



AGENDA

TORRES STRAIT ISLAND REGIONAL COUNCIL

MAY 2021

TRUSTEE MEETING

Monday 24th May 2021

Cairns

TRUSTEE MEETING
Monday 24th May 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 21st April 2021</u> |
| 5. | <u>9:15am – 9:20am</u> | <u>Outstanding Action Items</u> |
| 6. | <u>9:20am – 9:30am</u> | <u>Standing Agenda Item: (verbal update)</u> <ul style="list-style-type: none">• TRUSTEE – Undocumented commercial land occupation project• DOGIT Lease Verbal Update |
| | | |
| 7. | <u>9:30am – 9:40am</u> | <u>LEGAL – Boiqu – LHA Entitlements – Lot 90 – Lot 15</u> |
| 8. | <u>9:40am – 9:50am</u> | <u>LEGAL – Dauan Kiosk divestment</u> |
| 9. | <u>9:50am – 10:00am</u> | <u>LEGAL – LHA Transfer – Lot 12 – Pele Mooka</u> |
| 10. | <u>10:00am – 10:10am</u> | <u>LEGAL – Mabuiag – LHA Transfer – Lot 14 Kame Paipai</u> |
| 11. | <u>10:10am – 10:20am</u> | <u>LEGAL – St Pauls – LHA Transfer – Lot 22 – Rose Alau</u> |
| 12. | <u>10:20am – 10:23am</u> | <u>Next meeting – 29th June 2021</u> |
| 13. | <u>10:23am – 10:25am</u> | <u>Closing Remarks and Prayer</u> |



Draft Minutes

TORRES STRAIT ISLAND REGIONAL COUNCIL

APRIL 2021

TRUSTEE MEETING

Thursday 22nd April 2021

Video Conference

TRUSTEE MEETING
Wednesday 21st April 2021
Agenda Items

- | | | |
|----|------------------------|--|
| 1. | <u>1:30pm – 1:35pm</u> | <u>Opening Prayer and Welcome</u> |
| 2. | <u>1:35pm – 1:40pm</u> | <u>Apologies</u> |
| 3. | <u>1:40pm – 1:50pm</u> | <u>Declaration of Conflict of Interest (COI) Declarable and Prescribed</u> |
| 4. | <u>1:50pm – 2:00pm</u> | <u>Confirmation of Trustee Meeting held on 17th March 2021</u> |
| 5. | <u>2:00pm – 2:15pm</u> | <u>Outstanding Action Items</u> |
| 6. | <u>2:15pm – 2:45pm</u> | <u>Standing Agenda Item: (verbal update)</u> <ul style="list-style-type: none">• TRUSTEE – Undocumented commercial land occupation project• DOGIT Lease Verbal Update |
| 7. | <u>2:45pm – 3:15pm</u> | <u>LEGAL – Ugar Land Transfer and Saibai Land Transfer</u> |
| 8. | <u>3:15pm – 3:20pm</u> | <u>Next meeting – 17th and 18th May 2021</u> |
| 9. | <u>3:20pm – 3:30pm</u> | <u>Closing Remarks and Prayer</u> |

Present

Cr Phillemon Mosby, Mayor (Poruma) -
Cr Torenzo Elisala, Division 2 – Dauan
Cr Conwell Tabuai, Division 3 – Saibai
Cr Keith Fell, Division 4 – Mabuiag -
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) (Hammond)
Ms Hollie Faithfull, Chief Financial Officer (CFO) (Cairns)
Dawson Sailor, Acting Chief Operating Officer (Warraber)
Mr David Baldwin, Chief Engineer (CE) (Cairns)
Mr Peter Krebs, Senior Legal Counsel (Thursday Island Office)
Ms Ursula Nai, Senior Executive Assistant (SEA) (Thursday Island)
Ms Naila Nomoa, Travel Officer (TO) (Thursday Island)

Apologies

Cr Dimas Toby, Division 1 – Boigu
Cr Laurie Nona, Division 5 – Badu

TRUSTEE MEETING
Wednesday 21st April 2021
Agenda Items

10. **2:55pm – 2:55pm** **Opening Prayer and Welcome**

11. **2:55pm – 2:56pm** **Apologies**

- Cr Dimas Toby, Division 1 – Boigu
- Cr Laurie Nona, Division 5 – Badu
- Cr Stephen, Division 13- Ugar

Moved; Cr Gela Second; Cr Tamu

Apologies accepted.

