invoice for all fees and disbursements, regardless of whether they are calculated in accordance with the rates referred to in Schedule 7 or by reference to the *Capped Amount* in Schedule 7; and
- (j) despite clause 18.1(f), the rates based total will not under any circumstances exceed the *Capped Amount* by more than 40%.

Part 4 - Technical

Introduction - Part 4 sets out the terms on which the *Parties* have agreed to some technical issues and statutory requirements such as the following:

- How to interpret this *Agreement*.
- How *Disputes* relating to this *Agreement* should be resolved.
- How the *Parties* can give *Notice* to each other for purposes of this *Agreement*.
- Other technical points.

19. Interpretation

19.1 In this *Agreement* unless inconsistent with the context or subject matter:-

- (a) a reference to a person includes any other legal entity;
- (b) a reference to a legal entity includes a person;
- (c) words importing a singular number include a plural number;
- (d) words importing a plural number include a singular number;
- (e) clause headings are not part of the clause or sub-clause to which they relate;
- (f) where any word or phrase is given a defined meaning, any other grammatical form concerning the word or phrase has a corresponding meaning;
- (g) a reference to a statute includes all subordinate legislation and amendments;
- (h) a reference to repealed legislation includes a reference to any legislation replacing the repealed legislation;
- (i) references to writing include any means of representing or reproducing words in tangible and permanently visible form and includes email and facsimile;
- (j) except as otherwise set out in this *Agreement*, an obligation of two or more *Parties* binds them jointly and each of them severally;
- (k) an obligation incurred in favour of two or more *Parties* is enforceable by them severally;
- (l) where time is to be calculated from a day or event, the day or the day of the event must be excluded;
- (m) if any time period specified in this *Agreement* expires on a day which is not a *Business Day*, the period will expire at the end of the next *Business Day*;
- (n) a reference to a month means a calendar month; and
- (o) words and expressions defined in the *Torres Strait Islander Cultural Heritage Act* or the *Native Title Act* have the same meaning in the *Agreement* unless those words and expressions are given a separate definition in the *Agreement*.

19.2 A reference in this *Agreement* to a lease for home ownership purposes is a reference to a lease granted for private residential purposes of the kind provided for by the *TSILA*.

19.3 The explanatory notes and examples throughout the *Agreement*, are for explanation purposes only.

19.4 This *Agreement* takes effect as a Deed.

20. Body Corporate's Authority

20.1 The *Body Corporate* warrants and represents that it:-

- (a) is a *Prescribed Body Corporate*;
- (b) is the *Registered Native Title Body Corporate* in relation to the *ILUA Area*;
- (c) it represents the *Mualgal People* as the common law holders of *Native Title* in the *ILUA Area*;

20.2 The *Body Corporate* represents and warrants that before executing this *Agreement*:-

- (a) it consulted with the *Mualgal People* as the common law holders of *Native Title* in the *ILUA Area*, especially the *Particular Common Law Holder*, and obtained their consent to entering into this *Agreement* in accordance with regulation 8 of the *Native Title (Prescribed Bodies Corporate) Regulations*;
- (b) it informed the *Native Title Representative Body* in writing of its intention to enter into the *Agreement*;
- (c) it consulted with the *Native Title Representative Body* about the *Agreement*;
- (d) a document in the terms set out in Schedule 12 was executed in accordance with regulation 9(1) and 9(6) of the *Native Title (Prescribed Bodies Corporate) Regulations*; and
- (e) it complied with all of the requirements of the *Native Title Act*, the *Native Title (Prescribed Bodies Corporate) Regulations* and the *ILUA Regulations* for the purpose of entering into this *Agreement*.

20.3 The *Parties* agree that:-

- (a) the *State* may apply to *Register* this *Agreement* under the *Native Title Act*;
- (b) they will do everything reasonably necessary to achieve and maintain *Registration* of this *Agreement*; and
- (c) any removal of the details of this *Agreement* from the *Register* under section 199C of the *Native Title Act* will not affect any *Future Acts* consented to in accordance with clause 8 which are done prior to such removal.

21. New Body Corporate

21.1 Where the *Body Corporate* ceases to be a *Registered Native Title Body Corporate* for the *ILUA Area* and a new *Registered Native Title Body Corporate* is established for the *ILUA Area*:-

- (a) the *Native Title Representative Body* will give *Notice* about the new *Registered Native Title Body Corporate* to *TSIRC* and the *State*; and
- (b) the *Parties* will take all reasonable steps to arrange for the new *Registered Native Title Body Corporate* to, for the purpose of this *Agreement*, take the place of the *Body Corporate* particularly in such a way that the new *Registered Native*

Title Body Corporate becomes a party to this *Agreement* or to an indigenous land use agreement on substantially the same terms as this *Agreement*.

22. Relevant Law

- 22.1 The laws of the State of Queensland and the laws of the Commonwealth of Australia which are in force in Queensland govern this *Agreement*.
- 22.2 If matters under this *Agreement* need to be brought before the Courts, the *Parties* accept the jurisdiction of the Courts of Queensland and Tribunals of Queensland and relevant Federal Courts and Federal Tribunals.

23. Binding on Successors

- 23.1 This *Agreement* benefits and binds the *Parties* and their successors and any person to whom this *Agreement* is assigned.
- 23.2 Any *Party* may assign this *Agreement* where:-
 - (a) they are able to do so at Law; and
 - (b) the other *Parties* have agreed in writing (that agreement will not be unreasonably withheld).

24. Severance

- 24.1 Where a provision of this *Agreement* is void or unenforceable it must be severed from this *Agreement*.
- 24.2 The provisions of this *Agreement* which are not void or unenforceable are unaffected by the severance.

25. Counterparts and Facsimile

- 25.1 This *Agreement* may be executed in any number of counterparts.
- 25.2 Communication of the fact of execution from one *Party* to another may be made by sending evidence of execution by facsimile.

26. Dispute Resolution

- 26.1 A *Party* claiming that a *Dispute* has arisen must give a *Dispute Notice* to the other *Parties* within 10 *Business Days* after a *Dispute* arises.
- 26.2 Within 10 *Business Days* after the *Receipt Date* a representative of each *Party* must discuss the *Dispute* and negotiate to resolve the *Dispute*.
- 26.3 If the *Dispute* is not resolved by the *Parties* within 30 *Business Days* after the *Receipt Date* then any *Party* may refer the *Dispute* to the Land Court of Queensland to mediate the *Dispute*.
- 26.4 Despite clauses 26.2 and 26.3, if the *Dispute* is not resolved within 40 *Business Days* after the *Receipt Date* then any *Party* may take any action to resolve the *Dispute* including commencing court proceedings.

27. How to Give Notice between Parties

- 27.1 Any *Notice* which a *Party* is required or wants to give to another *Party* in relation to this *Agreement* will be:-

- (a) made in writing and sent to the recipient's address set out in this clause 27.2 or as varied by any *Notice*; and
- (b) hand delivered, sent by facsimile to *TSIRC*, the *TSRA* and the *State*, or pre-paid ordinary mail to that address.

27.2 The address for service of the *Parties* is as follows:-

- (a) if the *Notice* is in response to correspondence - the address of the other *Party* indicated in that correspondence; and
- (b) in any other case:

Body Corporate:

Notices to the Body Corporate must be sent to both of the following addresses:

Mualgal Torres Strait Islanders Corporation RNTBC ICN 3369

C/ TSIRC Office,
Kubin Village
Moa QLD 4875
Phone: 07 4069 4295
Facsimile: 07 4069 4272
Email: kanai_31@yahoo.com.au

**Torres Strait Regional Authority
Native Title Office**

C/- Level 1 Torres Strait Haus
46 Victoria Parade, Thursday Island,
Queensland, Australia
Facsimile: 07 4069 2582

TSIRC:

Torres Strait Island Regional Council

Attention: Chief Executive Officer
PO Box 7336
Cairns QLD 4870
Facsimile: 07 4034 5750

TSRA:

Torres Strait Regional Authority

Attention: Chief Executive Officer
Level 1 Torres Strait Haus
46 Victoria Parade, Thursday Island,
Queensland, Australia
Facsimile: 07 40691 879

State:

**Department of Aboriginal and Torres Strait
Islander Partnerships**

C/-
Remote Indigenous Land and Infrastructure
Program Office
Department of Aboriginal and Torres Strait
Islander Partnerships
Level 9, 15 Lake Street
Cairns, QLD, 4870
Facsimile: 07 404 15 048

Note: *Notices* cannot be sent to the *Body Corporate* by facsimile.

27.3 A *Notice* given under this clause is taken to have been received:-

- (a) if hand delivered - on delivery;
- (b) if sent by facsimile to *TS/RC*, the *TSRA* or the *State* - when the sender receives a receipt of successful facsimile transmission; or
- (c) if sent by pre-paid ordinary mail - 10 Business Days after the date of posting.

28. Force Majeure

28.1 If a *Party* is unable, as a result of a *Force Majeure Event*, to wholly or in part perform an obligation under this *Agreement*, that *Party* must give *Notice* to the other *Parties* including:-

- (a) which obligation the *Party* is unable to perform;
- (b) details of the *Force Majeure Event*;
- (c) reasonable details about the nature and extent of the *Force Majeure Event* and its impact on the *Party's* obligation;
- (d) how long the *Party* is likely to be delayed in meeting the obligation; and
- (e) the steps being taken or proposed to be taken to remedy the incapacity of the *Party* to perform the obligation.

28.2 A *Notice* given under clause 28.1 suspends the obligation of the *Party* giving the *Notice* to perform the obligation referred to in the *Notice* for the duration of the *Force Majeure Event*.

29. GST

29.1 If there is a *Taxable Supply* under this *Agreement* the *Supplier* will be liable to remit to the Australian Taxation Office any GST payable on the *Taxable Supply* and the *Recipient* of the *Taxable Supply* will not be liable to pay any amount on account of the GST.

29.2 If the consideration for the *Taxable Supply* is or includes non-monetary consideration, then the *Supplier* must calculate the GST having regard to the value of the non-monetary consideration assessed by the *Supplier* of the *Taxable Supply*, acting reasonably, and the *Supplier* must give the *Recipient* a statement of the method of valuation of the *Taxable Supply* at the same time as the *Supplier* gives the *Recipient* a *Tax Invoice* for the *Taxable Supply*.

30. Waiver

30.1 A right under this *Agreement* may only be waived in writing, executed by the party giving the waiver.

31. Costs

31.1 Each *Party* will bear its own costs in relation to the negotiation and execution of this *Agreement* and its *Registration*.

Executed by the *Parties* as a Deed.

Executed under the corporate seal of **Torres Strait Island Regional Council** in pursuance of its local laws, this 23 day of July, 20[insert] 2020

the Mayor

the Chief Executive Officer

and in the presence of:

Witness



(Signature of Witness)

Peter Joseph Krebs

(Full Name of Witness)



Mayor



Chief Executive Officer

Executed for and on behalf of **Mualgal Torres Strait Islanders Corporation RNTBC ICN 3369** this 26 day of February, 20[insert] 2020 in the presence of:

Witness



(Signature of Witness)

Cassandra Lang

(Full Name of Witness)



Director



Director / Secretary

Executed for and on behalf of **Torres Strait Regional Authority** by its Chief Executive Officer who warrants that he/she are authorised to do so this _____ day of _____, 20[insert] in the presence of:

Witness

(Signature of Witness)

(Full Name of Witness)

Chief Executive Officer

Executed for and on behalf of the **State of**
Queensland
day of SEPT 20[Insert] 20 this

By The Honourable Dr Anthony Cumia

as Minister for Natural Resources, Mines and
Energy

in the presence of:

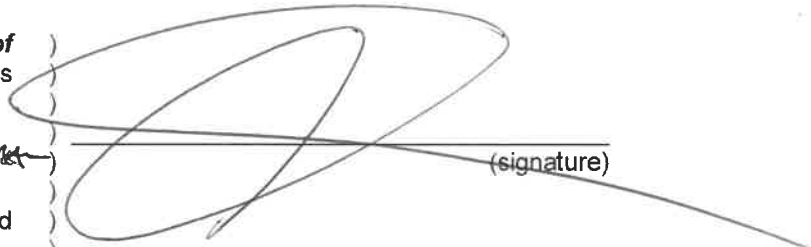
Witness



(Signature of Witness)

DAVID M MORTIMER

(Full Name of Witness)



(signature)

Schedule 1 – Dictionary

This Schedule contains the meanings of words and phrases shown in *italics* throughout the Agreement.

“Aboriginal and Torres Strait Islander Act” means the Aboriginal and Torres Strait Islander Act 2005 (Cth).

“Activity” and “Activities” has the widest possible meaning and includes any activity (including any physical construction and ground disturbing activity), action, undertaking, dealing, grant, approval, consent, agreement and all *Future Acts* including all those required for a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts*.

“Agreement” means this Deed and all schedules to it.

“Ancillary Project Area” means any area shown as such on a *Project Plan* and which is one or more of the following:-

- (a) an area on which an access route to a *Project Area* will be located for the purpose of construction relating to a particular project involving *Class 1 MIP Future Acts* or *Class 2 Non-MIP Future Acts*;
- (b) an area on which *Ancillary Project Area Infrastructure* will be constructed, operated, used, maintained or replaced for the purpose of providing services in connection a particular project involving *Class 1 MIP Future Acts* or *Class 2 Non-MIP Future Acts*; or
- (c) any other area which a *Proponent* and the *Body Corporate* agree in writing is an *Ancillary Project Area*.

“Ancillary Project Area Infrastructure” means reticulation or distribution infrastructure generally located above the surface of the ground (such as overhead power lines and/or power poles/towers, street and public place lighting and/or the poles/towers for such lighting, telephone lines and/or telephone poles/towers and data cables and/or data poles/towers) or located below the surface of the ground (such as buried power lines, telephone lines, data cables, gas pipelines, water pipelines, sewers and drains), that does not prevent the common law native title holders in relation to the land or waters where the infrastructure is to be located from having reasonable access to such land or waters in the vicinity of the infrastructure except:-

- (a) while the infrastructure is being constructed; or
- (b) for reasons of health and safety.

“Business Days” means any day other than a Saturday, Sunday or a *Public Holiday*.

“Capped Amount” means the total fee amounts referred to in paragraph 5 of Schedule 7 and in paragraph 5 of Schedule 8.

“Class 1 MIP Future Acts” has the meaning given in clause 8.2(a).

“Class 2 Non-MIP Future Acts” has the meaning given in clause 8.2(b).

“Class 3 Housing - Home Ownership Future Acts” has the meaning given in clause 8.2(c).

“Class 4 Housing – Renovation Acts” has the meaning given in clause 8.2(d).

“Class 5 Transfer-Related Future Acts” has the meaning given in clause 8.2(e).

“Cleared” means an area in respect of which the *Cultural Heritage Clearance Procedure* has been completed or is deemed to be completed.

“Compensation Entitlement” means the amounts and other benefits referred to in clause 10.

“CPI Increase” means an increase in any relevant amount in accordance with increases in the Consumer Price Index: All Groups, Brisbane from any relevant date.

“Cultural Heritage Clearance Procedure” means the procedure detailed in Schedule 6.

“Cultural Heritage Find” means a significant Torres Strait Islander object or evidence of archaeological or historic significance of Torres Strait Islander occupation of an area of the Torres Strait within the *ILUA Area* or Torres Strait Islander human remains, found in the course of undertaking an *Activity*.

“Deed of Grant in Trust” has the meaning given in the Land Act 1994 (Qld).

“Determination Orders” means a native title determination of the Federal Court of Australia made on 12 February 1999 and recorded on the *National Native Title Register* under number QCD1999/002.

“Determination Area” means the area in respect of which Native Title was determined to exist in the *Determination Orders*.

“Dispute” means any dispute or disagreement between the *Parties* relating to this *Agreement*.

“Dispute Notice” means a *Notice* given to the other *Parties* containing full details of the dispute.

“Disturbed Area” means an area of land or waters where the surface of land and any bed or banks below waters, was excavated or disturbed by machinery prior to the *Execution Date* and includes an area of land or waters previously subject to *Significant Ground Disturbance*.

Example: Digging trenches, altering the natural ground level or constructing major structures.

“Established Cultural Heritage Area” means an area of land or water for which there is an entry in the Torres Strait Islander Cultural Heritage Register or the Torres Strait Islander Cultural Heritage Database (or any official Government record of Torres Strait Islander Cultural Heritage sites which replace them).

“Execution Date” means the date that the last *Party* signs this *Agreement*.

“Extension” means the construction of any additional improvement, including any additional living room, bathroom or bedroom, which improvement may or may not be joined to the existing dwelling house, provided that such improvement shall not contain a kitchen;

“Fee for Service Guidelines” means any fee for service guidelines that may be agreed between the State and the Queensland Representative Body Alliance and which becomes State policy;

“Final Project Notice” means a *Notice* to the *Body Corporate* in relation to a particular project which:-

- (a) is substantially in the form of the template notice in Schedule 10; and

- (b) is completed with the necessary information required in the form of the template notice in Schedule 10; and
- (c) includes details of any *Social and Economic Development Opportunities* associated with the project or other *Activity*.

“Force Majeure Event” means an event or circumstance which is beyond the reasonable control of the *Party* affected by the event or circumstance including war, insurrection, civil disturbance, blockade, riot, embargo, epidemic, earthquake, storm, flood, explosion, fire or lightning, significant traditional ceremony or cultural activity, strikes and other labour conflict, government action or inaction (including a change to the *Law*), breakdown of machinery, equipment or facilities or shortages of material or equipment.

“Freehold Title” means an estate in fee simple other than any estate in fee simple which coexists with *Native Title*.

“Future Acts” has the same meaning as given in the *Native Title Act*.

“GST” has the same meaning as given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“Harm” has the meaning given in the *Torres Strait Islander Cultural Heritage Act*.

“High Cultural Heritage Impact” in relation to a physical *Activity*, means anything which is included in, or covered by, any of the classes of *Activities* in Schedule 5.

“Housing Future Acts” depending on the context in which it is used, means *Class 3 Housing – Home Ownership Future Acts* and *Class 4 Housing – Renovation Acts*.

“IBIS Store” means any existing or proposed retail outlet operated by Community Enterprise Queensland (which trades as the Islanders Board of Industry and Service) under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (Qld).

“ILUA Area” means the area described in writing in Schedule 2 being all of the land and waters shown on the map in Schedule 3.

“ILUA Regulations” means Native Title (Indigenous Land Use Agreements) Regulations 1999 (Cth).

“Infrastructure Facility” means any works, structures or improvements to land or waters other than *Ancillary Project Area Infrastructure* which directly or indirectly provide a service or any other benefit to:-

- (a) the general public; or
- (b) the Island community,

including –

- (c) offices, depots and staff housing by or for the benefit of the Commonwealth of Australia, the *State*, any local government, statutory authority or government owned corporation,
- (d) any electricity generation, distribution or transmission facility;
- (e) public education facilities;
- (f) public health facilities;

- (g) police facilities;
- (h) emergency facilities;
- (i) transport facilities (including pedestrian paths, cycle ways, transfer facilities, freight storage and logistic areas, bus stops and layovers, ferry stops, taxi stops);
- (j) sewage pump stations and sewerage treatments facilities;
- (k) solid waste transfer and treatment facilities;
- (l) water supply pump stations, raw water storage, clear water storage, dams, weirs, bore field infrastructure;
- (m) the things listed in section 24KA(2) of the *Native Title Act* to the extent that they are not *Ancillary Project Area Infrastructure*; and
- (n) any *IBIS Store*;

but not including –

- (o) *Social Housing*.

“Initial Project Notice” means a Notice to the Body Corporate which:-

- (a) is substantially in the form of the template notice in Schedule 9; and
- (b) is completed with the necessary information required in the form of the template notice in Schedule 9.

“Law” means any Law of the *State* and the Commonwealth of Australia including:-

- (a) the common law;
- (b) equity;
- (c) any legislative instrument;
- (d) any *Local Laws*; or
- (e) any *Local Planning Instrument*.

“Local Government Act” means the Local Government Act 2009 (Qld).

“Local Laws” means the local laws and local law policies of *TSIRC* and any regulations derived from the local laws.

“Local Planning Instrument” has the meaning given in the Sustainable Planning Act 2009 (Qld).

“Low Cultural Heritage Impact” in relation to a physical *Activity*, refers to anything which is included in, or covered by, any of the classes of *Activities* in Schedule 4.

“Mualgal People” means all the people who are the common law Native Title holders for the *ILUA Area* under the *Determination Orders*.

“National Native Title Register” has the meaning given in the *Native Title Act*.

"Native Title" means native title rights and interests held by or on behalf of the *Mualgal People* which were determined under the *Determination Orders* to exist in the *ILUA Area*.

"Native Title Act" means the Native Title Act 1993 (Cth).

"Native Title (Prescribed Bodies Corporate) Regulations" means the Native Title (Prescribed Bodies Corporate) Regulations 1999 (Cth).

"Native Title Representative Body" means the *TSRA* as native title representative body or any other native title representative body or native title services provider under the *Native Title Act* for the *ILUA Area*.

"Non-Extinguishment Principle" has the same meaning as given in the *Native Title Act*.

"NPARIH" means the National Partnership Agreement on Remote Indigenous Housing.

"Notice" refers to any *Notice* given under the *Agreement*.

"Opt-in Party" means any person who:

- (a) has been determined in writing by the *Body Corporate* in its absolute discretion to be accepted by it as an Opt-In Party for a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Class 3 Housing – Home Ownership Future Acts*, *Class 4 Housing – Renovation Acts* or *Class 5 Transfer-Related Future Acts*; and
- (b) has executed a deed in the form of Schedule 13; and
- (c) has provided a copy of the executed deed to the *Parties*.

Example: The *Body Corporate* could determine that a grantee of an interest in land under the *Torres Strait Islander Land Act 1991* (Qld) is a proponent for particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Class 3 Housing – Home Ownership Future Acts*, *Class 4 Housing – Renovation Acts* or *Class 5 Transfer-Related Future Acts*.

"Party" or **"Parties"** means the *Body Corporate*, the *TSIRC*, the *TSRA* and the *State*.

"Particular Common Law Holder" means:-

- (a) each person who, under the traditional laws and customs of the *Mualgal People*, are identified by the *Body Corporate* as individually entitled to exclusive possession, occupation, use and enjoyment of all or parts of a particular *Project Area* or a particular *Ancillary Project Area*; or
- (b) where there are no such persons, a senior member of the family or clan group who, under the traditional laws and customs of the *Mualgal People*, is identified by the *Body Corporate* as being entitled to the exclusive possession, occupation, use and enjoyment of all or parts of a *Project Area* or an *Ancillary Project Area*.

"Prescribed Body Corporate" has the meaning given in the *Native Title (Prescribed Bodies Corporate) Regulations*.

"Project Area" means an area shown as such on a *Project Plan* and which is an area where one or more of the following are proposed to take place:-

- (a) there is to be the grant of a lease over any land or waters for the purposes of a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts*;

- (b) any building, structure or other thing that is a fixture (other than fencing or a gate and other than Ancillary Project Infrastructure) is to be constructed, for the purposes of a particular project involving *Class 1 MIP Future Acts, Class 2 Non-MIP Future Acts, Housing Future Acts* or *Class 5 Transfer-Related Future Acts*; or
- (c) a road reserve is to be dedicated or a permanent publically accessible road is to be constructed for purposes of a particular project involving *Class 1 MIP Future Acts, Class 2 Non-MIP Future Acts, Housing Future Acts* or *Class 5 Transfer-Related Future Acts*;

“Project Consent Certificate” means a certificate by the *Body Corporate* which:-

- (a) is substantially in the form of the template certificate in Schedule 11;
- (b) is completed with the necessary information required in the form of the template certificate in Schedule 11; and
- (c) is signed in accordance with the *Native Title (Prescribed Bodies Corporate) Regulations*.

“Project Plan” means a written plan of an area proposed for a particular project involving *Class 1 MIP Future Acts, Class 2 Non-MIP Future Acts, Housing Future Acts* or *Class 5 Transfer-Related Future Acts* which shows:-

- (a) the general location where the particular *Class 1 MIP Future Acts, Class 2 Non-MIP Future Acts, Housing Future Acts* or *Class 5 Transfer-Related Future Acts* will be undertaken;
- (b) the boundaries of the *Project Area* where the particular *Class 1 MIP Future Acts, Class 2 Non-MIP Future Acts, Housing Future Acts* or *Class 5 Transfer-Related Future Acts* will be undertaken and the total area in square metres of that *Project Area*; and
- (c) the boundaries of any *Ancillary Project Area* for the particular project and the total area in square metres of such area or areas.

Note: A copy of the final *Project Plan* must be attached to, or contained in, the *Final Project Notice* to which it relates and the areas in square metres shown on the *Project Plan* are to be used in calculating the consent consideration amount.

“Proponent” means:-

- (a) *TSIRC* where it is acting as the proponent of a particular project involving *Class 1 MIP Future Acts, Class 2 Non-MIP Future Acts, Housing Future Acts* or *Class 5 Transfer-Related Future Acts*, or where *TSIRC* is the lessor (seller) of a lease for home ownership purposes (including any improvements on the lease area) of the kind involving *Class 3 Housing – Home Ownership Future Acts*; or
- (b) *the State* where it is acting as the proponent of a particular project involving *Class 1 MIP Future Acts, Class 2 Non-MIP Future Acts, Housing Future Acts* or *Class 5 Transfer-Related Future Acts*; or
- (c) *TSIRC* and the *State* where they are acting jointly as the proponent of a particular project involving *Class 1 MIP Future Acts, Class 2 Non-MIP Future Acts, Housing Future Acts* or *Class 5 Transfer-Related Future Acts*; or

- (d) any *Opt-in Party* where it is acting as the proponent of particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts*.

“Public Holiday” means a day appointed under the *Holidays Act 1983* (Qld) or another Act as a public holiday.

“Receipt Date” means the day on which *Dispute Notice* is taken to have been received in accordance with clause 27.3.

“Recipient” has the same meaning as given in the A New Tax System (Goods and Services Tax) Act 1999 (Clth).

“Register of Indigenous Land Use Agreements” has the same meaning as given in the *Native Title Act*.

“Register” and **“Registration”** means the inclusion of the indigenous land use agreement comprised by this *Agreement* as an entry in the *Register of Indigenous Land Use Agreements*.

“Registered Native Title Body Corporate” has the meaning given in the *Native Title Act*.

“Registration Date” means the date on which details of this *Agreement* are entered in the *Register of Indigenous Land Use Agreements*.

“Review Date” means each 5th anniversary of the *Execution Date*.

“Significant Ground Disturbance” means:

- (a) disturbance by machinery of the topsoil or surface rock layer of the ground, such as ploughing drilling or dredging; and/or
- (b) the removal of native vegetation by disturbing root systems and exposing underlying soil.

“Significant Ground Disturbance Activities” means activities conducted by the *Proponent* involving *Significant Ground Disturbance*.

“Social House” means any dwelling house used for *Social Housing*.

“Social and Economic Development Opportunities” means:-

- (a) the employment and contracting requirements of a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts*; and
- (b) any opportunities which can reasonably be made available to the *Body Corporate* or *Mualgal People* in connection with a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts* including training, arts, cultural and place naming opportunities.

“Social Housing” means housing –

- (a) funded or provided by the Queensland Government; or
- (b) funded or provided by the Australian Government; or

- (c) jointly funded or provided by the Queensland Government and the Australian Government;
- (d) funded or provided –
 - (i) directly or indirectly; or
 - (ii) in whole or in part,
 by the *Body Corporate*,

and includes housing provided under the *Housing Act 2003* (Qld).

Note: With respect to subparagraph (d) above, this might involve housing provided through a joint venture or an alliance involving the *Body Corporate*.

“Supplier” has the same meaning as given in the A New Tax System (Goods and Services Tax) Act 1999 (Clth).

“Taxable Supply” has the same meaning as given in the A New Tax System (Goods and Services Tax) Act 1999 (Clth).

“Tax Invoice” has the same meaning as given in the A New Tax System (Goods and Services Tax) Act 1999 (Clth).

“Terminate” and **“Terminated”** means that this *Agreement* is brought to, or has come to, an end.

“TSILA” means the Torres Strait Islander Land Act 1991 (Qld)

“Torres Strait Islander Cultural Heritage” has the meaning given in the *Torres Strait Islander Cultural Heritage Act*.

“Torres Strait Islander Cultural Heritage Act” means the *Torres Strait Islander Cultural Heritage Act 2003* (Qld).

“Torres Strait Islander Cultural Heritage Body” means:-

- (a) where it satisfies the meaning of that phrase in the *Torres Strait Islander Cultural Heritage Act*, the *Body Corporate*; and
- (b) any other person who satisfies the meaning of that phrase in the *Torres Strait Islander Cultural Heritage Act*.

“Torres Strait Islander Cultural Heritage Database” has the meaning given in the *Torres Strait Islander Cultural Heritage Act*.

“Torres Strait Islander Cultural Heritage Register” has the meaning given in the *Torres Strait Islander Cultural Heritage Act*.

“Torres Strait Islander Party” has the meaning given in the *Torres Strait Islander Cultural Heritage Act*.

“TSIRC” means the Torres Strait Island Regional Council in its capacity as a local government under the *Local Government Act* and in its capacity as the trustee of any Deed of Grant in Trust.

“Undisturbed Area” means any area which is not a *Disturbed Area*.

"Useful Life" means, unless another period is expressly agreed by *TSIRC* and the *Body Corporate* through, for example, the consultation referred to in clause 9.1(b), the period in which the financial benefit of depreciation of an *Infrastructure Facility* as a depreciable asset accrues to *TSIRC* having regard to all reasonable factors including any determination of the effective life of the same or similar depreciating asset by the Commissioner for Taxation, the factors which the Commissioner for Taxation considers in determining the effective life of a depreciating asset and the particular effective life specified for the same or similar assets listed in any public ruling under the *Taxation Administration Act 1953* (Clth).

Schedule 2 – Written Description

This schedule details the written description of the *ILUA Area*.

The *ILUA Area* is the *Determination Area*.

The ILUA Area is all land within Moa Island covered by the Determination Area of QCD1999/002 where native title exists.

In the case of any inconsistency between the Determination Area and ILUA Area as defined under the ILUA, the Determination Area as described and depicted in the Determination Order prevails to the extent of any inconsistency.

The Infrastructure and Housing ILUA only covers the land and inland waters of Moa Island on the landward side of the high water mark and does not cover any other lots or islands outside of Moa.

The ILUA Area does not include the following areas within Moa:

- (a) Lot 8 on Plan TS161, (now shown as Lot 8 SP248095 State School, Kubin);
- (b) Lot 9 on Plan TS162, (now shown as Lot 9 SP271017 State School Residence, St Pauls);
- (c) Lot 10 on Plan TS162, (now shown as Lot 10 SP271017 State School, St Pauls);
- (d) Lot 9 on Plan CP894532, (now shown as Lot 9 SP271014 Kubin Airstrip);
- (e) Special Lease No 24154 described as Lot 2 on TS36 (now shown as Lot 67 SP256048, Lot 68 SP256048, part lot 26 SP256048 Church and part road); and
- (f) Any road on the landward side of the high water mark of Moa Island.

Schedule 2 - Written Description - Moa Infrastructure and Housing ILUA

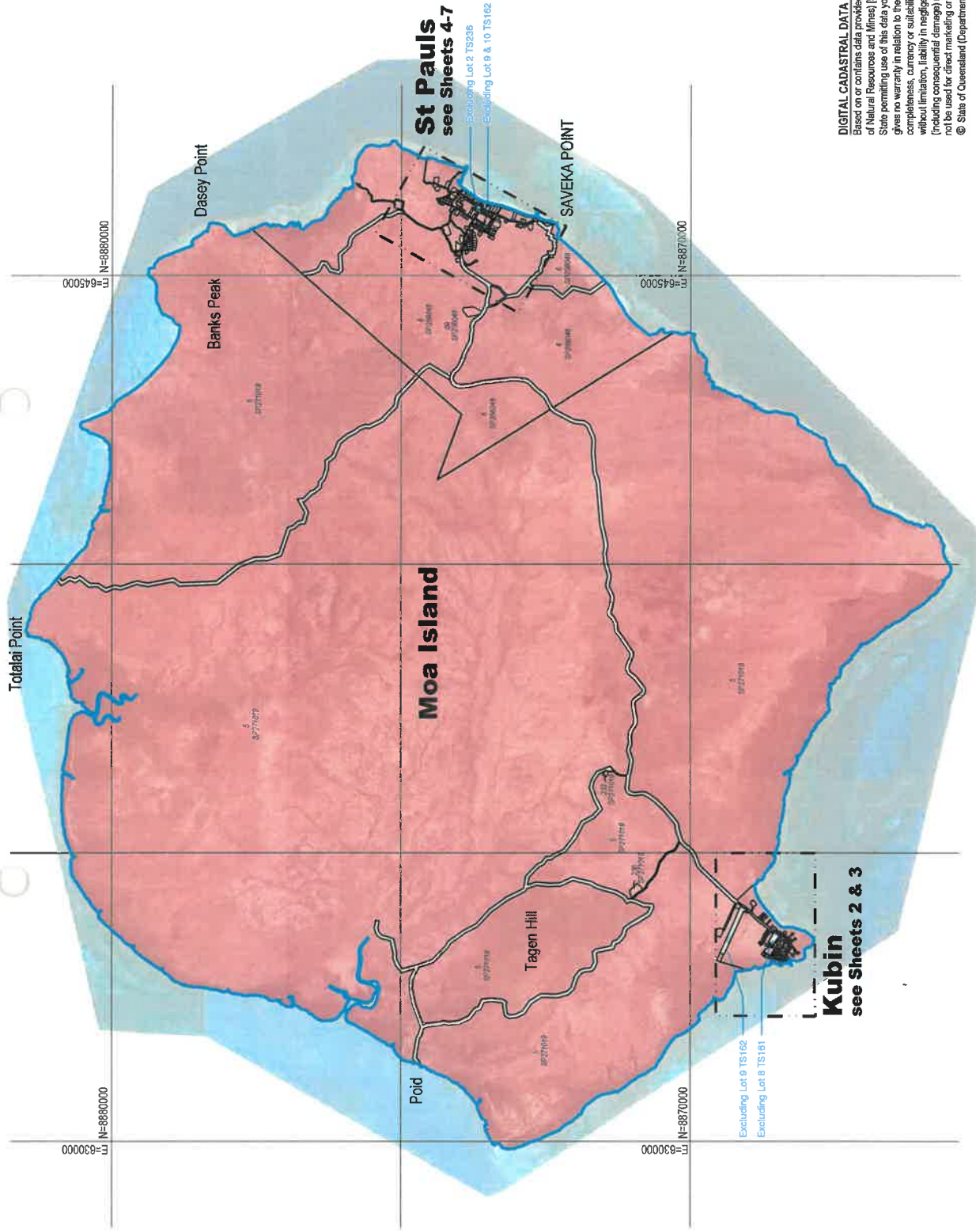
RPS

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Schedule 3 – Map of ILUA Area

The map in this schedule depicts the *ILUA Area*.

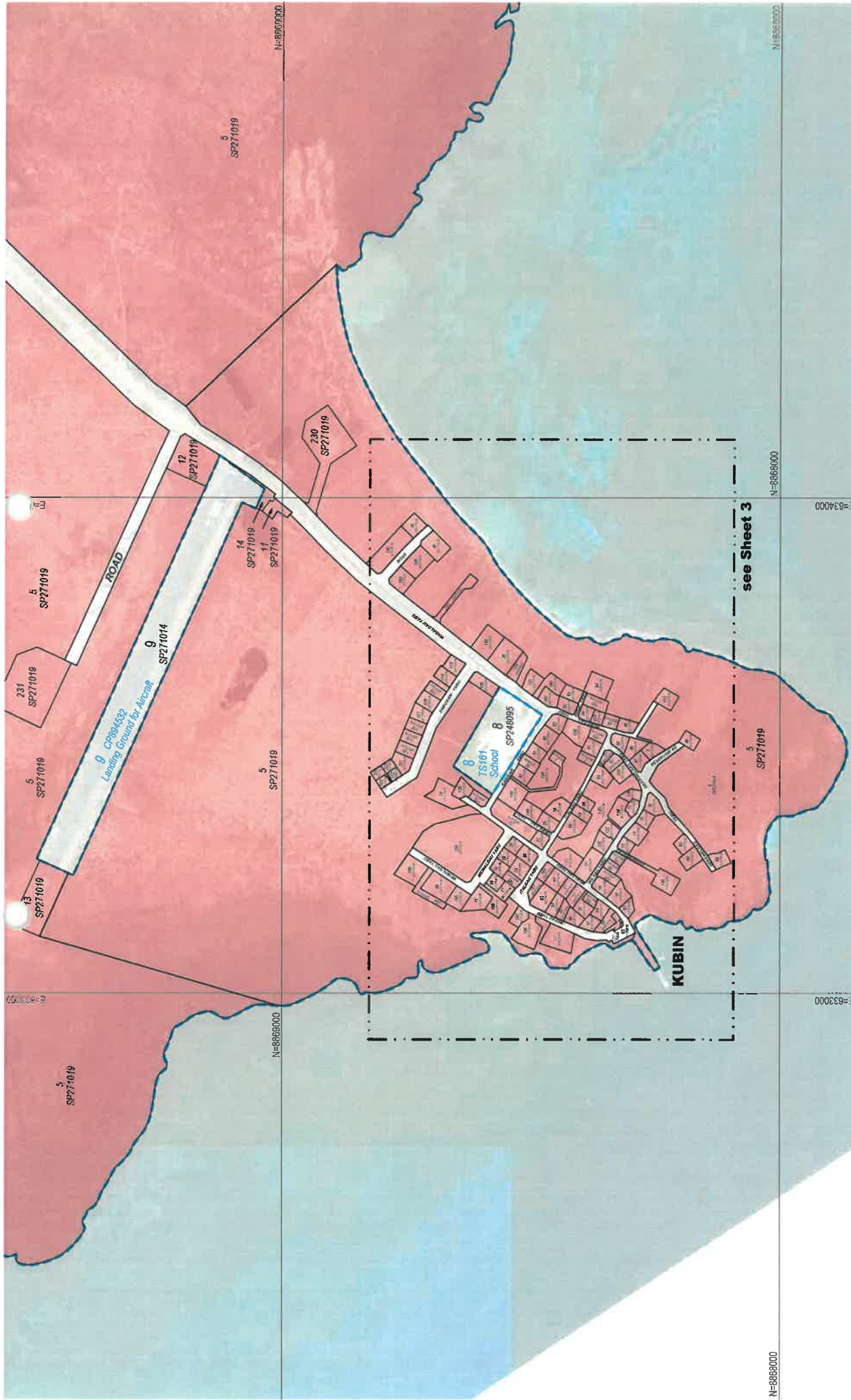


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Schedule 3 - Moa Infrastructure and Housing ILUA

LEGEND
 ILUA Area
 Native Title Determination
 Lotno PlanNumber DCDB 9 January 2019
 6 SP256048

Datum MGA94 Z54 Scale 1:70,000 @ A3 | Date 01-04-2019 | Drawing PR109503-106 B | Sheet 1 of 7