12. **2:56pm – 2:58pm** **Declaration of Conflict of Interest (COI)**
Declarable and Prescribed

Nil.

13. **2:58pm – 2:59pm** **Confirmation of Trustee Meeting held on 17th**
March 2021

Moved: Cr Dorante; Second: Cr Levi

That the minutes from the Trustee meeting held on the 17th of March 2021, be adopted as a true and accurate record of that meeting.

MOTION CARRIED

14. 2:59pm – 3:01pm Outstanding Action Items

Acting Chief Executive Officer provided an update.

15. 2:15pm – 2:45pm Standing Agenda Item: (verbal update)

- TRUSTEE – Undocumented commercial land occupation project
- DOGIT Lease Verbal Update

Senior Legal Counsel spoke to report Ergon Energy has several sites that do not have a current lease. Negotiations are ongoing.

Conversation with Australian Maritime Safety Authority occupation on Hammond Island regarding Helicopter landing site as well as a base for navigation as well. Negotiations are ongoing.

16. 2:45pm – 3:26pm LEGAL – Ugar Land Transfer and Saibai Land Transfer

Cr Tabuai declared COI- Board of Director for Saibai Prescribed Body Corporate.
Cr Stephen declared COI- Member of Stephen Island Prescribed Body Corporate.

Senior Legal Counsel spoke to report.

Matter left lying on table, Senior Legal Counsel to take matter offline with Cr Stephen and Cr Tabuai. Concerns were raised regarding ongoing funding and support, community input and consultation regarding the DOGIT transfer

Mayor Mosby requested that Community Enterprise Queensland be invited to the next meeting to discuss lease agreements to ensure consistency across the region.

ACTION: Senior Legal Counsel to invite CEQ to attend our next meeting to discuss lease arrangements

17. **3:15pm – 3:20pm**

Next meeting – 17th and 18th May 2021

18. **3:31pm – 3:34pm**

Closing Remarks and Prayer

Mayor Mosby thanked Councillors, Staff and Acting Chief Executive Officer.

Mayor Mosby closed with a word of prayer.

TORRES STRAIT ISLAND REGIONAL COUNCIL

TRUSTEE REPORT

COUNCIL ORDINARY MEETING

DATE: May 2021
SUBJECT: Land Holding Act leases – Boigu
AUTHOR: Peter Krebs, Senior Legal Counsel
PRESENTER: Peter Krebs, Senior Legal Counsel

PERSONAL INTERESTS

Councillors are reminded to inform the meeting of any prescribed conflicts of interests or declarable conflicts of interests.

RECOMMENDATION

- 1. That the Trustee recommend advising the Minister that the lease over Lot 90 on SP273190 (90 Airport Road, Boigu) should issue to John Gibuma as soon as possible under section 35 of the Aboriginal and Torres Strait Islander Land Holding Act 2013, and authorise the Chief Executive Officer to sign the Advice and Recommendation Report.*
- 2. That the Trustee recommend advising the Minister that the lease over Lot 15 on SP273190 (15 Toby Street, Boigu) should issue to Wallen Ingui as soon as possible under section 35 of the Aboriginal and Torres Strait Islander Land Holding Act 2013, and authorise the Chief Executive Officer to sign the Advice and Recommendation Report.*

BACKGROUND

Application	Applicant	Address	Lease to be granted to
43/89	John Gibuma	90 Airport Rd, Boigu (Lot 90 on SP273190)	John Gibuma
62/89	Wallen Ingui	15 Street, Boigu (Lot 15 on SP273190)	Wallen Ingui

OFFICER COMMENT

The Advice & Recommendation report for each lease entitlement is attached.

Under the current Trustee Policy, the CEO has delegated authority from November 2018 to recommend the grant of a Katter lease by executing all documents necessary to give effect to LHA lease interests, with advice provided to the Mayor and the Divisional Councillor.