Schedule 3 - Moa Infrastructure and Housing ILUA
Kubin

LEGEND

ILUA Area

Native Title Determination

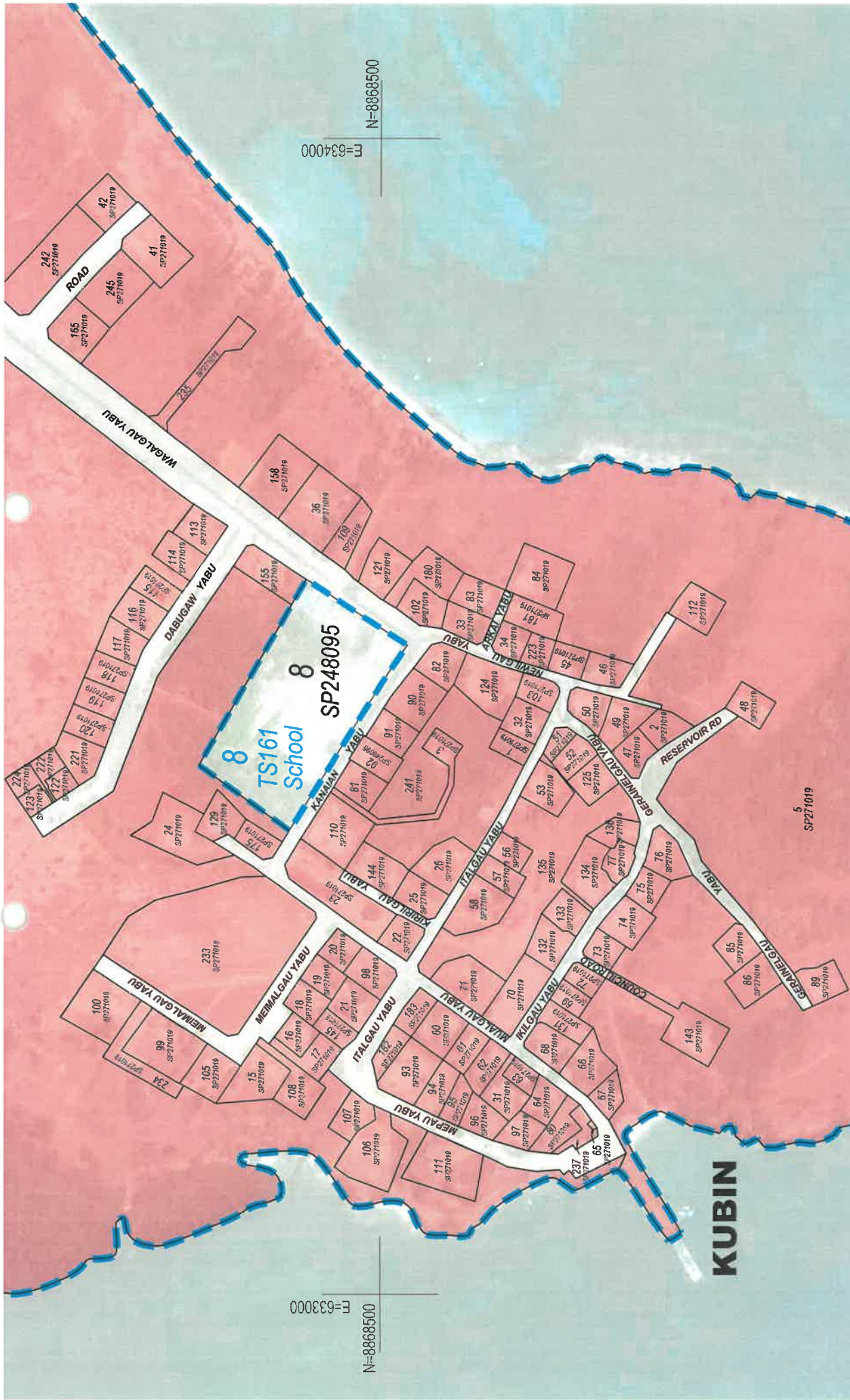
6 SP256048 Lotno PlanNumber DCD8 9 January 2019

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Datum MGA94 Z54 Scale 1:7,000 @ A3 | Date 01-04-2019 | Drawing PR109503-106 B | Sheet 2 of 7

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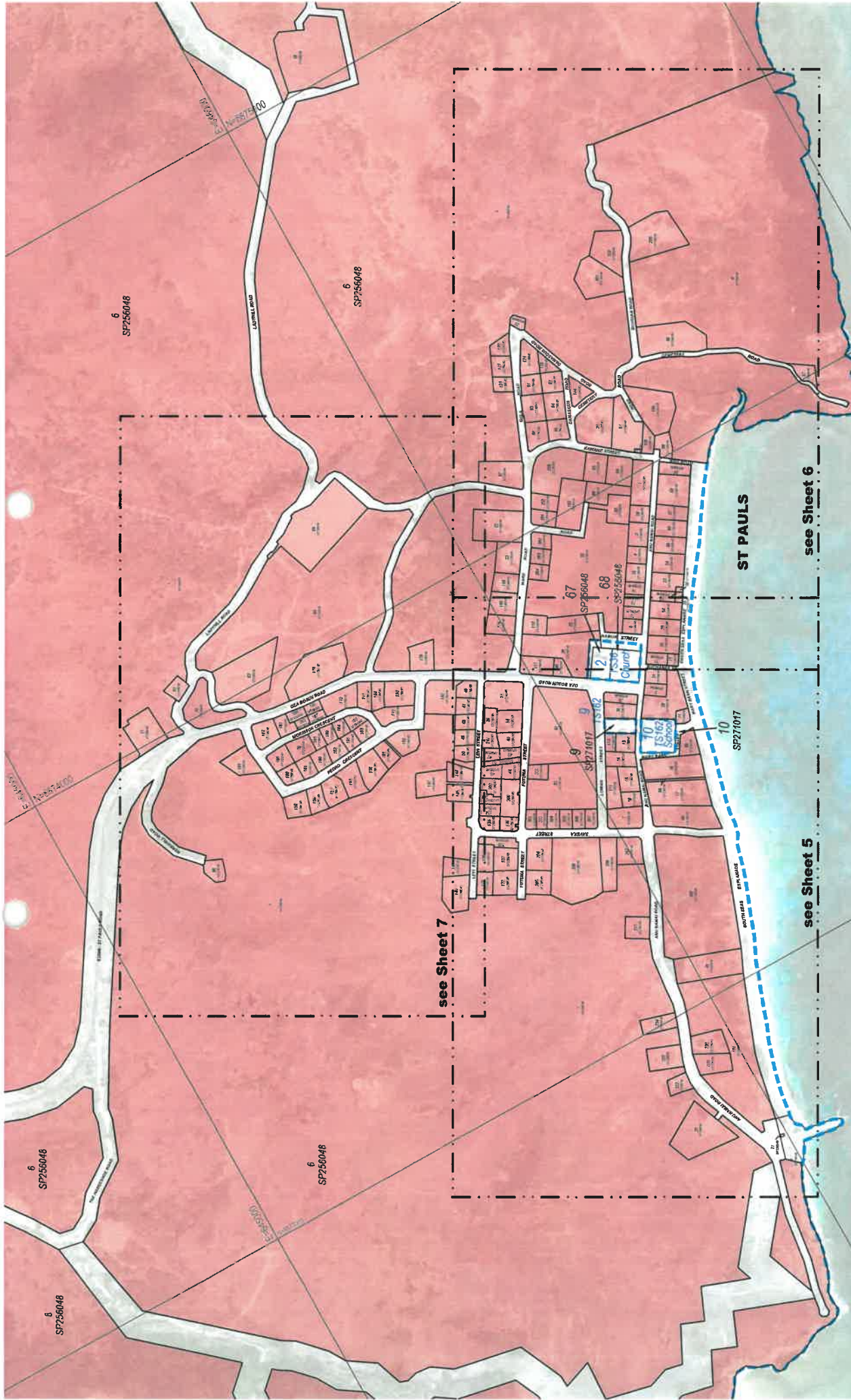


Schedule 3 - Moa Infrastructure and Housing ILUA **Kubin**

LEGEND
 ILUA Area
 Native Title Determination

6 SP256048 Lotno PlanNumber DCOB 9 January 2019

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Schedule 3 - Moa Infrastructure and Housing ILUA

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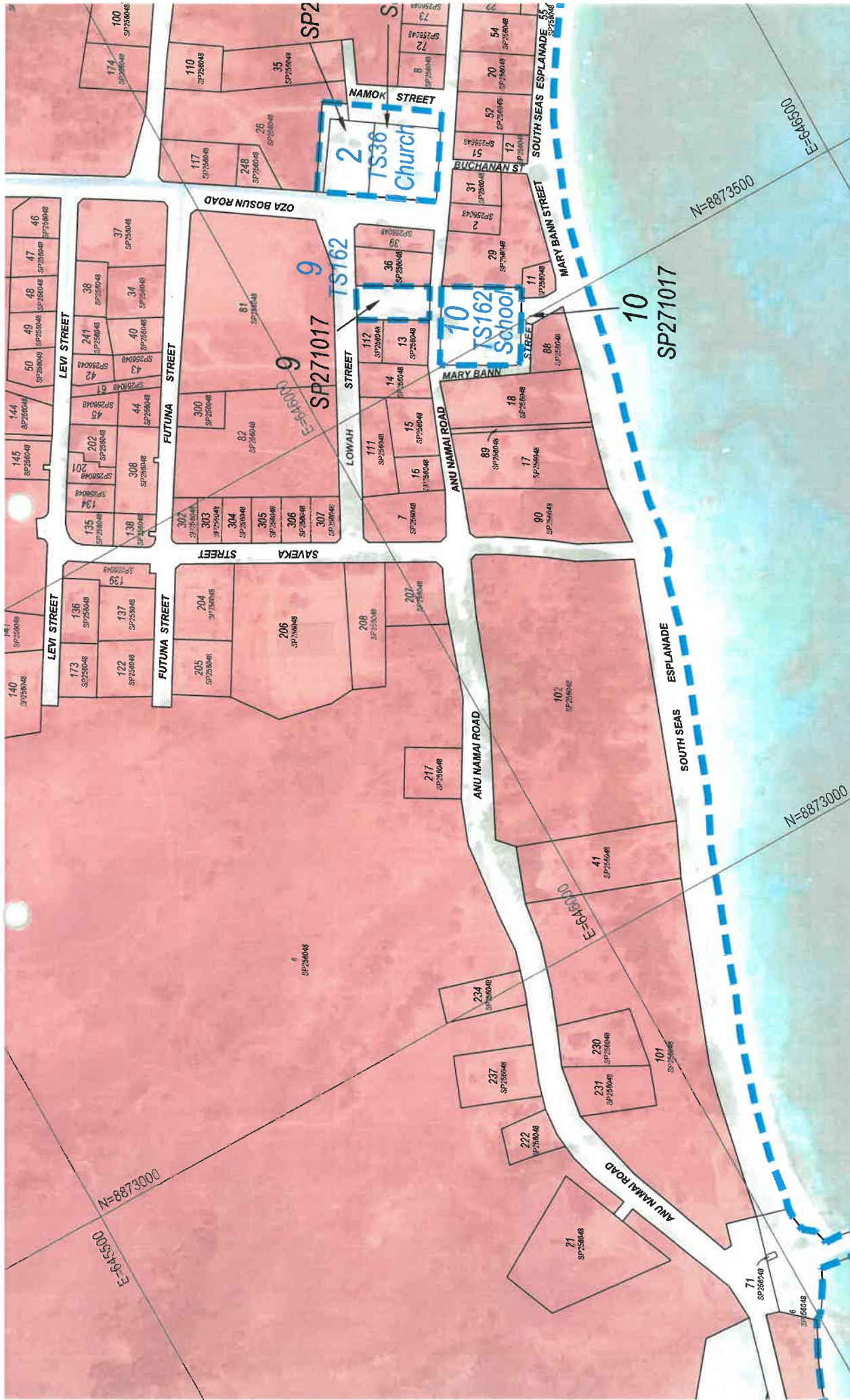
LEGEND

- ILUA Area
- Native Title Determination

6 SP256048 Lotno PlanNumber DCDB 9 January 2019

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Datum MGA94 Z54 Scale 1:7,000 @ A3 | Date 01-04-2019 | Drawing PR109503-106 B | Sheet 4 of 7



Schedule 3 - Moa Infrastructure and Housing ILUA

St Pauls

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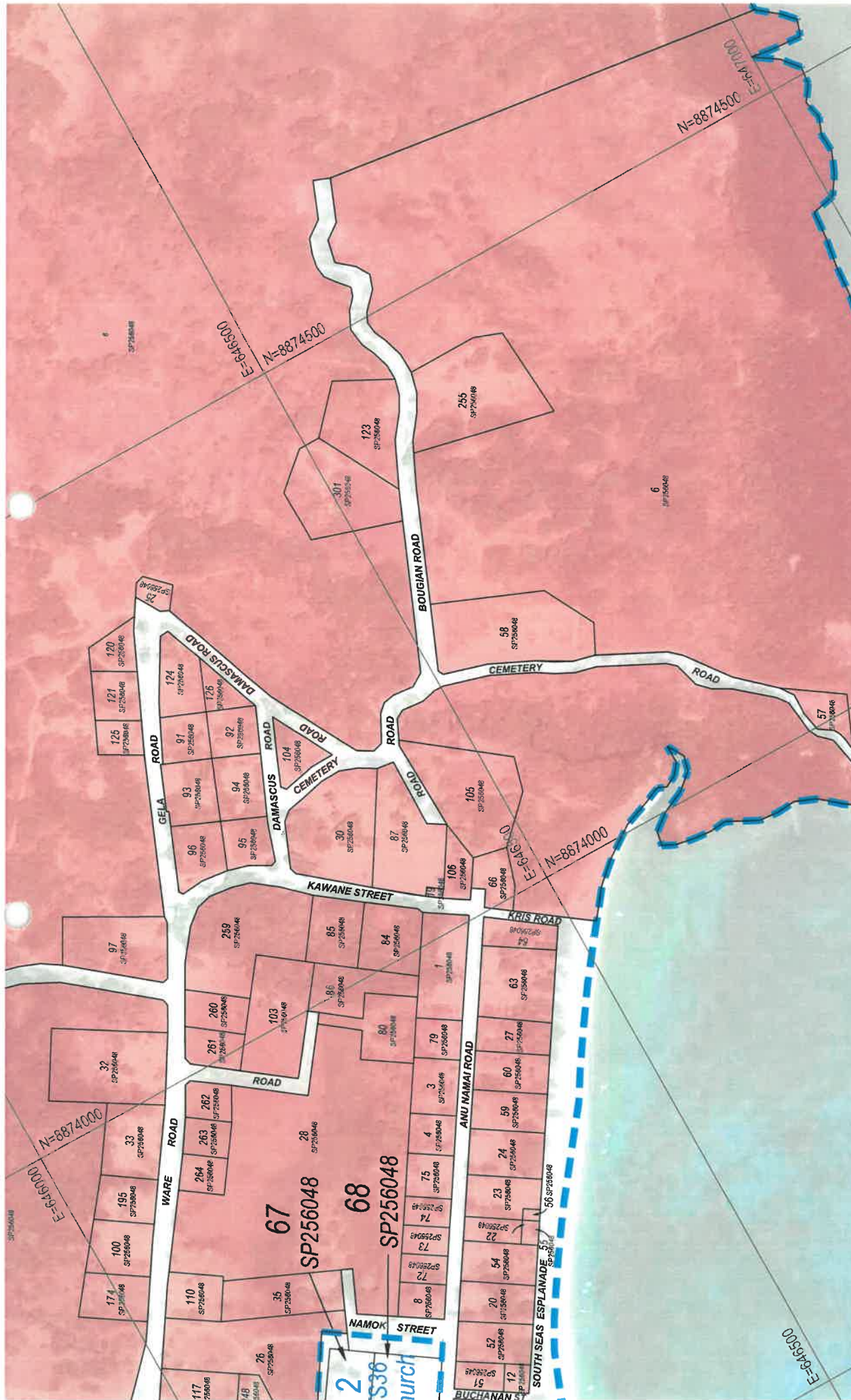
LEGEND

- ILUA Area
- Native Title Determination

6 SP256048 Lohno PlanNumber DCDB 9 January 2019

Datum MGA94 Z54 Scale 1:3,000 @ A3 | Date 01-04-2019 | Drawing PR109503-106 B | Sheet 5 of 7

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Schedule 3 - Moa Infrastructure and Housing ILUA

St Pauls

LEGEND

- ILUA Area
- Native Title Determination

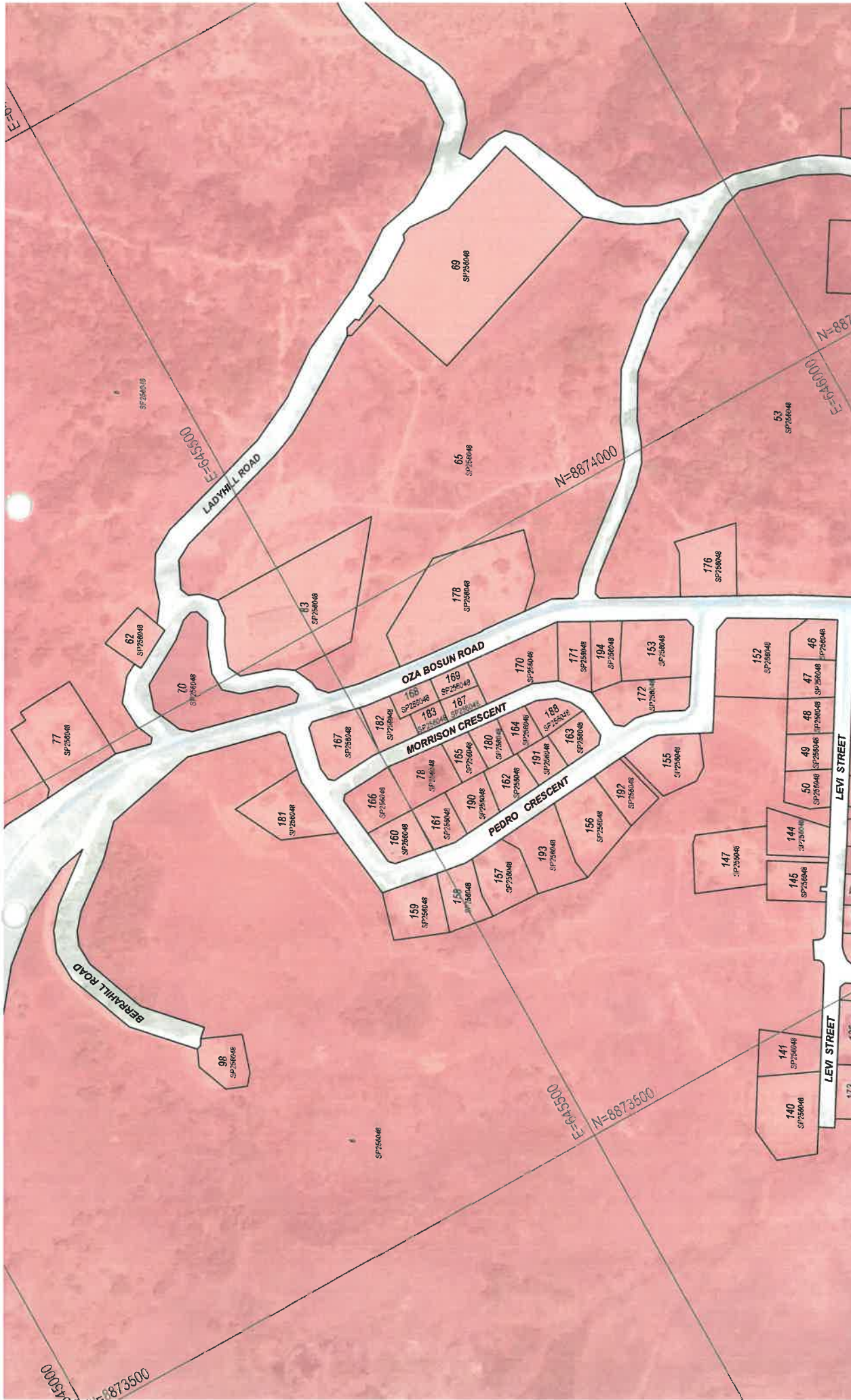
6 SP256048 Lotno PlanNumber DCDB 9 January 2019

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Datum MGA94 Z54 Scale 1:3,000 @ A3 | Date 01-04-2019 | Drawing PR109503-106 B | Sheet 6 of 7



Schedule 3 - Moa Infrastructure and Housing ILUA

St Pauls

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LEGEND

ILUA Area

Native Title Determination

6 SP256048 Lotno PlanNumber DCDB 9 January 2019

Datum MGA94 Z54 Scale 1:3,000 @ A3 | Date 01-04-2019 | Drawing PR109503-106 B | Sheet 7 of 7

0 30 60 90 120 150 300

173 136

Schedule 4 – Low Cultural Heritage Impact Activities

This Schedule contains classes of *Activities* which have a *Low Cultural Heritage Impact*.