However, the Trustee directed during the November delegations' workshop that all land-related decision-making by the trustee should be made at the Council level. Therefore, this report presents recommendations for the Trustee to endorse the grant of Katter leases.

CONSULTATION

- DNRME
- Cr Toby has confirmed support

LINKS WITH STRATEGIC PLANS

Operational Plan:

- LHA (Katter) lease resolution

STATUTORY REQUIREMENTS

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

FINANCE AND RISK

Capital Cost

NIL

Operating Cost

NIL

Risk Assessment

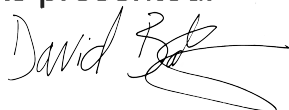
NIL

SUSTAINABILITY

NA

CONCLUSION

As presented.

A handwritten signature in black ink, appearing to read "David Baldwin", with a stylized flourish at the end.

David Baldwin
A/CEO

A handwritten signature in black ink, appearing to read "Peter Krebs", with a stylized flourish at the end.

Peter Krebs
Senior Legal Counsel

ATTACHMENTS

1. Advice & Recommendation Report: 43/89
2. Advice & Recommendation Report: 62/89

Queensland Government home Queensland Government homeFor QueenslandersAboriginal and Torres Strait Islander peoplesEnvironment, land use and native titleLeasing Indigenous landLand Holding Act LeasesLease entitlement notices

Lease entitlement notices Boigu Island

These notices identify the persons entitled to the grant of a lease under the *Aboriginal and Torres Strait Islander Land Holding Act 2013* as a consequence of an application previously lodged and approved under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

Return to the [list of all communities \(https://www.dnrm.qld.gov.au/qld/indigenous-land/notices\)](https://www.dnrm.qld.gov.au/qld/indigenous-land/notices).

Notice details	Date of publication	Deadline for changes	Application number
Name John GIBUMA Address 90 Airport Road Description Lot 90 on SP273190	22-Mar-19	22-Sep-20	43/89

Granting of leases

Before making an application regarding your entitlement, please read about the [process for resolving lease entitlements \(http://www.qld.gov.au/atsi/environment-land-use-native-title/process-granting-leases/index.html\)](http://www.qld.gov.au/atsi/environment-land-use-native-title/process-granting-leases/index.html).

Last updated: 15 April 2019

Last reviewed: 15 May 2017

ADVICE AND RECOMMENDATION REPORT

Boigu Island Trust Area

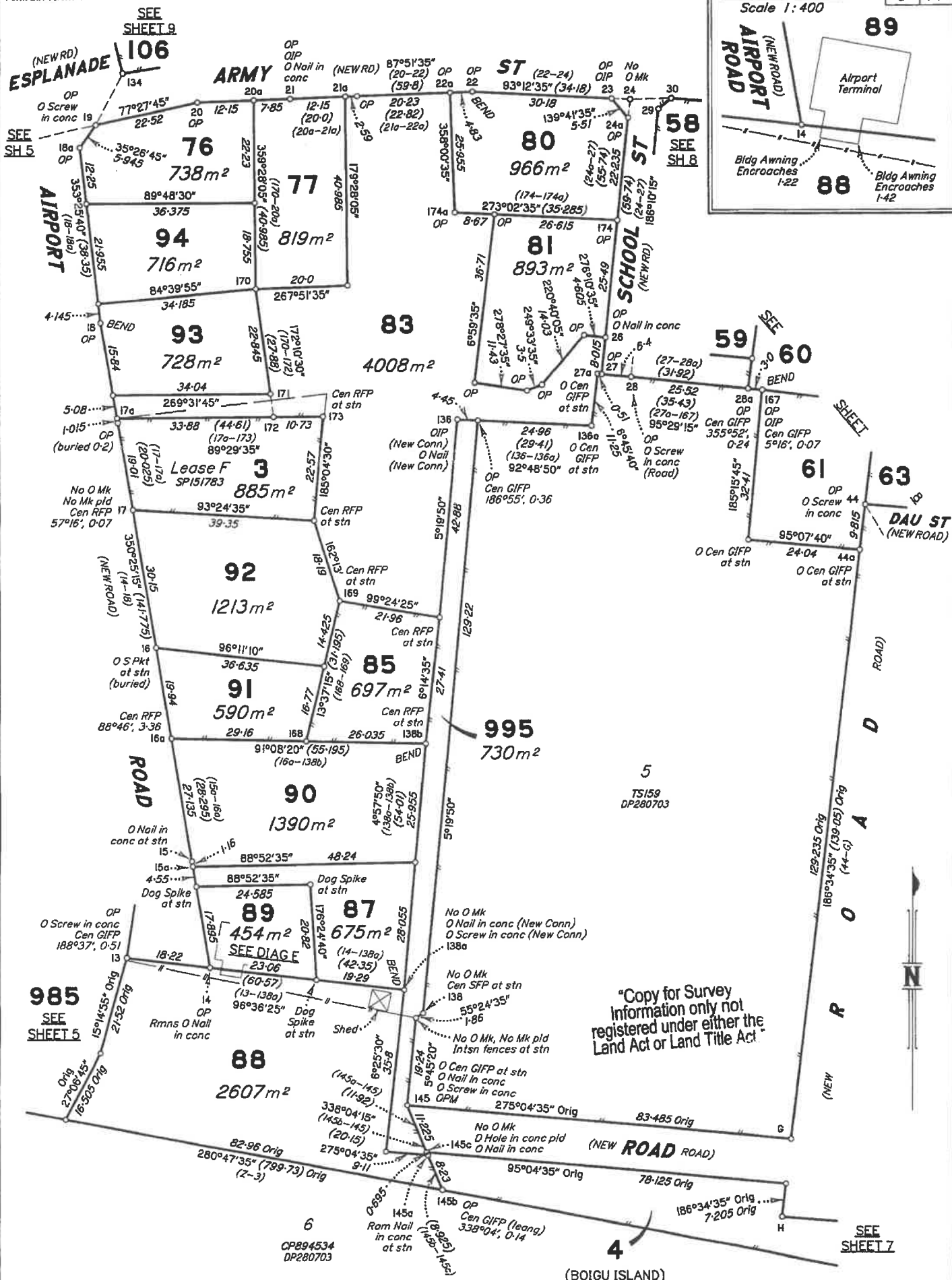
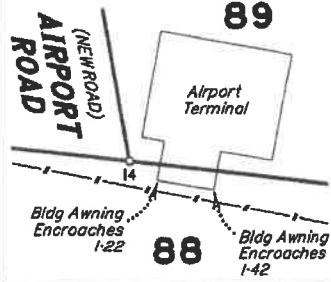
Aboriginal and Torres Strait Islander Land Holding Act 2013 (LHA 2013)

Purpose of Advice and Recommendation Report		
<p>This matter has been referred on behalf of the Minister for Resources to TSIRC as trustee of the trust area to:</p> <p><i>Identify to the Minister any practical obstacles it considers to exist to satisfying the lease entitlement (section 30(2)(a))</i></p> <p><i>Provide the Minister any advice or recommendations it considers appropriate about satisfying the lease entitlement (section 30(2)(b))</i></p>		
LEASE ENTITLEMENT (LEN)		
Name of applicant(s):	John Gibuma	No: 43/89
Type of tenancy:		
Lot/Plan Description of original application:	Form 1: 15/PLD554	Current: Lot 90 on SP273190
Street address:	86 and 90 Airport Road	
Date referred to trustee:	23 March 2021	

INFORMATION PROVIDED BY DoR		
Trust Area notice published:	22 March 2019	
LEN published:	22 March 2019	Copy attached
Deceased applicant:	N/A	
Beneficiary:	N/A	
Location of the area of the lease entitlement land:	The lease entitlement has been surveyed as Lot 90 on SP273190, which is a suitable survey plan for issue of lease.	
Improvements on the lease entitlement land:	1 x Social Housing - 3 bedroom detached house	
Tenancy Of House (Managed By TSIRC):	Head tenant: Ethel Anau Relationship to applicant/beneficiary: Unknown Tenant relocation: Unknown	

Consultation:	Yes	
	Person consulted	Issues discussed
	Wallen Ingui Frederick Anau	Wallen Ingui advised he wants the lease granted and then he will transfer the lease to Frederick Anau. Frederick has confirmed he wishes to accept home ownership responsibilities.
Comments:	The PBC has endorsed the granting of this lease.	