Short Description	Types of Activities
Maintenance	Anything which involves the maintenance, repair, protection or making safe of existing infrastructure, structures, improvements, earthworks and areas under <i>TSIRC's</i> ownership, care or control and the upgrade, renovation, repair and restoration of a dwelling house in respect of a <i>Housing Future Acts</i> . <i>Examples</i> - Repairs to buildings, re-sealing roads and car parks, mowing parks, removing rubbish, restoring erosion.
Pest Control	Anything which permits, requires or consists of the management, control or elimination of pests. <i>Examples</i> - Removing weeds, eradicating non-native animals.
Access and Site Investigation	Access and site investigation activities which do not require major excavations or earthworks. <i>Examples</i> - Inspecting an area, surveying an area, conducting geotechnical testing, water quality testing.
Activities on a Disturbed Area	Anything which involves the construction or establishment of infrastructure, structures, improvements and earthworks or the and the upgrade, renovation, repair and restoration of a dwelling house in respect of a <i>Housing Future Acts</i> on a <i>Disturbed Area</i> . <i>Examples</i> - Constructing a car-park facility on an existing car-park site, rebuilding an existing road, replacing or improving an existing drain.
Emergency	Anything which is undertaken for the purpose of preventing or minimising physical harm or the threat of physical harm to persons or public property. <i>Examples</i> - Constructing a fire break or a safety barrier.
Low Impact Activities	Anything which is agreed in writing by the <i>Body Corporate</i> or any <i>Torres Strait Islander Cultural Heritage Body</i> to be of no or low impact for purposes of <i>Torres Strait Islander Cultural Heritage</i> .

Schedule 5 – High Cultural Heritage Impact Activities

This Schedule contains classes of *Activities* have a *High Cultural Heritage Impact*.

Short Description	Types of Activities
Certain <i>Activities</i> on an <i>Established Cultural Heritage Area</i>	Anything which involves the physical construction or establishment of infrastructure, structures, improvements and earthworks on an <i>Established Cultural Heritage Area</i> .
Certain <i>Activities</i> Where a <i>Cultural Heritage Find</i> is Made	Anything which involves the physical construction or establishment of infrastructure, structures, improvements and earthworks after a <i>Cultural Heritage Find</i> has been made in a location where it would be affected by continuing works.
Certain <i>Activities</i> on an <i>Undisturbed Area</i>	Anything which involves the physical construction or establishment of infrastructure, structures, improvements and earthworks on an <i>Undisturbed Area</i> .

Schedule 6 – Cultural Heritage Clearance Procedure

This Schedule contains the *Cultural Heritage Clearance Procedure* which applies where *Activities* in a particular *Project Area* and any *Ancillary Project Area* necessary for particular *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts* which have potentially *High Cultural Heritage Impact* are notified under an *Initial Project Notice*.

Below is a flowchart which summarises the steps involved in the clearance procedure.

STEP 1
Provision of Initial
Project Notice

The *Proponent* provides the Mualgal Torres Strait Islanders Corporation RNTBC ICN 3369 with an *Initial Project Notice* notifying of *Activities* which have a potentially *High Cultural Heritage Impact*.

Then go to Step 2.



STEP 2
Site Inspection
and
Recommendations
Report

Within fifteen (15) *Business Days* from receipt by the *Body Corporate's* response to the *Initial Project Notice* referred to in Step 1, the *Proponent* and the *Body Corporate* must carry out a site inspection jointly and in the manner reasonably required by the *Body Corporate*.



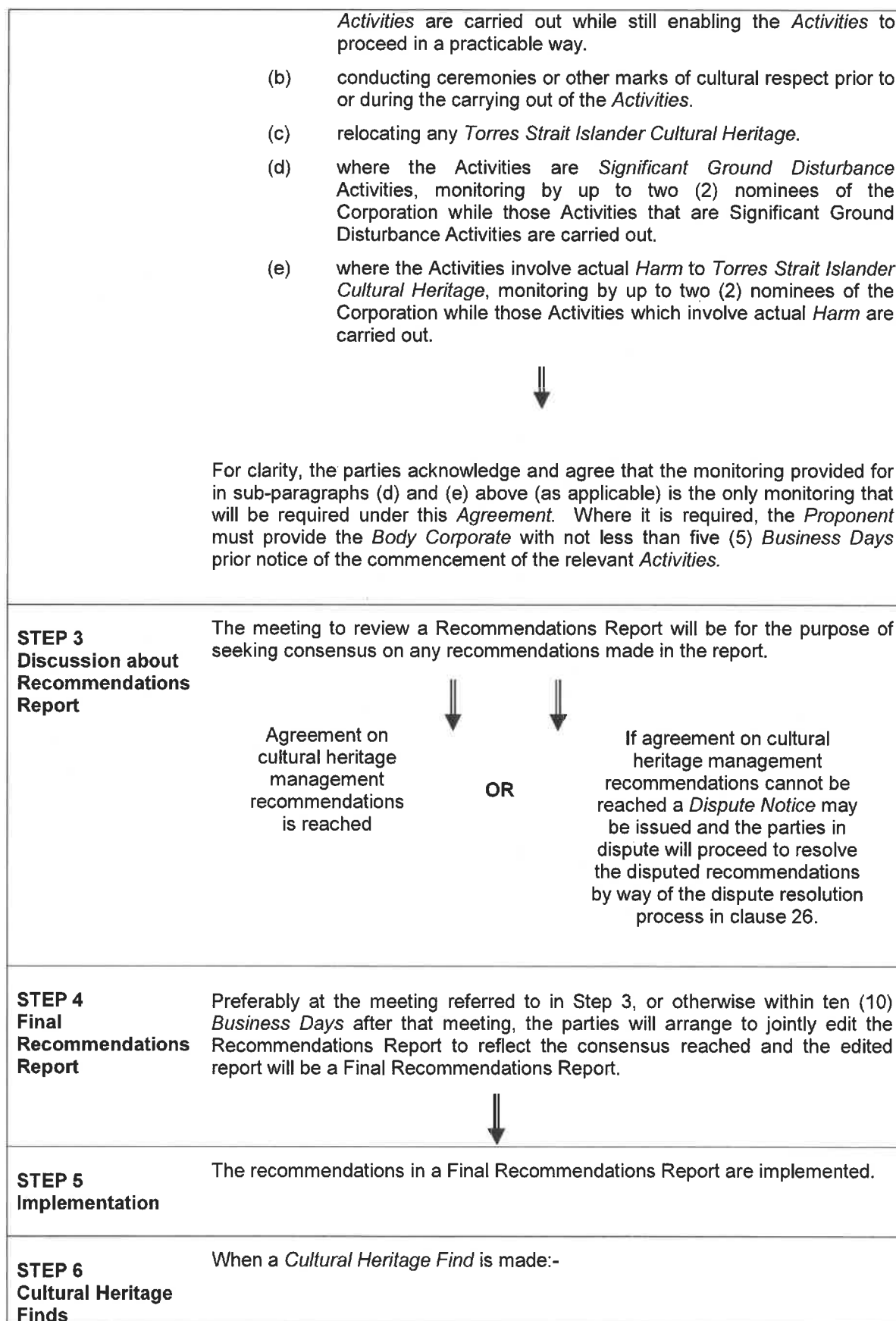
Within ten (10) *Business Days* after the site inspection the *Body Corporate* must provide the *Proponent* with a *Recommendations Report* that must include a statement either:-

- (a) that there is no *Torres Strait Islander Cultural Heritage* in the area proposed for the *Activities* (in which case no further compliance steps are required); or
- (b) that *Torres Strait Islander Cultural Heritage* may exist in the area proposed for the *Activities*.

Where the statement is in terms of sub-paragraph (b) above, within fifteen (15) *Business Days* after receipt of the report by the *Proponent* the parties will convene the meeting provided for at Step 3 below to discuss the *Recommendations Report*.

The *Recommendations Report* may include recommendations to avoid or otherwise reasonably minimise any *Harm* to any *Torres Strait Islander Cultural Heritage* that might be involved in carrying out the project including the following:-

- (a) changing the location of the *Activities* or the way in which the



	Step A Notice to the <i>Proponent</i>	<p>A <i>Monitor</i> or other nominee of the <i>Body Corporate</i>:</p> <p>(a) may immediately advise the <i>Proponent</i> to cease work and, in that case, they will do so; or</p> <p>(b) may at his or her discretion remove the <i>Cultural Heritage Find</i>.</p> <p>They must immediately give notice of the <i>Cultural Heritage Find</i> to the <i>Proponent</i> and provide particulars about the location and nature of it, reasons for its significance and recommendations for dealing with it.</p>
	Step B Meet to Discuss Recommendations	<p>Within forty-eight (48) hours (or as agreed) after the notification to the <i>Proponent</i> about the <i>Cultural Heritage Find</i>, the relevant parties will:</p> <p>(a) meet to discuss any <i>Cultural Heritage Find</i> that has not been already removed under Step A;</p> <p>(b) discuss the recommendations made for dealing with the <i>Cultural Heritage Find</i> and</p> <p>(c) use best endeavours to agree on how to protect the <i>Cultural Heritage Find</i>.</p> <p>If an agreement cannot be reached about how to deal with the <i>Cultural Heritage Find</i> either party may give a <i>Dispute Notice</i> and proceed to resolve the disputed recommendations by way of the dispute resolution process in clause 26.</p>
	Cultural Heritage Find of Torres Strait Islander Human Remains	<p>Where a <i>Cultural Heritage Find</i> of Torres Strait Islander human remains is made at any step in the Cultural Heritage Clearance Procedure, the <i>Proponent</i> and the <i>Body Corporate</i> and persons acting on their behalf will follow the procedure on the final page of this Schedule.</p>

Mandatory Timeframes for Completing Steps in the Cultural Heritage Clearance Procedure

Steps in the Procedure

Mandatory Timeframes to Complete Step

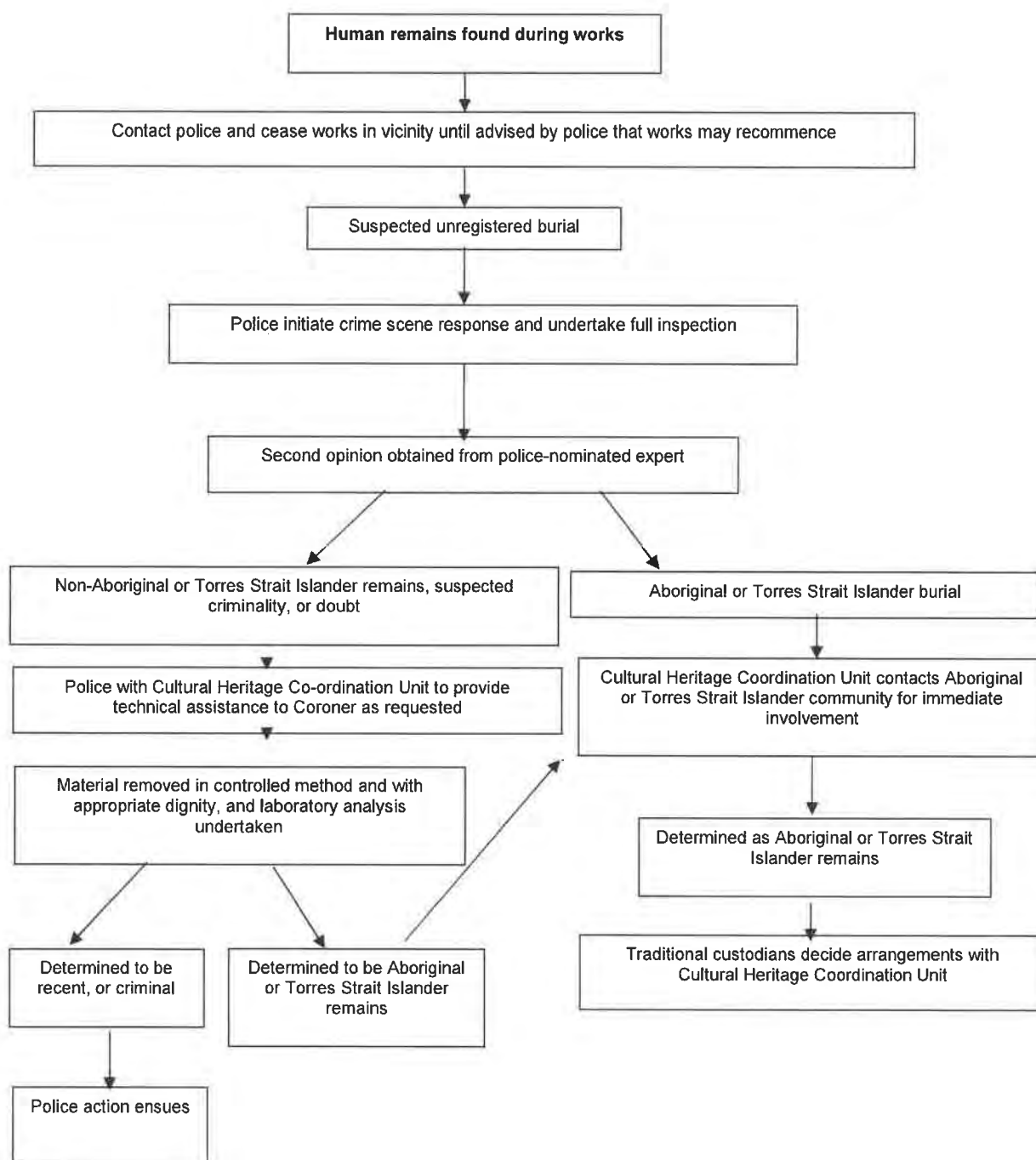
STEP 1 Assessment and Initial Project Notice

-

STEP 2 Site Inspection and Recommendations Report	<p>Inspection - 15 <i>Business Days</i> from receipt by the <i>Proponent</i> of the <i>Body Corporate's</i> response.</p> <p>Report - 10 <i>Business Days</i> from the date on which the inspection is completed.</p>
STEP 3 Discussion about Recommendations Report	<p>Meeting to Discuss - 15 <i>Business Days</i> from receipt of the report by the <i>Proponent</i>.</p>
STEP 4 Report Finalised	<p>Meeting to Jointly Edit the Report – 10 <i>Business Days</i> from the meeting in Step 3.</p>
STEP 5 Implementation	<p>As set out in the final report.</p>
STEP 6 Cultural Heritage Finds	<p>-</p>

For clarity, the parties acknowledge and agree that where a party by its act or omission causes any of the above steps to take longer than the time prescribed under the above mandatory timeframes:

- (a) clause 16.3 will apply; and
- (b) additionally, that party will be in default of this *Agreement* and any other party may issue a *Dispute Notice* and the parties in dispute will proceed to resolve the delay by way of the dispute resolution process in clause 26.

Procedure for Dealing with Human Remains

Schedule 7 – Cultural Heritage Remuneration

This Schedule sets out the principles for remuneration to be paid to the *Body Corporate* and its nominees for their services in helping to implement Part 3 of this *Agreement* where *Activities* in a particular *Project Area* and any *Ancillary Project Area* necessary for particular *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts* which have potentially *High Cultural Heritage Impact* are notified under an *Initial Project Notice*.

1. Remuneration for the *Body Corporate* and its nominees as reasonably required and incurred in the provision of services for implementation of Part 3 of this *Agreement* where *Activities* in a particular *Project Area* and any *Ancillary Project Area* necessary for particular *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts* which have potentially *High Cultural Heritage Impact* are notified under an *Initial Project Notice* will be assessed as follows:-

- (a) one nominee of the *Body Corporate* for the following:-

- (i) preparing a draft Recommendations Report; and
 - (ii) providing any other Cultural Heritage written responses.

The time spent for each of these tasks will be capped at a maximum seven (7) hours at the Hourly Rate.

- (b) a maximum of two (2) nominees of the *Body Corporate* acting simultaneously:-

- (i) at the Hourly Rate; or
 - (ii) at the Daily Rate where the total hours for any single day exceeds seven (7) hours

for any of the following:-

- initial consultations relating to an *Initial Project Notice* and any related communications;
- site inspections under Step 2 of the *Cultural Heritage Clearance Procedure*;
- consultations, and related logistical matters;
- making enquiries or seeking advice or guidance;
- any other actions and matters without limitation necessary for or incidental to completion of a draft and Final Recommendations Report.

2. A maximum of two (2) nominees of the *Body Corporate* acting simultaneously in carrying out monitoring and any other recommendations in a Final Recommendations Report at the Hourly or Daily Rate as applicable.

Note: In determining the actual number of persons required, the person proposing the project and the Body Corporate will discuss and reach agreement over whether any special circumstances apply to warrant the maximum number (e.g. an exceptionally large

area must be cleared or many machines used).

3. Expenses of the *Body Corporate*'s nominees as identified in items 1(a), 1(b) and 2 of this Schedule where reasonably required and incurred in connection with its services in helping to implement Part 3 of this *Agreement* will be at the following rates all of which are subject to *CPI Increase* from 30 June 2014:-

Hourly Rate		\$60.00 (for up to two nominees of the <i>Body Corporate</i>).
Daily Rate		\$420.00 (for up to two nominees of the <i>Body Corporate</i>).
Accommodation and Incidentals		
Accommodation per night		At cost as evidenced in writing by the provision of a receipt or the like, to a maximum of \$240.00 (for each of the nominees of the <i>Body Corporate</i> involved).
Incidentals per day		\$50.00 (for each of the nominees of the <i>Body Corporate</i> involved).
Travel, Mileage and Car Hire		
Mileage (4WD) per kilometre		\$0.68c
Mileage (Non 4WD) per kilometre		\$0.53c
By Air		At cost to a maximum of \$1,200.00 for each of the nominees of the <i>Body Corporate</i> involved.
By boat		At cost for each of the nominees of the <i>Body Corporate</i> involved but where the nominees' own dingy is involved, a maximum of \$10.00 per kilometre.

An administration fee is payable to the *Body Corporate* of 15% of the total amount of each invoice issued by a *Body Corporate* for services of the kind specified in this Schedule. The administration fee is fully inclusive of all other costs and expenses associated with the services provided by the *Body Corporate* to help implement Part 3 of this *Agreement*.

4. The following general direction is provided in relation to the remuneration and expenses:-
- where the *Proponent* requests an estimate of the remuneration and expenses, the *Body Corporate* will provide a written estimate, and reasonable information about how the estimate has been calculated, within a reasonable time of the request;
 - the *Body Corporate* will ensure that actual remuneration and expenses are

incurred in accordance with the written estimate and will notify the *Proponent* as soon as possible if it appears that the estimate will be exceeded. The estimate will include any amount for GST.

5. The fee component for any *Capped Amount* in relation to the services to which this schedule relates is \$4,000.00 exclusive of any GST subject to *CPI Increase* from 30 June 2014. Any disbursements (such as travel, accommodation and meals), are to be dealt with in the way provided for in paragraph 3 of this Schedule as if the maximum number of nominees identified in items 1(a), 1(b) and 2 of this Schedule had incurred the disbursements.

Schedule 8 – Body Corporate’s Fees for Service

This Schedule sets out the agreed fees which the *Body Corporate* can charge for its services in helping to develop and implement Part 2 of this *Agreement* where consent for *Native Title* compliance under Part 2 of this *Agreement* is required.

1. Remuneration for the *Body Corporate* and its nominees as reasonably required and incurred in the provision of services for implementation of Part 2 of this *Agreement* where consent for *Native Title* compliance under Part 2 of this *Agreement* is required will be assessed as follows:-

- (a) one nominee of the *Body Corporate* for preparing the following:-

- (i) responding to an *Initial Project Notice*; and
- (ii) preparing a *Project Consent Certificate*.

The time spent for each of these tasks will be each capped respectively to a maximum of seven (7) hours at the Hourly Rate.

- (b) a maximum of two (2) nominees of the *Body Corporate* acting:-

- (i) at the Hourly Rate; or
- (ii) at the Daily Rate where the total hours for any single day exceeds seven (7) hours

for any of the following:-

- participating in meetings;
- reading, considering and responding to any communications;
- engaging in relevant discussions or other consultations with any *Parties* to this *Agreement*;
- making enquiries or seeking advice or guidance; and
- undertaking consultations with common law native title holders or members of the *Body Corporate*.

2. Expenses of the *Body Corporate*’s nominees as identified in items 1(a) and 1(b) of this Schedule where reasonably required and incurred in connection with its services in helping to implement Part 2 of this *Agreement* will be at the following rates all of which are subject to *CPI Increase* from 30 June 2014:-

Hourly Rate		\$60.00 (for up to two nominees of the <i>Body Corporate</i>).
Daily Rate		\$420.00 (for up to two nominees of the <i>Body Corporate</i>).
Accommodation and Incidentals		
Accommodation per night		At cost as evidenced in writing by the provision of a receipt or the like, to a maximum of \$240.00 (for each of the nominees of the <i>Body Corporate</i> involved).
Incidentals per day		\$50.00 (for each of the nominees of the <i>Body Corporate</i> involved).
Travel, Mileage and Car Hire		
Mileage (4WD) per kilometre		\$0.68c
Mileage (Non 4WD) per kilometre		\$0.53c
By Air		At cost to a maximum of \$1,200.00 for each of the nominees of the <i>Body Corporate</i> involved.
By boat		At cost for each of the nominees of the <i>Body Corporate</i> involved but where the nominee's own dinghy is involved a maximum of \$10.00 per kilometre.

3. An administration fee is payable to the *Body Corporate* of 15% of the total amount of each invoice issued by a *Body Corporate* for services of the kind specified in this Schedule. The administration fee is fully inclusive of all other costs and expenses associated with the services provided by the *Body Corporate* to help implement Part 2 of this *Agreement*.
4. The following general direction is provided in relation to the fees for service:-
 - (a) where the *Proponent* requests an estimate of the fees for service, the *Body Corporate* will provide a written estimate, and reasonable information about how the estimate has been calculated, within a reasonable time of the request.
 - (b) the *Body Corporate* will ensure that the actual fees for service are in accordance with the written estimate and will notify the person proposing the project as soon as possible if it appears that the estimate will be exceeded.

The estimate will include any amount for GST.

5. The component for any *Capped Amount* in relation to the services to which this schedule relates is \$4,000.00 exclusive of any GST subject to *CPI Increase* from 30 June 2014. Any disbursements (such as travel, accommodation and meals), are to be dealt with in the way provided for in paragraph 2 of this Schedule as if the maximum numbers of nominees identified in items 1(a) and 1(b) of this Schedule had incurred the disbursements.

Schedule 9 – Template Initial Project Notice

This is a template of the notice that a person proposing to undertake a project must give to the *Body Corporate* to initiate a process to obtain consent for *Native Title* compliance under Part 2 of this *Agreement* and/or Torres Strait Islander Cultural Heritage compliance under Part 3 of this *Agreement*.

Initial Project Notice

The **[Insert name of Proponent]** hereby gives Notice of its intention to undertake the project or other activity described below. This Notice is given under the Moa Infrastructure and Housing ILUA which was registered on **[Insert date of registration of ILUA]**.

The purpose of this Notice is to initiate consultation with the Mualgal Torres Strait Islanders Corporation RNTBC ICN 3369 in relation to (Tick one box only):

- ☐ Both Native Title and Cultural Heritage compliance (go to Part A of the Notice)
- ☐ Cultural Heritage Compliance only (Go to Part B of the Notice)

Part A - Both Native Title and Cultural Heritage Compliance

- (a) Name of Project:.....
- (b) Name and contact details of the Proponent of the Project:
.....
.....
.....
- (c) For Native Title compliance purposes specify which class in clause 8.1 of the ILUA applies to the proposed project or other activity:
- ☐ Class 1 MIP Future Acts
- ☐ Class 2 Non-MIP Future Acts
- ☐ Class 3 Housing – Home Ownership Future Acts
- ☐ Class 4 Housing – Renovation Acts
- ☐ Class 5 Transfer-Related Future Acts
- (d) Following is a full description of the proposed project or other activity:
.....
.....
.....
- (e) Following is a description of the location of the proposed *Project Area* and any *Ancillary Project Area* and size of the *Project Area* and any *Ancillary Project Area* in square meters:
.....
.....

A *Project Plan* showing, in particular, the proposed *Project Area* and any proposed

Ancillary Project Area, accompanies this Notice.

Note: A plan of the activity should be attached to this notice so that that everyone knows exactly where the project or other activity is proposed to occur, in particular, the location of the proposed *Project Area* and any *Ancillary Project Area*. Although consultation will be needed before a final *Project Plan* is completed, the plan attached to this notice should meet the requirements in the definition of "*Project Plan*" in the ILUA as far as possible.

- (f) The proposed project or other activity is likely to commence in the following estimated timeframes:
.....
- (g) Where the proposed project or other activity involves the construction of an *Infrastructure Facility* but does not involve the grant of a lease, the *Useful Life* of the *Infrastructure Facility* will be:.....
- (h) For Cultural Heritage compliance purposes, the proposed project or other activity has been assessed under clause 17.1 as follows (tick one box only):
- ☐ It consists of Activities which are neither *Low Cultural Heritage Impact Activities* nor *High Cultural Heritage Impact Activities* (clause 17.2(a)(i)).
- ☐ It will be entirely located in an area which was previously *Cleared* (clause 17.2(a)(ii)). Details of the previous clearance are as follows:
.....
.....
- ☐ It is assessed as being of *Low Cultural Heritage Impact* for the following reasons:
.....
.....
- ☐ It is assessed as being of potentially *High Cultural Heritage Impact*. Therefore The *Proponent* and the *Body Corporate* must complete a *Cultural Heritage Clearance Procedure* for the proposed project, and you must return the completed Cultural Heritage Response Form at the end of this Notice to **[insert name of Proponent]** by(Insert a date at least 30 *Business Days* after the *Body Corporate* will have received this Notice).

Part B - Cultural Heritage Compliance Only

- (a) Name of Project:.....
- (b) Name and contact details of the Proponent of the Project:
.....
.....
.....
- (c) Following is a full description of the proposed project or other activity:
.....
.....
.....

- (d) Following is a description of the location of the proposed *Project Area* and any *Ancillary Project Area*:
-

A *Project Plan* showing, in particular, the proposed *Project Area* and any proposed *Ancillary Project Area*, accompanies this Notice.

Note: A plan of the activity should be attached to this notice so that everyone knows exactly where the project or other activity is proposed to occur, in particular, the location of the proposed *Project Area* and any *Ancillary Project Area*. Although consultation will be needed before a final *Project Plan* is completed, the plan attached to this notice should meet the requirements in the definition of "*Project Plan*" in the ILUA as far as possible.

- (e) The proposed project or other activity is likely to commence in the following estimated timeframes:
-
- (f) For Cultural Heritage compliance purposes, the proposed project or other activity has been assessed under clause 17.1 as follows (tick one box only):

☐ It consists of Activities which are neither Low Cultural Heritage Impact Activities nor High Cultural Heritage Impact Activities (clause 17.2(a)(i)).

☐ It will be entirely located in an area which was previously *Cleared* (clause 17.2(a)(ii)). Details of the previous clearance are as follows:

.....

☐ It is assessed as being of *Low Cultural Heritage Impact* for the following reasons:

.....

If you dispute that it will be of *Low Cultural Heritage Impact* you must notify **[insert name of Proponent]** in writing by
(Insert a date at least 30 *Business Days* after the *Body Corporate* will have received this Notice).

☐ It is assessed as being of potentially *High Cultural Heritage Impact*. Therefore if the *Body Corporate* wants to undertake a *Cultural Heritage Clearance Procedure* for the project or other activity, you must return the completed Cultural Heritage Response Form at the end of this notice to **[insert name of Proponent]** by
(Insert a date at least 30 *Business Days* after the *Body Corporate* will have received this Notice).

Cultural Heritage Response Form

The Mualgal Torres Strait Islanders Corporation RNTBC ICN 3369 hereby informs **[Insert name of Proponent]** that Mualgal Torres Strait Islanders Corporation RNTBC ICN 3369 does seek to undertake a *Cultural Heritage Clearance Procedure* for the *Activity* assessed as being of potentially *High Cultural Heritage Impact* that is outlined in this Notice. Please contact me to arrange a site inspection.

The Mualgal Torres Strait Islanders Corporation RNTBC ICN 3369 nominates the following people to

help carry out the site inspection:

- **[insert name]**

- **[insert name]**

Date Signed :

Signed:

Name:

Signatory's position at Mualgal Torres Strait Islanders Corporation RNTBC ICN 3369

Schedule 10 – Template Final Project Notice

This is a template of the *Final Project Notice* which the *Proponent* must give to the *Body Corporate* as part of the process for obtaining consent for some *Future Acts*.

The **[Insert name of the Proponent]** hereby notifies the Mualgal Torres Strait Islander) Corporation RNTBC ICN 3369 under the Moa Infrastructure and Housing ILUA which was registered on **[Insert date of registration of ILUA]** of its intention to proceed with the project described below.

The project detailed in this Notice is proposed to proceed on the following basis and in the following way:-

- (a) Name of project:.....
- (b) Specify the class of *Future Acts* in Clause 8.2 of the ILUA which relates to the project:
 - ☐ Class 1 MIP Future Acts
 - ☐ Class 2 Non-MIP Future Acts
 - ☐ Class 3 Housing – Home Ownership Future Acts
 - ☐ Class 4 Housing – Renovation Acts
 - ☐ Class 5 Transfer-Related Future Acts
- (c) Final description of the project and list of all the activities which it involves (insert full details in Schedule 1 Item A):

.....

.....

.....

.....
- (d) Where the proposed project or other activity involves the construction of an *Infrastructure Facility* but does not involve the grant of a lease, the *Useful Life* of the *Infrastructure Facility* will be:.....
- (e) Location of the *Project Area* and any *Ancillary Project Area* (also attach final *Project Plan* as Schedule 1 Item B – this needs to comply with the definition of “*Project Plan*” in the ILUA) and size of such areas in metres squared:-

.....

.....

.....

.....
- (f) Include any *Social and Economic Development Opportunities* in Schedule 2.

Date:

Signed :

Name :

Description of Signatory's position (must be someone authorised by the proponent).

```
#####
```

Schedule 1

Item A. The Project covers all of the following activities:

This image shows a full page of primary-ruled notebook paper. It features horizontal dashed lines for writing and two vertical solid lines on each side to create margins. The paper is white and contains no text or other markings.

Item B. Plan of Project Area including the size of that area in square meters.

[Insert Project Plan here]

Item C. Plan of any Ancillary Project Area including the size of that area in square meters.

[Insert Ancillary Project Area Plan here]

Schedule 2

O

[illegible]

O

(This area contains faint bleed-through from the reverse side of the page.)

Schedule 11 – Template Project Consent Certificate

This is a template of the certificate which the *Body Corporate* must give to satisfy the condition of consent which applies to some *Future Acts*.

Project Consent Certificate

For the purposes of the *Native Title Act*, the Mualgal Torres Strait Islanders Corporation RNTBC ICN 3369 and the Torres Strait Regional Authority hereby *Certify* that the project or other activities set out in the attached *Final Project Notice* has consent for purposes of the Moa Infrastructure and Housing ILUA which was registered on ***[Insert date of registration of ILUA]***.

This certificate also confirms that the requirements of Regulations 8 and 9 of the Native Title (Prescribed Bodies Corporate) Regulations 1999 (Clth) have been met.

This certificate provides for consent to the project as identified as follows:-

- (a) Name of project to which it applies:
.....
.....
- (b) It covers the *Project Area* and any *Ancillary Project Area* described in the *Final Project Notice* dated (a copy of that *Final Project Notice* must be attached to this certificate).

Tick which of the following applies (Tick one box only):

- (a)
- ☐ The traditional decision making process of the *Mualgal People* was complied with.
- ☐ The decision making process agreed to and adopted by the *Mualgal People* was complied with.
- (b) The common law native title holders have understood the purpose and nature of the benefits to be provided under this *ILUA* applicable to the project and this certificate by:
- Mualgal Torres Strait Islanders Corporation RNTBC ICN 3369 consulting, and considering the views of the *Native Title Representative Body* for the Project Area; and
 - being given notice of those views to the extent that the Mualgal Torres Strait Islanders Corporation RNTBC ICN 3369 considered it appropriate and practicable.

Signature by Body Corporate

We, the undersigned certify that:

1. this is a document for the purposes of regulations 9(1) and 9(6) of the Native Title

(Prescribed Bodies Corporate) Regulations 1999 (Clth);

2. we are all members of the *Body Corporate* and the *Mualgal People* whose native title rights and interests would be affected by the *Body Corporate* certifying that consent under the ILUA applies to the project;

3. the *Mualgal People* have been consulted about, and have consented to, the giving of this certificate by the *Body Corporate*; and

4. prior to the *Mualgal People* consenting to the *Body Corporate* entering into the ILUA:

- (a) the TSRA was consulted; and
- (b) the TSRA's views about the *Body Corporate* entering into the ILUA were considered in accordance with the sub-regulation 8(3) of the Native Title (Prescribed Bodies Corporate) Regulations 1999 (Clth).

.....
(Signature)

.....
(Signature)

.....
(Full Name)

.....
(Full Name)

this day of 20..

this day of 20..

in the presence of

in the presence of

.....
(Signature of Witness)

.....
(Signature of Witness)

.....
(Full Name of Witness)

.....
(Full Name of Witness)

.....
(Signature)

.....
(Signature)

.....
(Full Name)

.....
(Full Name)

this day of 20..

this day of 20..

in the presence of

in the presence of

.....
(Signature of Witness)

.....
(Signature of Witness)

<p>..... (Full Name of Witness)</p>	<p>..... (Full Name of Witness)</p>
<p>..... (Signature)</p> <p>..... (Full Name)</p> <p>this day of 20..</p> <p>in the presence of</p> <p>..... (Signature of Witness)</p> <p>..... (Full Name of Witness)</p>	<p>..... (Signature)</p> <p>..... (Full Name)</p> <p>this day of 20..</p> <p>in the presence of</p> <p>..... (Signature of Witness)</p> <p>..... (Full Name of Witness)</p>
<p>Signature by Native Title Representative Body</p>	
<p>..... (Signature)</p> <p>..... (Full Name)</p> <p>this day of 20..</p> <p>(Description of signatory's position (must be an authorised officer of the Native Title Representative Body)</p> <p>in the presence of</p> <p>..... (Signature of Witness)</p> <p>..... (Full Name of Witness)</p>	<p>..... (Signature)</p> <p>..... (Full Name)</p> <p>this day of 20..</p> <p>(Description of signatory's position (must be an authorised officer of the Native Title Representative Body)</p> <p>in the presence of</p> <p>..... (Signature of Witness)</p> <p>..... (Full Name of Witness)</p>

**Schedule 12 – Document for Regulation 9 of the
Native Title (Prescribed Bodies Corporate) Regulations 1999 (Clth)**

This is a document which under clause 20.2(d) must be executed in accordance with regulation 9 of the Native Title (Prescribed Bodies Corporate) Regulations 1999 (Clth).

We, the undersigned, certify that:

1. This is a document for the purposes of regulation 9(1) and 9(6) of the Native Title (Prescribed Bodies Corporate) Regulations 1999 (Clth) ("the PBC Regulations").
2. Attached to this document and marked "A" is a copy of the Moa Infrastructure and Housing ILUA that the Mualgal Torres Strait Islanders Corporation RNTBC ICN 3369 ("the Corporation") is proposing to enter into.
3. [If this document can be signed in accordance with regulation 9(4) rather than regulation 9(5) of the PBC Regulations, keep this clause 3 and delete the alternative clause 3 immediately below] We are all members of the Corporation and we are all *Mualgal People* whose native title rights and interests would be affected by the Corporation entering into the ILUA.
3. [If this document must be signed in accordance with regulation 9(5) rather than 9(4) of the PBC Regulations, keep this clause 3 and delete the alternative clause 3 immediately above] We are all members of the Corporation and we are all *Mualgal People*. All of the *Mualgal People* whose native title rights and interests would be affected by the Corporation entering into the ILUA are intended to sign this document. [All such people must sign this document]
4. The *Mualgal People* have been consulted about, and have consented to the Corporation entering into the ILUA.
5. Prior to the *Mualgal People* consenting to the Corporation entering into the ILUA -
 - a. the TSRA was consulted about the proposed decision for the Corporation to enter into the ILUA; and
 - b. the views of the TSRA about the Corporation entering into the ILUA were considered in accordance with the PBC Regulations.
6. Attached to this document and marked "B" is a copy of a document signed by an authorised member of the TSRA certifying that the TSRA has been consulted about the proposed decision for the Corporation to enter into the ILUA.

Signed by Donald Namai (Insert Name)

this 26 day of February 2020
in the presence of:

Witness: Cassandra Lang
(print name)



(signature)



(witness signature)

Signed by IONA. C. MANAS [Insert Name]

this 26 day of February 2020
in the presence of:

Witness: Cassandra Lang
(print name)



(signature)



(witness signature)


Signed by JEAN TAMUWOY [Insert Name]

this 26 day of February 2020
in the presence of:

Witness: Cassandra Lang
(print name)



(signature)



(witness signature)

Signed by DAVID BOSUN [Insert Name]

this 26 day of February 2020
in the presence of:

Witness: Cassandra Lang
(print name)



(signature)

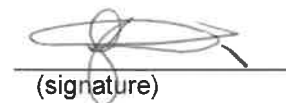


(witness signature)

Signed by JARAGU KANAI [Insert Name]

this 26 day of February 2020
in the presence of:

Witness: Cassandra Lang
(print name)



(signature)



(witness signature)

Attachment B – Document for Regulation 9(6) of the Native Title (*Prescribed Body Corporate*) Regulations 1999 (Cth)

I, _____ authorised member of the Torres Strait Regional Authority ("TSRA"),
certify that the TSRA has been consulted about the proposed decision by Mualgal Torres Strait
Islanders Corporation RNTBC, ICN 3369 to enter into the Moa Infrastructure and Housing Indigenous
Land Use Agreement

Signature by authorised officer of the TSRA

.....
(Signature)

.....
(Full Name)

this day of 2019

.....
(Description of signatory's position (must be
an authorised officer of the TSRA)

in the presence of:

.....
(Signature of Witness)

.....
(Full Name of Witness)

Schedule 13 – Deed to be executed by Opt-in Party

This is a template of the deed to be executed by a person other than the *TSIRC* or the *State* (or the *TSIRC* and the *State* acting jointly) who wishes to become a *Proponent* for particular *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Class 3 Housing – Home Ownership Future Acts*, *Class 4 Housing - Renovation Acts* or *Class 5 Transfer-Related Future Acts*.

Mualgal Torres Strait Islanders Corporation RNTBC ICN 3369

"Body Corporate"

[Insert name and address of person seeking to become proponent]

"Opt-in Party"

RECITALS

- A. The Opt-in Party wishes to carry out the Project in the *ILUA Area* and, therefore, requires either or both of the following:-
 - (a) native title consent for the Project;
 - (b) cultural heritage compliance for the Project
- B. The *ILUA* concerns certain classes of infrastructure, housing and transfer-related projects and the classes of *Future Acts* involved in the undertaking of them, which classes are called under the *ILUA Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Class 3 Housing – Home Ownership Future Acts*, *Class 4 Housing – Renovation Acts* and *Class 5 Transfer-Related Future Acts* and contains a means of achieving native title compliance and cultural heritage compliance outcomes for those projects.
- C. Under the *ILUA*, a person who undertakes a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Class 3 Housing – Home Ownership Future Acts*, *Class 4 Housing – Renovation Acts* or *Class 5 Transfer-Related Future Acts* is called a *Proponent*.
- D. Clause 7.4 of the *ILUA* permits a person other than the *TSIRC* and the State of Queensland to become a *Proponent* of a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Class 3 Housing – Home Ownership Future Acts*, *Class 4 Housing – Renovation Acts* or *Class 5 Transfer-Related Future Acts* if the person:
 - (a) has been determined in writing by the Body Corporate in its absolute discretion to be the proponent of a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Class 3 Housing – Home Ownership Future Acts*, *Class 4 Housing – Renovation Acts* or *Class 5 Transfer-Related Future Acts*; and
 - (b) has executed a deed in the form of this Deed; and
 - (c) has provided a copy of the executed deed to the original parties to the *ILUA*, called under the *ILUA* the *Parties*, being the Body Corporate, the *TSRA*, the *TSIRC* and the State of Queensland within 14 days.