TRUSTEE ADVICE AND RECOMMENDATION	
Location of the area of the lease entitlement land:	The location of the area of the lease entitlement is resolved and identified as Lot 90 on SP273190.
Improvements on the lease entitlement land:	The ownership of improvements do not need to be resolved and will become the property of the lessees upon issue of the lease.
Postal address for intended lessee/s:	C/- Post Office, Boigu Island QLD 4875
Other Interests:	N/A
Practical Obstacles:	There are no practical obstacles to the grant of the lease and the lease can be granted under section 35 of the <i>Aboriginal and Torres Strait Islander Land Holding Act 2013</i> .
Recommendation:	It is recommended that the Minister be advised that the lease over Lot 90 on SP273190 should issue to John Gibuma as soon as possible.
APPROVAL	
Sign:	<p>.....</p> <p>Ilario Sabatino Acting Chief Executive Officer Torres Strait Island Regional Council</p>
Date:	This day of2021



Queensland Government home Queensland Government homeFor QueenslandersAboriginal
and Torres Strait Islander peoplesEnvironment, land use and native titleLeasing Indigenous
landLand Holding Act LeasesLease entitlement notices

Lease entitlement notices Boigu Island

These notices identify the persons entitled to the grant of a lease under the *Aboriginal and Torres Strait Islander Land Holding Act 2013* as a consequence of an application previously lodged and approved under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

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Notice details	Date of publication	Deadline for changes	Application number
Name Wallen INGUI Address 15 Toby Street Description Lot 15 on SP273190	22-Mar-19	22-Sep-20	62/89

Granting of leases

Before making an application regarding your entitlement, please read about the [process for resolving lease entitlements \(http://www.qld.gov.au/atsi/environment-land-use-native-title/process-granting-leases/index.html\)](http://www.qld.gov.au/atsi/environment-land-use-native-title/process-granting-leases/index.html).