- C. The Body Corporate has determined that the Opt-in Party is the proponent of the Project and that the Project involves *[Class 1 MIP Future Acts / Class 2 Non-MIP Future Acts / Class 3 Housing – Home Ownership Future Acts / Class 4 Housing - Renovation Acts / Class 5 Transfer-Related Future Acts]* for the purposes of the ILUA.
- D. The Opt-in Party has agreed to observe and be bound by the obligations which are imposed on a *Proponent* of a project involving *[Class 1 MIP Future Acts / Class 2 Non-MIP Future Acts / Class 3 Housing – Home Ownership Future Acts / Class 4 Housing - Renovation Acts / Class 5 Transfer-Related Future Acts]* under the ILUA and to accept the rights which are conferred on a *Proponent* under the ILUA.
- E. The Opt-in Party has agreed to provide a copy of this Deed to the Body Corporate, the TSRA, the TSIRC and the State of Queensland, within 14 days of the date of this Deed.

1. DEFINITIONS

1.1 In this deed -

'Deed' means this deed.

'ILUA' means the Moa Infrastructure and Housing Indigenous Land use Agreement between the Mualgal Torres Strait Islanders Corporation RNTBC ICN 3369, the TSIRC, the TSRA and the State of Queensland registered on the register of indigenous land use agreements pursuant to section 24BG(1) of the *Native Title Act 1993* (Clth) on **[insert date of registration]**.

'ILUA Area', 'TSIRC', 'Class 1 MIP Future Acts', 'Class 2 Non-MIP Future Acts', 'Class 3 Housing – Home Ownership Future Acts', 'Class 4 Housing - Renovation Acts' Class 5 Transfer-Related Future Acts' and 'Proponent' have the same meaning as in the ILUA.

'Project' means **[insert description of particular project involving Class 1 MIP Future Acts / Class 2 Non-MIP Future Acts / Class 3 Housing – Home Ownership Future Acts / Class 4 Housing - Renovation Acts / / Class 5 Transfer-Related Future Acts]**.

2. AGREEMENT

- 2.1 The Body Corporate has determined that the Opt-in Party is the proponent of the Project and that the Project is involves *[Class 1 MIP Future Acts / Class 2 Non-MIP Future Acts / Class 3 Housing – Home Ownership Future Acts / Class 4 Housing - Renovation Acts / Class 5 Transfer-Related Future Acts]* for the purposes of the ILUA.
- 2.2 The Opt-in Party agrees to observe and be bound by the obligations which are imposed on a *Proponent* of a project involving *[Class 1 MIP Future Acts / Class 2 Non-MIP Future Acts / Class 3 Housing – Home Ownership Future Acts / Class 4 Housing - Renovation Acts / Class 5 Transfer-Related Future Acts]* under the ILUA, including payment by the Opt-in Party to the Body Corporate of any applicable compensation entitlement payable under the ILUA, and to accept the rights which are conferred on a *Proponent* under the ILUA.
- 2.3 The Opt-in Party will provide a copy of this Deed to the Body Corporate, the TSRA, the TSIRC and the State of Queensland, within 14 days of the date of this Deed.
- 2.4 The Opt-in Party acknowledges that it has received a copy of the ILUA and has had an opportunity to seek independent legal advice with respect to all aspects of this Deed and the ILUA.

Executed as a deed this day of 20

[NOTE: Insert appropriate execution clauses for Body Corporate and Opt-in Party]

TORRES STRAIT ISLAND REGIONAL COUNCIL

TRUSTEE REPORT

COUNCIL ORDINARY MEETING

DATE: March 2021

SUBJECT: Saibai Health Lease F assignment to TCHHS

AUTHOR: Julia Maurus, Manager Legal Services

PERSONAL INTERESTS

Councillors are reminded to declare any personal interests relating to:

- State of Queensland (represented by Queensland Health)
- Torres and Cape Hospital and Health Service (TCHHS)
- Traditional owner interests at Saibai

RECOMMENDATION

1. *That pursuant to the Torres Strait Islander Land Act 1991 (Qld), the Trustee consent to the State of Queensland (represented by Queensland Health) assigning Lease 717381004 (Saibai Lease F on SP258902, title reference 51134285) to the Torres and Cape Hospital and Health Service (TCHHS).*
2. *That the Trustee delegate to the Chief Executive Officer the power to conclude the terms of the Deed of Consent to Assignment of Lease and execute same.*



BACKGROUND

The Department of Health has asked to transfer its “Lease F” at Saibai to the Torres and Cape Hospital and Health Services. Health lease “F” is the residential Health duplex next to the IBIS.

The proposal is to change who holds the lease: for historical reasons, the lease is still in the name of the State of Queensland (represented by Queensland Health) and has not yet been transferred across to the Torres and Cape Hospital and Health Service by the Department. The lease transfer will not change any terms of the lease.

OFFICER COMMENT

Saibai lease F is included as Attachment 1.

The draft Deed of Consent to Assignment of Lease is included as Attachment 2.

The Lease relevantly provides for transfer with the Trustee's consent, which must not be unreasonably withheld. This clause 15 is considered to cover the current request to assign the lease.

15. Transfer, Sub-letting and Other Interests

Queensland Government

- 15.1 While the Queensland Government is the Lessee, the Lessee by notice to the Trustee, may advise of a change of the department or body holding and administering this Lease and may lodge with the Registrar such documents as are required to record the change.

No Transfer Without Consent

- 15.2 Subject to clause 15.1, the Lessee must not transfer, sub-lease or create another interest in this Lease except with the prior written consent of the Trustee. The Trustee must not unreasonably withhold consent to the transfer or sub-lease.

Document No.: 4241942 v3 - Saibai – lease from TSIRC to Department of Health

CONSULTATION

- Cr Conwell Tabuai
- Crown Law
- TCHHS
- Legal Services Division

LINKS WITH STRATEGIC PLANS

Corporate Plan

STATUTORY REQUIREMENTS

Torres Strait Islander Land Act 1991 (Qld)
Native Title Act 1993 (Cth)

FINANCE AND RISK

Capital Cost

NIL

Operating Cost

NIL

Risk Assessment

NIL

SUSTAINABILITY

Trustee lease revenue is vital to ensuring the sustainability of the Trustee's functions and improvement of the DOGIT.

CONCLUSION

As presented.

Ilario Sabatino
A/CEO



Julia Maurus
Manager Legal Services

ATTACHMENTS

1. Saibai Health Lease F
2. Draft Deed of Consent to Assignment of Lease

717381004

EL 500 \$0.00

12/07/2016 15:02:06

OFFICE USE ONLY

This form is authorised by legislation and is
the Department's website.

1. Lessor TORRES STRAIT ISLAND REGIONAL COUNCIL DEED OF GRANT IN TRUST THE GRANTEE TO HOLD THE SAID LAND IN TRUST FOR THE BENEFIT OF ISLANDER INHABITANTS AND FOR NO OTHER PURPOSE WHATSOEVER	Lodger (Name, address, E-mail & phone number) STATE CROWN SOLICITOR GPO BOX 5221 BRISBANE QLD 4001 PHONE: 3239 6233 REF: CP5/HEA027/6918/TZE	Lodger Code BE066A
---	--	----------------------------------

2. Lot on Plan Description LOT 3 ON CROWN PLAN TS157	County	Parish	Title Reference 21296134
--	---------------	---------------	------------------------------------

3. Lessee	Given names	Surname/Company name and number	(include tenancy if more than one)
		THE STATE OF QUEENSLAND (REPRESENTED BY DEPARTMENT OF HEALTH)	

4. Interest being leased
FEE SIMPLE IN TRUST

5. Description of premises being leased
LEASE F ON SP 258902 IN LOT 3 ON TS157

6. Term of lease Commencement date: 30/3/2016 Expiry date: 01/08/2042 Options: Nil #Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)	7. Rental/Consideration \$2,330 per annum
--	---

8. Grant/Execution

The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in the attached Schedule A.

* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

.....signature

.....full name

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1
of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Execution Date

SEE ENLARGED PANEL

Lessor's Signature

9. Acceptance

The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.

.....signature

.....full name

.....qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1
of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Execution Date

SEE ENLARGED PANEL

Lessee's Signature

Title Reference 21296134

8. Grant/Execution


The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in the attached Schedule A.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

Witnessing Officer

Execution
Date

Lessor's Signature

 signature
Fiona Campbell 13/5/16 full name
Solicitor qualification

as per Schedule 1 of Land Title Act 1994 (eg Legal
Practitioner, JP, C.Dec)

Signed for and on behalf of the **TORRES STRAIT
ISLAND REGIONAL COUNCIL**

by Chris McLaughlin full name

 signature
Mayor/Chief Executive Officer

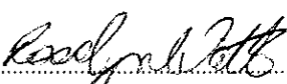
9. Acceptance

The lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.

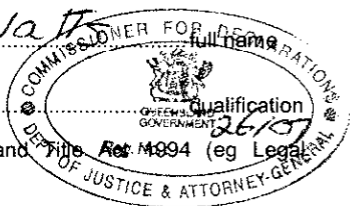
Witnessing Officer

Execution
Date

Lessee's Signature

 signature
Rocky Watters 27/04/16 full name

as per Schedule 1 of Land Title Act 1994 (eg Legal
Practitioner, JP, C.Dec)



Signed for and on behalf of **THE STATE OF
QUEENSLAND (REPRESENTED BY DEPARTMENT
OF HEALTH)**

by NICOLE DAVIS full name

GM, ASSETS & FACILITIES designation

who is a duly authorised officer

 signature

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Reference Table

Premises description	Premises located at Hospital Road, Saibai Island described as Lease F on SP 258902 in Lot 3 on Crown Plan TS157
Trustee name and notice details	<p>Torres Strait Island Regional Council</p> <p>Delivery Address: Lot 12 Francis Road Hammond Island Qld 4870</p> <p>Postal Address: PO Box 7336 Cairns Qld 4870</p> <p>Facsimile: (07) 4069 1868</p> <p>Email: records@tsirc.qld.gov.au</p> <p>Attention: Chief Executive Officer</p>
Trust	For the benefit of Islander inhabitants and for no other purpose whatsoever.
Lessee name and notice details	<p>The State of Queensland (represented by Department of Health)</p> <p>Delivery Address: Level 6, William McCormack Place 5B Sheridan Street Cairns Qld 4870</p> <p>Postal Address: PO Box 5607 Cairns Qld 4870</p> <p>Facsimile: (07) 4226 5678</p> <p>Email: TCHHS-Chief-Executive@health.qld.gov.au</p> <p>Attention: Health Service Chief Executive Torres and Cape Hospital and Health Service</p>
Rent	\$2330 per annum
Area	269 m ²
Community	Torres Strait Communities – Top Western Islands Saibai

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1. Interpretation and Definitions

Definitions

1.1 In this Lease, unless the context requires otherwise, the following terms will have the meanings assigned to them:

Act means the *Torres Strait Islander Land Act 1991* (Qld) as amended from time to time and if that Act is repealed, any Act which replaces it;

Agreed Standard means the standard agreed in writing between the parties from time to time or, failing agreement, the higher of:

- (a) the relevant Australian standard (if applicable);
- (b) the relevant industry code or guidelines;
- (c) the standard required by law;
- (d) generally accepted industry standards and practices; and
- (e) community accepted standards and practices;

Air Conditioning Equipment means the plant, electrical installations, ductwork and diffusers used for the manufacture and reticulation of conditioned air throughout the Premises and includes all mechanical ventilation;

Approvals means any consent or approvals required by law;

Building means the staff residence to be constructed on the Trust Land under clause 4;

Commencement Date means the dates specified in Item 6 on the Form 7;

Department means the Department of Natural Resources and Mines;

DOGIT means the deed of grant in trust granted over the Trust Land;

Expiry Date means the date specified in Item 6 on the Form 7;

Fire Equipment includes all stop-cocks, hydrants, fire hoses, fire alarms, fire sprinklers and other fire prevention, extinguishing and detection equipment in the Premises;

Form 7 means the Form 7 lease which incorporates by reference the terms of this document;

Government Services Use means public infrastructure for a purpose as defined under section 5 of the *Acquisition of Land Act 1967* and involves the development, subsequent use and maintenance of the Premises to deliver any such purpose together with such office, storage or residential purpose buildings (including accommodation for government employees) of and incidental to, or necessarily connected to the delivery of that purpose. For information and not as a limit upon the extent of the permissible uses within this definition, this includes providing improvements essential to public administration, health, education and training facilities, policing, community infrastructure or similar services under an administrative requirement or obligation on the Queensland Government;

GST has the same meaning in the GST Law;

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999*;

Improvements means as Trustee's Improvements and the Lessee's Improvements;

Land Act Minister means the Minister administering the *Land Act 1994*;

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Lease means a lease under the Act and the agreement recorded in this document, its schedules, plans and attachments and includes any variation which has been duly executed by the parties and registered by the Land Registrar;

Lease Year means each separate year of the Term of this Lease, the first Lease Year commencing on the Commencement Date;

Lessee means the Lessee named in Item 3 on the Form 7 and unless inconsistent with the subject matter, includes all persons authorised by the Lessee;

Lessee's Improvements means all improvements, fixtures and fittings on the Premises but excluding the Trustee's Improvements and items owned by a third party;

Minister means the minister from time to time administering the Act;

Permitted Use means the use specified in clause 3.1;

Plans means the plans substantially in the same form as the plans attached in Schedule C;

Premises means the premises described in Item 5 of the Form 7 and shown on the plan attached as Schedule B;

Queensland Government means the State of Queensland and includes each and every department or other body owned or controlled by the State of Queensland, but does not include a Government Owned Corporation under the *Government Owned Corporations Act 1993*;

Reference Table means the table and information on page 3 of this Lease;

Registrar means the Registrar of Titles under the *Land Title Act 1994* or the chief executive under the *Land Act 1994* as applicable;

Rent means the amount specified in the Reference Table and where applicable, adjusted in accordance with clause 5.2(a) or 5.4;

Services means those services provided by the local government and includes potable water, sewerage, stormwater and drainage and formed roads;

Supply has the same meaning as that term in the GST Law;

Tax Invoice has the same meaning as that term in the GST Law;

Term means the period specified in Item 6 on the Form 7;

Torres Strait Islander Land has the same meaning as that term of the Act;

Trust Land means the land described in Item 2 on the Form 7;

Trustee means the Trustee referred to as the Lessor in Item 1 on the Form 7, together with its successors and permitted assigns and unless inconsistent with the subject matter or context, includes all persons for the time being authorised by the Trustee;

Trustee's Improvements means all improvements on the Premises owned by the Trustee; and

Utilities means those services provided by the local government or by an external provider including electricity, telecommunications and rubbish removal.

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Interpretation

- 1.2 Headings are for convenience only and do not affect interpretation of this Lease.
- 1.3 A reference to a person includes a reference to corporations and other entities recognised by law.
- 1.4 A reference to a statute, regulation, ordinance or local law will be deemed to extend to all statutes, regulations, ordinances or local laws amending, consolidating or replacing them.
- 1.5 The singular includes the plural and vice versa.
- 1.6 Words importing one gender will include a reference to all other genders.
- 1.7 A covenant or agreement on the part of two or more persons will be deemed to bind them jointly and severally.
- 1.8 A reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment to this Lease and includes any amendments to them made in accordance with this Lease.
- 1.9 Where under or pursuant to this Lease the day on or by which any act, matter or thing is to be done is a Saturday, Sunday or public holiday in the place where the act or thing is to be done, the act, matter or thing may be done on the next business day in that place.
- 1.10 In the absence of any provision to the contrary, references to the Premises include any part of the Premises.

2. Commencement and Term of Lease

- 2.1 The Term of this Lease is the term described in Item 6 of the Form 7.

3. Permitted Use

Lessee Use of Premises

- 3.1 The Lessee must use the Premises for:
 - (a) the construction of the Building under clause 4;
 - (b) residential accommodation for employees of the Lessee,and for any other Government Services Use reasonably incidental to those purposes.

No Liquor on Premises

- 3.2 The Lessee may not store, sell or supply liquor on the Premises unless:
 - (a) the Lessee has obtained the prior written consent of the Trustee;
 - (b) the Lessee has obtained all necessary licences and Approvals; and
 - (c) the storage, sale or supply is in accordance with the terms of all licences and Approvals.

4. Construction of Building

Trustee's Consent

- 4.1 The Trustee authorises and consents to the Lessee constructing residential accommodation for its employees in substantially the same form as the Plans.

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Approvals and Plans

4.2 The Lessee will:

- (a) obtain all Approvals required for the construction of the Building;
- (b) construct the Building in accordance with the Approvals and the Plans;
- (c) construct the Building in a proper and workman like manner, using good quality materials; and
- (d) use its best endeavors to complete construction of the Building no later than 3 years after the Commencement Date.

5. Rent

Payment of Rent

- 5.1 The Lessee must pay the Rent to the Trustee annually in accordance with clause 5.2.

Prescribed Rent

- 5.2 If during the Term of this Lease a regulation is made under the Act which prescribes the rent for leases granted to the State of Queensland under the Act, then:

- (a) if applicable, the Rent must be adjusted to comply with the prescribed amount under that regulation; and
- (b) this Lease must be amended in accordance with clause 29.1(b) to reflect the adjusted Rent.

Time of Payment

- 5.3 Unless otherwise agreed in writing, the Rent must be paid in advance on the Commencement Date and after that, on each anniversary of the Commencement Date. A pro-rata adjustment must be made for any periods relating to part of a Lease Year.

Rent Adjustments

- 5.4 Unless otherwise agreed between the parties, the Rent payable for the second and each subsequent Lease Year will be determined in accordance with the following formula:

$$\text{Rent} = \frac{R \times C2}{C1}$$

Where:

R is the sum equal to the Rent payable during the first Lease Year; and

C1 is the Consumer Price Index (All Groups) for Brisbane index number as published by the Australian Bureau of Statistics for the quarter ending immediately prior to the Commencement Date; and

C2 is the Consumer Price Index (All Groups) for Brisbane index number as published by the Australian Bureau of Statistics for the quarter ending immediately prior to the date of commencement of the particular Lease Year for which the Rent is to be calculated and increased.

Change of Index

- 5.5 If at any time during the Term the Consumer Price Index (All Groups) figure for the City of Brisbane published by the Australian Bureau of Statistics is discontinued or modified, the Australian Government Statistician will be asked to nominate the Index which in his/her opinion is the most practical for the purpose of measuring any variation in

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the cost of living in the City of Brisbane as between the Date of Commencement and the commencement of the Lease Year for which the annual Rent is being calculated. The base figure under such Index which in his/her opinion corresponds to the Consumer Price Index (All Groups) will be adopted in lieu of such index figure for the City of Brisbane for the purposes of this Lease. Pending such determination, the Lessee will continue to pay the annual Rent payable during the previous year and an adjustment will be made between the parties upon the determination being notified in writing to the Lessee.

6. Outgoings

Statutory Charges

6.1 The Lessee must pay all:

- (a) local government service charges for the Premises; and
- (b) other statutory levies and charges payable by the occupier of the Premises.

Reimbursement

6.2 If an amount under clause 6.1 is levied on the Trustee, then the Lessee must reimburse the Trustee for the amount, or pay the amount at the Trustee's direction, by the later of:

- (a) the due date for payment by the Trustee; and
- (b) the date which is 30 Business Days after the Lessee is called upon by the Trustee to pay the amount.

Pro-rata

6.3 If an amount referred to in clause 6.1 relates to more than the Premises, then a pro-rata adjustment (as bona fide determined by the Trustee) must be made and the Lessee will be responsible for its reasonable share of the amount. The Lessee's share will be the proportion that the Premises bears to the area to which the amount relates.

Services

6.4 In respect of Utilities provided to the Premises, the Lessee is responsible for:

- (a) establishing accounts in its own name wherever possible; and
- (b) paying all fees and charges for the use of the Utilities.

7. Inspection by Trustee

Inspection

7.1 After giving 10 days' written notice to the Lessee, the Trustee and its agents may inspect the Premises. These inspections may be undertaken annually, or at such other time during the Term where a reasonable cause for an inspection is stated in the notice.

Lessee to be Present at Inspection

7.2 Any inspection under clause 7.1 must be undertaken in the presence of a nominated officer of the Lessee.

Areas Excluded from Inspection

7.3 Despite clause 7.1, the Lessee may give notice to the Trustee that access to certain areas of the Premises is excluded by law, or due to reasonable security, or public concerns, having regard to the Permitted Use.

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Written Report

7.4 Where the Lessee has given notice under clause 7.3, the Lessee must provide a written report to the Trustee certifying:

- (a) that part of the Premises excluded from the inspection continues to be used for the Permitted Use; and
- (b) the state of repair of the Premises.

8. Nuisance

8.1 The Lessee:

- (a) must conduct its operations on the Premises in an orderly and respectable manner; and
- (b) will not do, or suffer to be done, anything in, upon, or about the Premises which is, or may be, or may become a nuisance.

9. Pest Plants and Animals

9.1 The Lessee must control pest plants and animals on the Premises during the Term of this Lease in accordance with the *Land Protection (Pest and Stock Route Management) Act 2002* and the requirements of the Torres Strait Island Regional Council.

10. Removal of Trees

10.1 The Lessee must not remove or destroy any trees on the Premises, unless in accordance with the *Vegetation Management Act 1999* and/or the *Sustainable Planning Act 2009*. The Lessee must consult the Trustee in regard to any proposed removal or destruction of trees on the Premises.

11. Quiet Enjoyment

11.1 If the Lessee pays the Rent and observes and performs its covenants and conditions of this Lease, the Lessee will be entitled to quiet enjoyment of the Premises without interruption or disturbance by the Trustee, or any person claiming under or through the Trustee.

12. Environment Protection

No Pollution

12.1 The Lessee must not dispose of, or permit to be disposed of, any garbage, oil, chemical or other substance or thing from the Premises in the sea, or on the Trust Land in such a way as it may leak, wash or be blown or otherwise enter into any watercourse or the sea.

Storage

12.2 The Lessee:

- (a) must store and keep all trade refuse and trade garbage in proper containers; and
- (b) must dispose of all refuse regularly and hygienically at an approved rubbish dump,

without causing pollution or damage to the surrounding land or sea. Trade refuse and trade garbage includes debris from building works, chemicals from chemical works, medical waste and other waste of this type but does not include general refuse and garbage which is collected by the relevant local authority.

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Lessee's Obligation

12.3 The Lessee must use all reasonable endeavours to:

- (a) overcome and minimise any deleterious effects upon the environment arising from its use of the Premises; and
- (b) rehabilitate the Premises if there is damage caused to the Premises as a result of and incidental to the Lessee's use of the Premises.

13. Compliance with Laws

13.1 The Lessee must punctually comply with and observe the requirements of all statutes, regulations, ordinances and local laws relating to its occupation of the Premises, including any Approvals required for the use of the Premises.

14. Access, Utilities and Services

Access

14.1 If there is no direct access to the Premises from a public road, the Trustee grants the Lessee and its officers, employees, agents, contractors, consultants and invitees reasonable access through the land adjoining the Premises for the purpose of gaining access to the Premises.

14.2 The route over the Trust Land for access to the Premises may be restricted by the Trustee, with the means of access directed to the shortest practical route which both minimises nuisance or interference to the Trustee, adjoining occupiers or neighbours and is culturally appropriate, but the Trustee cannot deny reasonable access. Where the Trustee may lawfully restrict access by persons upon the Trust Land, the Lessee must inform the Trustee of the names or descriptions of persons, or types of person required to undertake the Permitted Use and the Trustee will not deny access to the named or described persons, or types of persons without just cause.

14.3 The Lessee agrees that the provisions of clause 17 (Insurance) and clause 19 (Release and Indemnity) applies to the exercise by the Lessee of its rights pursuant to clause 14.1.

Utilities

14.4 At its cost, the Trustee must ensure that Utilities are provided to the boundary of the Premises, to the Agreed Standard and available for connection or use by the Lessee at the Lessee's cost.

Services

14.5 At its cost, the Trustee must ensure that Services are provided to the boundary of the Premises, to the Agreed Standard.

15. Transfer, Sub-letting and Other Interests

Queensland Government

15.1 While the Queensland Government is the Lessee, the Lessee by notice to the Trustee, may advise of a change of the department or body holding and administering this Lease and may lodge with the Registrar such documents as are required to record the change.

No Transfer Without Consent

15.2 Subject to clause 15.1, the Lessee must not transfer, sub-lease or create another interest in this Lease except with the prior written consent of the Trustee. The Trustee must not unreasonably withhold consent to the transfer or sub-lease.

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16. Improvements, Repairs and Alterations

Lessee's Improvements

16.1 Subject to clause 16.3, the Lessee, at its cost, may:

- (a) construct and install on the Premises all Lessee's Improvements which the Lessee determines are necessary for its use of the Premises;
- (b) modify or extend the Lessee's Improvements from time to time in order to meet the requirements of the Lessee; and
- (c) construct other improvements to replace the Lessee's Improvements (or any part of them) in the event of destruction of the Lessee's Improvements (or any part of them).

16.2 The rights under clause 16.1 are in addition to the rights of the Lessee to construct the Buildings under clause 4.

Approvals

16.3 Before constructing any improvements, the Lessee must obtain all applicable Approvals.

Ownership

16.4 Subject to clauses 21 and 22, the Lessee's Improvements remain the property of the Lessee.

Appearance of Premises

16.5 The Lessee must:

- (a) keep the Premises fit for occupation by the Lessee for the Permitted Use; and
- (b) maintain the outward appearance of the Premises in a state of cleanliness and good repair so as not to unduly diminish the aesthetic appearance of the general locality in which the Premises are situated.

Lessee's Obligations

16.6 The Lessee must maintain and repair the Lessee's Improvements at the Lessee's cost including fair wear and tear.

16.7 The Lessee must maintain the Air Conditioning Equipment and Fire Equipment in good order and repair.

17. Insurance

Lessee's Policy

17.1 The Lessee must effect a public liability insurance policy with an insurer authorised under the *Insurance Act 1973* (Commonwealth), naming the Lessee as the insured. The policy must cover legal liability for any loss of or damage to any property and for the injury (including death) to any person arising out of anything done, or omitted on or about the Premises and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect of the loss, damage or injury. The policy must be:

- (a) for an amount of not less than \$20 million in respect of all claims arising out of a single event or such higher amounts as the Trustee may reasonably require;
- (b) effected on a 'claims occurring' basis so that any claim made by the Lessee under the policy after the expiration of the period of policy cover, but relating to an event occurring during the currency of the policy, will be covered by the policy subject to the claim meeting the policy's other terms and conditions; and
- (c) maintained at all times during the currency of this Lease.

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Renewal of Lessee's Policy

- 17.2 The Lessee must renew the policy, at the Lessee's expense, each year during the Term of this Lease and forward a certificate of currency to the Trustee within 14 days of the commencement of each Lease Year.

Cancellation of Lessee's Policy

- 17.3 Upon receipt of a notice of cancellation of the policy, the Lessee must immediately effect another public liability policy in accordance with the provisions of this clause 17.

Government Lessee

- 17.4 Clause 17.1 is satisfied if:

- (a) the Lessee is the Queensland Government, or a statutory authority eligible for cover under the Queensland Government Insurance Fund and is insured and continues to be insured by the Queensland Government Insurance Fund; or
- (b) the Lessee is the Commonwealth of Australia, or a statutory authority eligible for cover under the Comcover Insurance Fund and it is insured and continues to be insured by Comcover.

Keep Trustee Informed

- 17.5 As soon as practicable, the Lessee must inform the Trustee in writing, of the occurrence of any event that the Lessee considers is likely to give rise to a claim under the policy of insurance effected. The Lessee must ensure that the Trustee is kept fully informed of subsequent actions and developments concerning the claim.

18. No Warranties

- 18.1 The Trustee gives no warranty as to the suitability of the Premises for the Permitted Use.

19. Release and Indemnity

- 19.1 The Lessee:

- (a) indemnifies; and
- (b) releases and discharges,

the Trustee, the Minister, the Land Act Minister and the State of Queensland represented by the Department of Natural Resources and Mines ('the Indemnified') from and against all actions, claims, demands, costs, losses, damages and expenses which may be brought against or made upon the Indemnified or which the Indemnified may pay, sustain or be put to by reason of, or in consequence of or in connection with the occupation and use of the Premises, except to the extent of any negligent act or omission of the Indemnified, their employees, servants, contractors, or agents.

20. Default

- 20.1 Subject to section 124 of the *Property Law Act 1974*, if a party (Defaulting Party) defaults under this Lease (a Default) then, in addition to any other right the other party (Innocent Party) may have, the following clauses will apply:

- (a) the Innocent Party may serve a notice to remedy the Default (a Default Notice) on the Defaulting Party. The Default Notice must provide reasonable particulars of the default and require the Defaulting Party to remedy the default within a reasonable time (which must not be less than 30 Business Days and may be such longer period as the Innocent Party at its absolute discretion allows);

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- (b) the Defaulting Party must use its best endeavours to remedy the Default as soon as reasonably possible and in any case, within the time stipulated in the Default Notice;
- (c) when the Defaulting Party has remedied the Default, it must provide reasonable evidence to the Innocent Party that it has done so; and
- (d) if the Defaulting Party has not remedied the default to the Innocent Party's reasonable satisfaction prior to expiry of the time stipulated in the Default Notice, then:
 - (i) the Innocent Party may elect to:
 - (A) remedy the Default, in which case the Defaulting Party must pay all of the Innocent Party's reasonable costs and outlays of and incidental to the Default Notice and remedying the Default; or
 - (B) serve a written notice on the Defaulting Party terminating the Lease if the Innocent Party has been materially prejudiced by the unremedied default; and
 - (ii) the Innocent Party may claim compensation for the Default from the Defaulting Party.

21. Damage and Destruction

Damage

- 21.1 Subject to clauses 21.2 and 21.3, if during the Term any of the Lessee's Improvements are damaged or destroyed then in respect of the repair, reinstatement, or replacement (Repair) of the Lessee's Improvements the Lessee may either Repair the Lessee's Improvements at its cost or terminate this Lease.

Fault

- 21.2 To the extent a party causes or contributes to the damage or destruction of the Lessee's Improvements, whether by wilful damage or neglect, that party is responsible for repairing and reinstating the damage at its expense.

Notice by Lessee

- 21.3 No later than 20 Business Days after the Damage, the Lessee must give written notice to the Trustee:
- (a) of the Lessee's intention to Repair the Lessee's Improvements; or
 - (b) terminating this Lease.

22. Removal of Improvements

- 22.1 At the expiry or sooner termination of this Lease:

- (a) the Lessee may remove any of the Lessee's Improvements and its other property, within 3 months of the date that the Lease ends and the Lessee must repair any damage caused by the removal of the Lessee's Improvements;
- (b) the Lessee must leave the Premises in a clean and tidy state; and
- (c) if the Lessee does not remove the Lessee's Improvements, then it must leave the Lessee's Improvements in good and tenantable condition.

Lessee's Acknowledgement

- 22.2 The Lessee specifically acknowledges and agrees that the provisions of clause 17 (Insurance) and clause 19 (Release and Indemnity) apply to the exercise by the Lessee of its rights pursuant to this clause 22.

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Lessee's Improvements not Removed from Premises

- 22.3 Any of the Lessee's Improvements which have not been removed within 3 months after this Lease ends will become the property of the Trustee.

23. Surrender

Lessee's Surrender of Lease

- 23.1 At any time during the Term of this Lease, the Lessee may surrender its interest in this Lease by:

- (a) giving not less than 3 months' written notice to the Trustee of its decision to do so; and
- (b) providing to the Trustee an executed surrender in registrable form.

Trustee to Execute Surrender

- 23.2 The Trustee must execute the surrender and return it to the Lessee within 14 Business Days for registration with the Department. On the registration of the surrender, this Lease will end and the provisions in clause 22 will apply.

24. No Waiver

- 24.1 If there is any delay or indulgence on the part of a party in the exercise by it of any of its rights, powers or remedies under this Lease, such delay or indulgence will not be deemed to be a waiver of such rights powers or remedies except where specifically communicated to the other party in writing.

25. Consents

- 25.1 Any permission, consent or approval to be given by the Trustee must not be unreasonably withheld but may be given subject to reasonable conditions.

26. Property Law Act Exclusions

- 26.1 The obligations and powers implied under sections 105 and 107 of the *Property Law Act 1974* are expressly excluded from this Lease.

27. Further Assurances

- 27.1 Where a party to this Lease has an obligation or right to do something, then the other party:

- (a) must not unreasonably do anything which prevents the party from performing its obligation or exercising its right; and
- (b) must at the other party's expense, sign any documents or do any acts reasonably required to assist the other party performing the obligation or exercising the right, except in circumstances where doing so would materially prejudice the party.

28. GST

- 28.1 All payments to be made by the Lessee under this Lease (including Rent) are calculated exclusive of GST.

- 28.2 If GST is or will be assessed on the provision of goods, services or any other Supply under this Lease, then the recipient of the Supply must pay the relevant GST amount (in addition to all payments whatsoever contracted to be made under this Lease) to the supplier, upon receipt of a valid Tax Invoice.

29. Amendment of Lease

- 29.1 This Lease may be amended in accordance with the Act if:

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- (a) both the Trustee and the Lessee agree; and
- (b) a formal instrument of amendment is registered with the Department.

30. Notices

Form of Notices

- 30.1 Notices under this Lease may be delivered by hand, by mail, by facsimile or by email to the addresses specified in the Reference Table, or any substitute address as may have been notified in writing by the relevant addressee from time to time.

Time of Notice

- 30.2 Notice will be deemed given:

- (a) 10 days after deposit in the mail with postage prepaid;
- (b) when delivered by hand;
- (c) if sent by facsimile transmission, upon an apparently successful transmission being noted by the sender's facsimile machine prior to close of business at 5.00pm; or
- (d) if emailed, on the date of the email,

as the case may be.

- 30.3 An email or facsimile transmissions received after 5.00pm on any day will be deemed to be received at the start of the next business day,

as the case may be.

31. Costs

Registration and Survey Fees

- 31.1 The Lessee must pay any registration fees and survey fees for this Lease.

Stamp Duty

- 31.2 The Lessee must pay the stamp duty (if any) for this Lease.

Costs Generally

- 31.3 Each party is responsible for its own costs of and incidental to this Lease, including the cost of any necessary consents and Approvals sought by that party.

32. Cancellation of Lease

Reasons for Cancellation

- 32.1 Subject to clause 32.2, the parties acknowledge that if the DOGIT is cancelled or the area on which the Premises are located is deleted from the DOGIT, then this Lease is cancelled on the date that the DOGIT is cancelled, or the area deleted.

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Torres Strait Islander Land

32.2 If:

- (a) this Lease is registered of the Trust Land; and
- (b) the Trust Land becomes Torres Strait Islander Land,

then this Lease continues in force.

Effect of Cancellation

32.3 If this Lease is cancelled under clause 32.1, then no person has a right to a claim for compensation.

Land Act Minister's Approval to Remove Lessee's Improvements

32.4 If this Lease is cancelled under clause 32.1:

- (a) the Lessee may make an application to the Land Act Minister, for the Land Act Minister's approval to remove the Lessee's Improvements from the Premises and the Trustee will not object to the Lessee's application;
- (b) the Lessee may only remove the Lessee's Improvements with the Land Act Minister's prior written approval; and
- (c) the Lessee must pay the Lessee's costs of removing the Lessee's Improvements from the Premises.

33. Registration of Lease

33.1 The Lessee must register this Lease after receiving the signed Lease from the Trustee.

34. Governing Law

34.1 This Lease is governed by the laws of Queensland.

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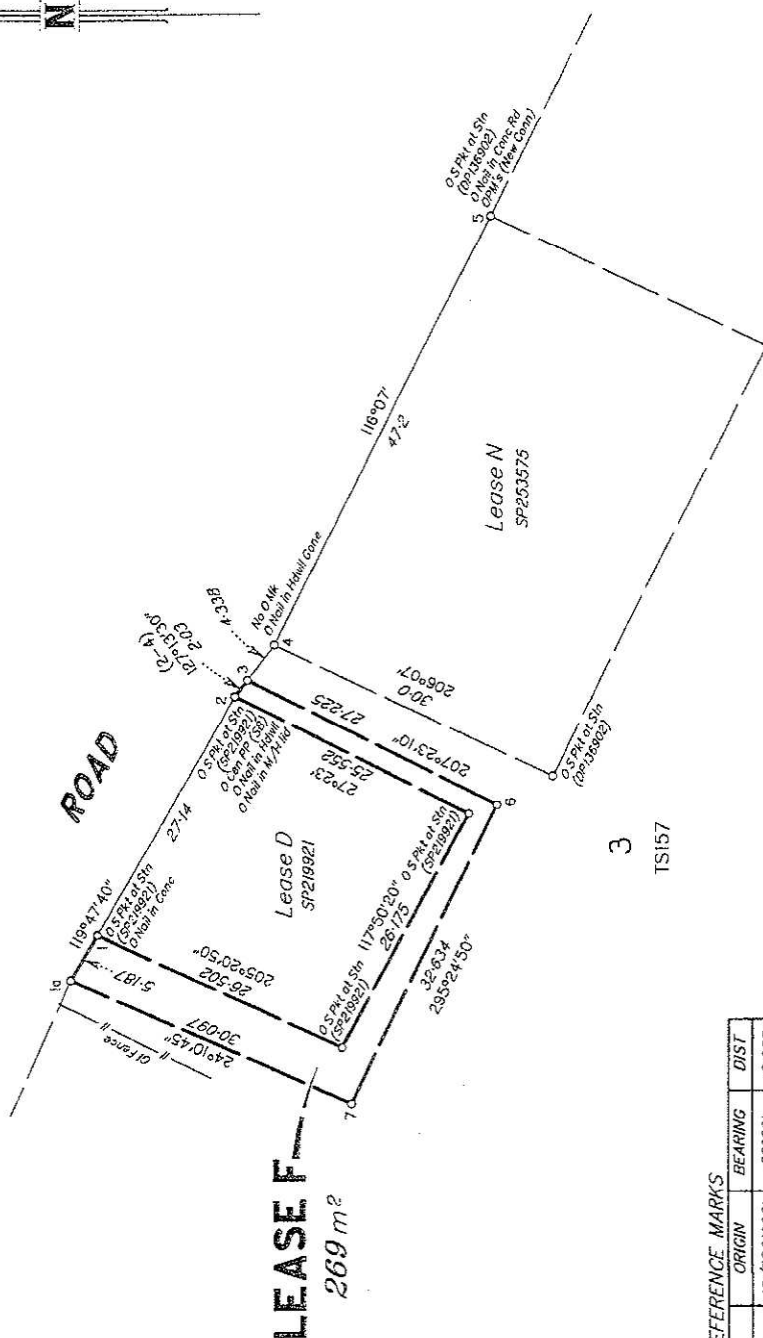
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Plan of Premises

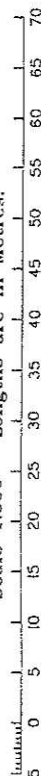
(attached)



Star Picket placed at stations 6 & 7.

Peg Placed at stations 1a & 3.


Scale 1:500 — Lengths are in Metres.



REFERENCE MARKS			
S/N	TO	BEARING	DIST
1	O Nail in Conc.	26°23'	6.608
2	O Can PP (Sg)	5°48'	1.364
3	O Nail in Hdw	54°20'30"	10.987
4	O Nail in H ¹ lid	69°14'50"	17.374
5	O Nail in Hdw	23°59'	4.052
6	O Nail in Conc Rd	33°38'	8.345
7	Mark S	160°38'	1.935

PERMANENT MARKS				
PM	ORIGIN	BEARING	DIST	NO TYPE
5-OPM	3/10P/100.458	125°11'45"	146-556	12/1331
5-OPM	6/10P/100.458	130°04'10"	322-506	12/1332

RPS Australic East Pty Ltd (ACN 140 292 762) hereby certify that the land comprised in this plan was surveyed by the corporation, by Peter Henry STENZEL, surveying associate, for whose work the corporation accepts responsibility, under the authority of address Edward SOLOMON, cadastral surveyor, and that the plan is accurate, that the said survey was performed in accordance with the Survey and Mapping Infrastructure Act 2003 and Surveys Act 2003 and associated Regulations and Standards and that the said survey was completed on 2/03/2013.