Last updated: 15 April 2019
Last reviewed: 15 May 2017

ADVICE AND RECOMMENDATION REPORT

Boigu Island Trust Area

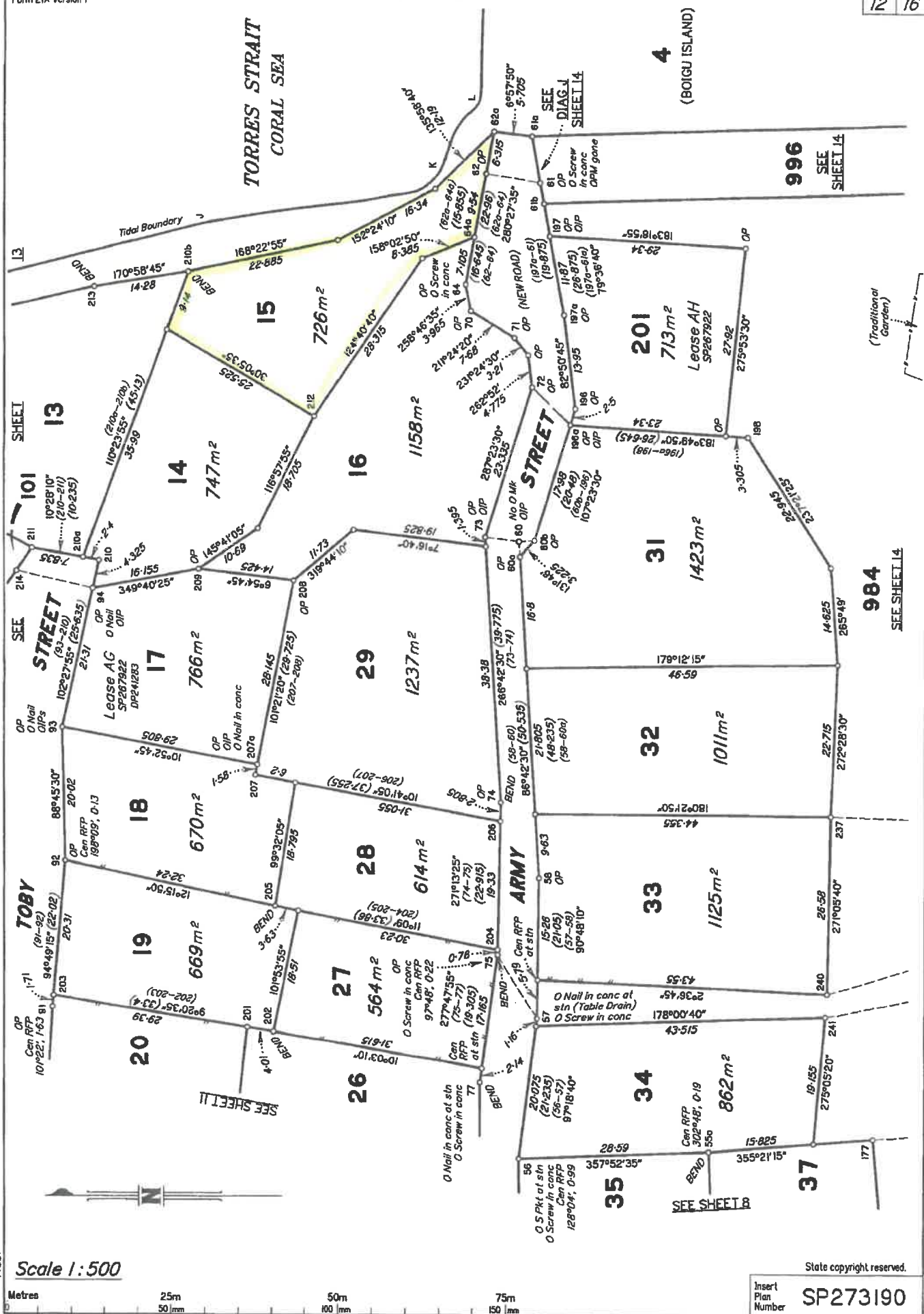
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LEASE ENTITLEMENT (LEN)		
Name of applicant(s):	Wallen Ingui	No: 62/89
Type of tenancy:		
Lot/Plan Description of original application:	Form 1: 15/PLD554	Current: Lot 15 on SP273190
Street address:	15 Toby Street	
Date referred to trustee:	23 March 2021	

INFORMATION PROVIDED BY DoR		
Trust Area notice published:	22 March 2019	
LEN published:	22 March 2019	Copy attached
Deceased applicant:	N/A	
Beneficiary:	N/A	
Location of the area of the lease entitlement land:	The lease entitlement has been surveyed as Lot 15 on SP273190, which is a suitable survey plan for issue of lease.	
Improvements on the lease entitlement land:	1 x Social Housing - 3 bedroom detached house	
Tenancy Of House (Managed By TSIRC):	Head tenant: Ethel Anau Relationship to applicant/beneficiary: Unknown Tenant relocation: Unknown	

Consultation:	Yes	
	Person consulted	Issues discussed
	Wallen Ingui Frederick Anau	Wallen Ingui advised he wants the lease granted and then he will transfer the lease to Frederick Anau. Frederick has confirmed he wishes to accept home ownership responsibilities.
Comments:	The PBC has endorsed the granting of this lease.	

TRUSTEE ADVICE AND RECOMMENDATION	
Location of the area of the lease entitlement land:	The location of the area of the lease entitlement is resolved and identified as Lot 15 on SP273190.
Improvements on the lease entitlement land:	The ownership of improvements do not need to be resolved and will become the property of the lessees upon issue of the lease.
Postal address for intended lessee/s:	C/- Post Office, Boigu Island QLD 4875
Other Interests:	N/A
Practical Obstacles:	There are no practical obstacles to the grant of the lease and the lease can be granted under section 35 of the <i>Aboriginal and Torres Strait Islander Land Holding Act 2013</i> .
Recommendation:	It is recommended that the Minister be advised that the lease over Lot 15 on SP273190 should issue to Wallen Ingui as soon as possible.
APPROVAL	
Sign:	<p>.....</p> <p>Ilario Sabatino Acting Chief Executive Officer Torres Strait Island Regional Council</p>
Date:	This day of2021



TORRES STRAIT ISLAND REGIONAL COUNCIL

TRUSTEE REPORT

COUNCIL ORDINARY MEETING

DATE: May 2021

SUBJECT: Dauan Kiosk divestment

AUTHOR: Julia Maurus, Manager Legal Services

PERSONAL INTERESTS

Councillors are reminded to declare any personal interests relating to:

- Dauan PBC
- Traditional owner interests at Dauan

RECOMMENDATION

1. *That the Trustee transfer ownership of the Dauan Kiosk located on part of Lot 39 on SP270872 to the Dauanalga (Torres Strait Islanders) Corporation RNTBC [ICN 3610] substantially on the terms set out in Attachment 2 of the report (Agreement for Sale and Purchase of Kiosk Building).*
2. *That pursuant to the Torres Strait Islander Land Act 1991 (Qld), the Trustee grant a Lease to Dauanalga (Torres Strait Islanders) Corporation RNTBC [ICN 3610] over part of Lot 39 on SP270872 (Dauan Kiosk building and common area access) at Dauan, for its administrative office, substantially on the terms set out in Attachment 5 of the report, subject to registration of an Indigenous Land Use Agreement substantially on the terms set out in Attachment 6 of the report, and subject to development approval (if required), and in the interim that the Trustee enter into a Licence Agreement substantially on the terms set out in Attachment 3 of the report and a Conditional Agreement to Lease substantially on the terms set out in Attachment 4 of the report.*
3. *That the Trustee delegate to the Chief Executive Officer the power to sign the above Agreement for Sale and Purchase of Kiosk Building, Lease, Licence Agreement, Conditional Agreement to Lease and Indigenous Land Use Agreement.*





BACKGROUND

Council (as local government) made a resolution in April 2015 to divest the Dauan Kiosk to the Dauan RNTBC, following a community-level invitation for expressions of interest as part of the enterprise divestment project. After several years of delays, discussions have progressed towards entering into a conditional agreement to lease and the RNTBC is keen to start occupying the kiosk as soon as possible.

In the intervening years since the Council resolution, the Dauan Kiosk building has been disposed from our Asset Register. Prior to that, the asset cost (market value) noted in Council's Asset Register was \$214,100.

OFFICER COMMENT

MacDonnells Law has reviewed the history and was asked to advise on the following questions:

1. Is the Dauan Kiosk still owned by TSIRC (as local government) or does the asset disposal result in ownership of the structure/improvement transferring to the trustee of the land (TSIRC as trustee)?
2. What is the appropriate way to transfer ownership of the Dauan Kiosk building/improvements to the Dauan RNTBC?
3. Can ownership be transferred to the Dauan RNTBC for a peppercorn? Is there any requirement for Council to seek consideration (market value or otherwise) when it transfers ownership of a disposed asset?
4. More generally for the enterprise divestment project and for the Divestment Policy that Council is currently developing, is there any requirement for Council to seek consideration (market value or otherwise) when it transfers ownership of a current asset, or can Council choose to reduce its asset base by transferring assets for a peppercorn?

MacDonnells Law advised (24 November 2020), in summary:

1. Absent any further documentation we consider Council should proceed on the basis that it the kiosk owned by Council as trustee.

2. Until a transfer of land to Dauan RNTBC occurs, the appropriate way to transfer ownership of the Dauan Kiosk would be to enter into an arrangement giving occupation of the Kiosk (and land whether partially or entirely) to Dauan RNTBC under either a lease or licence.
3. Council does not need to comply with the provisions of the *Local Government Regulation* regarding Contracting where Council holds the land as trustee under a DOGIT.
4. Where Council as trustee is holding the relevant property, it can decide how best it should deal with that property. As a trustee, it should give consideration to all relevant circumstances. In the current circumstances where the proposed recipient is the underlying RNTBC, we do not see any prohibition to transferring/leasing the property at a peppercorn rate and we do not think there is any requirement to seek market value.