 Authorised Delegate
 18/03/13.
 Date

Plan of Lease F

in Lot 3 on TS157

LOCAL GOVERNMENT: <i>TORRES STRAIT ISLAND REGIONAL</i>		LOCALITY: <i>SAIBAI ISLAND</i>	
Meridian: <i>MGA Vide SP219921 Zone 55</i>		Survey Records:	<i>No</i>

Scale: 1:500

Format: **STANDARD**



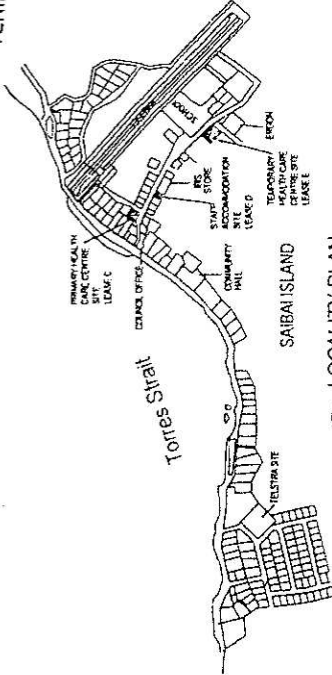
SP258902

(Dealing No.)		WARNING : Folded or Mutilated Plans will not be accepted. Plans may be rolled. Information may not be placed in the outer margins.																																	
1. Certificate of Registered Owners or Lessees. ✓/We <u>TORRES STRAIT ISLAND REGIONAL COUNCIL</u> <u>DEED OF GRANT IN TRUST</u> <u>THE GRANTEE TO HOLD THE SAID LAND IN TRUST FOR</u> <u>THE BENEFIT OF ISLANDER INHABITANTS AND FOR NO</u> <u>OTHER PURPOSE WHATSOEVER</u> (Names in full) * as Registered Owners of this land agree to this plan and dedicate the Public Use Land as shown hereon in accordance with Section 50 of the Land Title Act 1994. * as Lessees of this land agree to this plan. Signature of *Registered Owners *Lessees		5. Lodged by (Include address, phone number, reference, and Lodger Code)																																	
2. Planning Body Approval. * hereby approves this plan in accordance with the : % Dated this day of # # * Insert the name of the Planning Body. # Insert designation of signatory or delegation		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2">6. Existing</th> <th colspan="3">Created</th> </tr> <tr> <th>Title Reference</th> <th>Description</th> <th>New Lots</th> <th>Road</th> <th>Secondary Interests</th> </tr> <tr> <td>21296134</td> <td>Lot 3 on TSI57</td> <td></td> <td></td> <td>Lease F</td> </tr> </table> Lease F does not affect any other leases lodged or registered against CT21296134 as at 12/03/2013		6. Existing		Created			Title Reference	Description	New Lots	Road	Secondary Interests	21296134	Lot 3 on TSI57			Lease F																	
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3. Plans with Community Management Statement : CMS Number : Name :		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2">7. Orig Grant Allocation :</th> </tr> <tr> <td>Lots</td> <td>Orig</td> </tr> <tr> <td colspan="2">8. Map Reference : 7479-33111</td> </tr> <tr> <td colspan="2">9. Parish : GIACA</td> </tr> <tr> <td colspan="2">10. County : Torres</td> </tr> <tr> <td colspan="2">11. Passed & Endorsed : By: RPS Australia East Pty Ltd Date: 18/03/13 Signed: <i>[Signature]</i> Designation: Cadastrol Surveyor</td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">12. Building Format Plans only. I certify that : * As far as it is practical to determine, no part of the building shown on this plan encroaches onto adjoining lots or road. * Part of the building shown on this plan encroaches onto adjoining * lots and road</td> </tr> <tr> <td>Cadastrol Surveyor/Director * * delete words not required</td> <td>Date</td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">13. Lodgement Fees :</td> </tr> <tr> <td>Survey Deposit</td> <td>\$</td> </tr> <tr> <td>Lodgement</td> <td>\$</td> </tr> <tr> <td>..... New Titles</td> <td>\$</td> </tr> <tr> <td>Photocopy</td> <td>\$</td> </tr> <tr> <td>Postage</td> <td>\$</td> </tr> <tr> <td>TOTAL</td> <td>\$</td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>14. Insert Plan Number</td> <td style="text-align: center; font-weight: bold; font-size: 1.2em;">SP258902</td> </tr> </table>		7. Orig Grant Allocation :		Lots	Orig	8. Map Reference : 7479-33111		9. Parish : GIACA		10. County : Torres		11. Passed & Endorsed : By: RPS Australia East Pty Ltd Date: 18/03/13 Signed: <i>[Signature]</i> Designation: Cadastrol Surveyor		12. Building Format Plans only. I certify that : * As far as it is practical to determine, no part of the building shown on this plan encroaches onto adjoining lots or road. * Part of the building shown on this plan encroaches onto adjoining * lots and road		Cadastrol Surveyor/Director * * delete words not required	Date	13. Lodgement Fees :		Survey Deposit	\$	Lodgement	\$ New Titles	\$	Photocopy	\$	Postage	\$	TOTAL	\$	14. Insert Plan Number	SP258902
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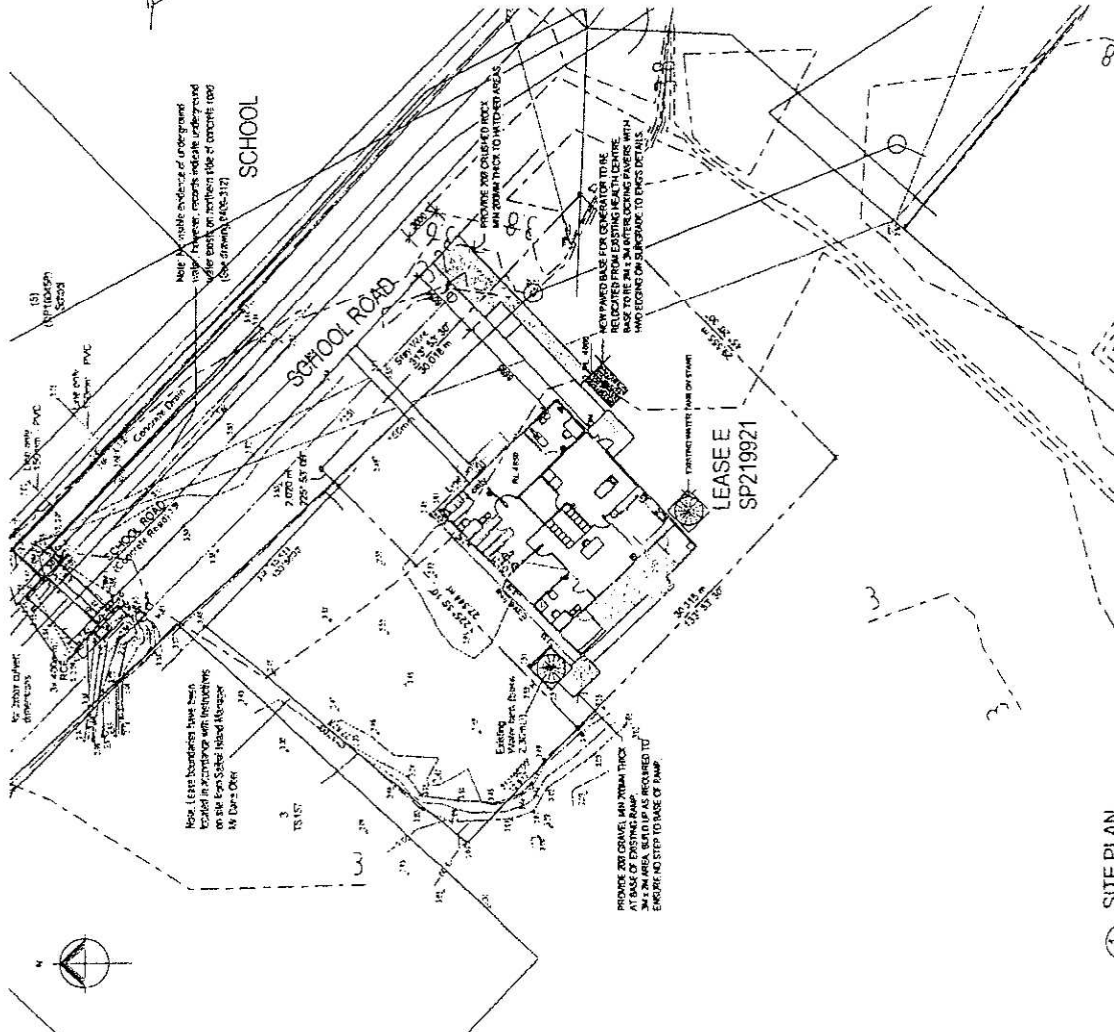
Title Reference 21296134

Plans
(attached)

UNCONTROLLED COPY
VERIFY BEFORE USE



NOTE:
CONTRACTOR TO MANUALLY REGRADE AND FILL
EXISTING GROUND UNLESS BREATH BUILDING TO ENGINE
FINISHED GROUND REMAINS FREE DRAINING.
PROVISIONAL QUANTITY ALLOWED REFER
SPECIFICATION



Note: No visible evidence of underground
services. However, services include underground
water supply and sewerage lines (see drawings EAS-112)

Note: Lease boundaries have been
recorded in accordance with instructions
on the Ego Saibai Island Manager
Map Data Sheet

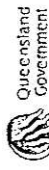
PROVIDE 200 GRATES AND 200mm THICK
AT BASE OF EXISTING RAMP
3m x 2m AREA. ROAD UP AS REQUIRED TO
ENGINEER AND STEP TO BASE OF RAMP

EXISTING WATER MAIN ON STREET

LEASE E
SP219921

1 SITE PLAN
SCALE 1:200

AMENDMENTS	DATE	DESCRIPTION
1	18/07/2011	ISSUED FOR TENDER
2	18/07/2011	ISSUED FOR TENDER
3	18/07/2011	ISSUED FOR TENDER
4	18/07/2011	ISSUED FOR TENDER
5	18/07/2011	ISSUED FOR TENDER
6	18/07/2011	ISSUED FOR TENDER
7	18/07/2011	ISSUED FOR TENDER
8	18/07/2011	ISSUED FOR TENDER
9	18/07/2011	ISSUED FOR TENDER
10	18/07/2011	ISSUED FOR TENDER
11	18/07/2011	ISSUED FOR TENDER
12	18/07/2011	ISSUED FOR TENDER
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99	18/07/2011	ISSUED FOR TENDER
100	18/07/2011	ISSUED FOR TENDER



Queensland
Health

Project Services
Department of Public Works

RESERVE
JAN 2011

PERMIT
DATE

1 HOUR PER
PERMIT

QUEENSLAND HEALTH

PROPOSED TEMPORARY
HEALTH CENTRE
SAIBAI ISLAND

SITE PLAN - TEMPORARY
HEALTH CENTRE

AT SCALE

28757

65054 / CD / A20.01

Deed of Consent to Assignment of Lease

Between

Torres Strait Island Regional Council

and

The State of Queensland

and

Torres and Cape Hospital and Health Service



Crown Law

**Crown Solicitor
Level 11
State Law Building
50 Ann Street
BRISBANE**

Telephone: (07) 3239 6162
Facsimile: (07) 3239 6386
Reference: CP5/HEA027/6918/TZE

AND: Torres and Cape Hospital and Health Service ('HHS')

RECITALS

- A. The Council is the trustee of the Land.
- B. The Council and the State entered into the Lease over the Premises.
- C. The State has agreed to assign its interest in the Lease and the HHS has agreed to accept the assignment of the Lease from the Date of Assignment.
- D. The State has requested the Council's consent to the assignment of the Lease to the HHS.
- E. The Council has agreed to consent to the assignment of the Lease to the HHS, subject to the terms and conditions specified in this Deed.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed, the following definitions will apply:

Claims means all actions, proceedings, claims, demands, costs, losses, damages and expenses;

Council means the Torres Strait Island Regional Council;

Date of Assignment means 5 business days after the Council notifies the State that the Council consents to the assignment of the Lease pursuant to clause 2.1;

Date of this Deed means the date on which this Deed is executed by the parties and if executed on different dates, the later of those dates;

Deed means this document and all schedules to this document;

HHS mean the Torres and Cape Hospital and Health Service;

Land means Lot 31 on SP 267944 contained in title reference 51134285;

Lease means the registered lease dealing number 717381004;

Premises mean those parts of the Land over which the Lease has been granted and described as Lease F on SP 258902;

State means the State of Queensland (represented by the Department of Health).

1.2 In this Deed:

- (a) words importing a gender include any other gender and words in the singular include the plural and vice versa;
- (b) all monetary amounts refer to Australian currency;
- (c) a reference to legislation includes subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (d) a reference to an individual or person includes a corporation or other legal entity;
- (e) a reference to a clause or schedule means a clause or schedule to this Deed;
- (f) headings are included for convenience of reference only and are not intended to affect the meaning of this Deed;
- (g) if an expression is defined, other grammatical forms of that expression will have corresponding meanings;
- (h) a reference to days or months means calendar days or months;
- (i) if the day on which any act or thing is to be done under this Deed is a Saturday, Sunday or public holiday in the place where the act or thing is to be done, the act or thing may be done on the next business day in that place;
- (j) if any conflict arises between the clauses in this Deed and the contents of any schedule, the clauses prevail; and
- (k) an obligation on the part of two or more persons binds them jointly and each of them individually.

1.3 If a government department, agency or statutory authority mentioned in this Deed:

- (a) ceases to exist; or
- (b) is reconstituted, renamed or replaced;

and its powers or functions are transferred to another government department, agency, or a statutory authority a reference to the government department or agency will include that other government department, agency or statutory authority.

2. COUNCIL CONSENT TO ASSIGNMENT OF LEASE

- 2.1 This Deed is conditional on the Council consenting to the assignment of the Lease from the State to the HHS on or before the date which is 3 months after the Date of this Deed.
- 2.2 The Council must notify the State and the HHS on or before the date referred to in clause 2.1, as to whether or not the condition has been satisfied.
- 2.3 If the condition in clause 2.1 is not satisfied, then this Deed will be at an end and the State will remain as the lessee under the Lease.

3. ASSIGNMENT

- 3.1 On and from the Date of Assignment, the State assigns to the HHS all of its right, title and interest in the Lease.

4. COUNCIL'S COVENANTS

- 4.1 On and from the Date of Assignment, the Council:
- (a) consents to the assignment of the Lease to the HHS;
 - (b) undertakes to carry out, observe and perform all of the Council's obligations under the Lease as if the HHS were named as the lessee under the Lease in lieu of the State.

5. HHS' COVENANTS

- 5.1 On and from the Date of Assignment, the HHS:
- (a) accepts the assignment of all of the State's right, title and interest in the Lease; and
 - (b) covenants to comply with and to be bound by all of the State's covenants, obligations and liabilities under the Lease as if the HHS had been named as the lessee under the Lease in lieu of the State.

6. INDEMNITIES

- 6.1 The State indemnifies and releases the HHS from and against all Claims which may be brought against, or made upon the HHS, or which the HHS may pay, sustain or be put to by reason of, or in consequence of, or in connection with the State's rights and obligations under the Lease and which arise prior to the Date of Assignment.
- 6.2 The Council indemnifies and releases the State from and against all Claims which may be brought against, or made upon the State, or which the State may pay, sustain or be put to by reason of, or in consequence of, or in connection with the Council's rights and obligations under the Lease and which arise after the Date of Assignment.

- 6.3 The HHS indemnifies and releases the State from and against all Claims which may be brought against, or made upon the State, or which the State may pay, sustain or be put to by reason of, or in consequence of, or in connection with HHS' rights and obligations under the Lease and which arise after the Date of Assignment.
- 6.4 The HHS indemnifies and releases the Council from and against all Claims which may be brought against, or made upon the Council, or which the Council may pay, sustain or be put to by reason of, or in consequence of, or in connection with HHS' rights and obligations under the Lease and which arise after the Date of Assignment.

7. NOTICES

- 7.1 Any notice under this Deed must be in writing and may be delivered by hand, by registered mail, by facsimile or by email to the addresses specified in clause 7.6, or any substitute address as may have been notified by the relevant addressee from time to time.
- 7.2 Subject to clause 7.3, notices will be deemed to be given:
- (a) if posted - 3 business days after deposit in the mail with postage prepaid;
 - (b) if delivered - on the date of delivery; or
 - (c) if faxed - on the date on which an apparently successful transmission is noted by the sender's facsimile machine;
 - (d) if emailed - on the date of the email,
- as the case may be.
- 7.3 An email or facsimile transmission received after 5.00pm on any day will be deemed to be received at the start of the next business day.
- 7.4 Notices must be on the relevant party's letterhead and signed by an authorised person.
- 7.5 Notices may be given by or to a party's solicitor by any of the means specified in clause 7.1.
- 7.6 The addresses for service for each party are as follows:
- (a) for the Council:

Contact Officer

Postal address:

Delivery address:

Chief Executive Officer

Torres Strait Island Regional Council

PO Box 7336

Cairns QLD 4870

Lot 12 Francis Road

Hammond Island QLD 4870

Fax no: (07) 4069 1868
Email address: records@tsirc.qld.gov.au

(b) for the State:

Contact Officer Manager, Property
Capital and Asset Services
Queensland Health

Postal address: GPO Box 48
Brisbane QLD 4001

Delivery address: Level 1, 33 Charlotte Street
Brisbane QLD 4001

Fax no:

Email address: jason.gaudry@health.qld.gov.au

(c) for the HHS:

Contact Officer Health Service Chief Executive
Torres and Cape Hospital and Health Service
Postal address: PO Box 5607
Cairns QLD 4870

Delivery address: Level 6, William McCormack Place
5B Sheridan Street
Cairns QLD 4870

Fax no: (07) 4226 5678

Email address: TCHHS-Chief-Executive@health.qld.gov.au

8. COSTS

- 8.1 The State and the HHS must pay their own costs of and incidental to the negotiation, preparation and execution of this Deed.
- 8.2 The HHS must pay the Council's reasonable legal costs of and incidental to the negotiation and execution of this Deed.

9. EXECUTION

- 9.1 The parties will execute copies of this Deed with each party retaining an original copy.

10. LEGAL EFFECT

- 10.1 Each party acknowledges and agrees for the benefit of each other party that this document is intended to take effect as a deed. Each party executes this document with the intention that it will be immediately legally bound by this document.

11. GENERAL PROVISIONS

- 11.1 This Deed constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements and agreements between the parties.
- 11.2 Any failure by a party at any time to enforce a clause of this Deed, or any forbearance, delay or indulgence granted by a party to the other, will not constitute a waiver of the party's rights.
- 11.3 No provision of this Deed will be deemed to be waived unless the waiver is in writing and signed by the waiving party.
- 11.4 A waiver by a party of a breach of any provision of this Deed will not operate as a waiver of any subsequent breach of the same provision nor as a waiver of any other provision.
- 11.5 This Deed is governed by the laws of Queensland and each party submits to the jurisdiction of the courts of Queensland.
- 11.6 If any part of this Deed is determined to be invalid, unlawful or unenforceable for any reason then that part will be severed from the rest of this Deed to the extent of the invalidity, unlawfulness or unenforceability and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.
- 11.7 This Deed may only be varied by a written agreement executed by the parties.
- 11.8 For the purposes of this Agreement and the *Electronic Transactions (Queensland) Act 2001*, the parties consent to the exchange of counterparts, delivery of the signed Agreement and notices by email or electronic means, including execution of documents and notices by electronic signature.
- 11.9 This Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same instrument.

Executed as a deed on the dates appearing below:

SIGNED SEALED AND DELIVERED

for and on behalf of the **Torres Strait Island
Regional Council** by

.....
(full name)

.....
(designation)

Mayor/Chief Executive Officer, a duly authorised
person

in the presence of:

.....
(print name of witness)

.....
(signature of witness)

.....
(signature)

..... / /
(date)

SIGNED SEALED AND DELIVERED

for and on behalf of **The State of Queensland** by

.....
(full name)

.....
(designation)

a duly authorised person

in the presence of:

.....
(print name of witness)

.....
(signature of witness)

.....
(signature)

..... / /
(date)

.....
(signature)

..... / /
(date)

(date)