The advice from MacDonnells Law is included as **Attachment 1**.

The proposed agreements are attached and key terms summarised as follows:

Attachment 2: Agreement for Sale and Purchase of Kiosk Building

- This agreement transfers ownership of the Kiosk Building for \$1.00.
- The Kiosk Building is transferred “as is, where is” and TSIRC gives no warranty as to fitness for purpose.

Attachment 3: Licence Agreement

- The agreement allows the PBC to start use the Kiosk Building before a lease is registered.
- The PBC is required to pay outgoings, including TSIRC commercial utility service charges, but is not required to pay rent or a licence care and consideration fee.

Attachment 4: Conditional Agreement to Lease

- In this agreement, TSIRC agrees to grant a lease for the land where the Kiosk Building is located, once an ILUA is registered to validate the lease.
- The PBC is required to pay the costs of registering the lease.

Attachment 5: Lease

- This is a 10-year lease to the PBC for \$1.00.

- The PBC is required to pay the costs of registering the lease, and all outgoings during the lease, but is not required to pay a lease care and consideration fee.
- When the lease ends, the PBC must remove the Kiosk Building or obtain the trustee's agreement to leave the Kiosk Building on the land in a good and tenable condition.
- The PBC is required to comply with all laws, including disposing of commercial waste by removing it from the local government area.

Attachment 6: Indigenous Land Use Agreement

- This agreement validates TSIRC granting the 10-year lease to the PBC for the land where the Kiosk Building is located.
- No native title compensation is payable.
- The PBC (via TSRA) is responsible for registering the ILUA.

Asset Report:

Dauan Kiosk - asset 1000128 – part of Lot 39 on SP270872 (64 Main Road, Dauan)

The Dauan Kiosk was disposed 30/06/2017 and there is no recent financial information. See disposed financials below.

At the time of disposal the condition was a 2 (Good Overall Condition).

Asset Details

Asset Register:* ASSET Infrastructure ☐ As:
 Asset Number:* 1000128 Kiosk - Part of Lot 38 on SP270872 Main
 Asset Structure: NNNNNNN

Asset Details		Attribute Details	Work Details
General			
Search Description:*	Kiosk - Part of Lot 38 on SP270872 Main		
Description:	Kiosk - Part of Lot 38 on SP270872 Main Rd, Dauan Island Qld 4875. This site is currently non-operational and has		
Short Description:*	Kiosk - Part of Lot		
Asset Status:*	Disposed		
Bar Code:			
Commission Date:	30/06/1994		
Expected Commissioning:			
Disposal/Write-off Date:	30/06/2017		
Asset Condition:*	2	Good Condition	
AMP Category:*	BLDGCORP	Buildings Corporate	
AMP Facility:*	WORKS	Works Centre	
PPE Reporting Ctgry:*	BLDCRP	Buildings (Corporate	
Legacy PCS Number:	10084		
SAM ID:	1000128.1		
Heritage Asset:	NO	No	



Primary Image: P1040565.JPG

General

Book Status:*	Disposed								
Commission Date:*	30/06/1994								
Current Units	0.000000	=	Units Acquired 1.000000	-	Units Disposed 1.000000	-	Units Written-off 0.000000	-	Units Split 0.000000
Unit Cost:	1.00								
Asset Cost	Current 0.00	=	Opening Asset Cost 190,000.00	+	Asset Cost Adjustments -190,000.00	+	Commissioned To Date 0.00		
Accumulated Depreciation	Current 0.00	=	Opening Depreciation 73,636.00	+	Depreciation Adjustments -82,374.95	+	Depreciation To Date 8,738.95		
Accumulated Impairment	Current 0.00	=	Opening Impairment Loss 0.00	+	Impairment Reversals 0.00	+	Impairment Loss To Date 0.00		
Written Down Value	0.00	=	Current Asset Cost 0.00	-	Current Depreciation 0.00	-	Current Impairment Loss 0.00		
Total Impairment Losses:	0.00								

Commitments

A draft Divestment Policy has been referred to the Economic Growth Standing Committee.

CONSULTATION

- Cr Elisala
- TSRA Native Title Office
- Legal Services Division
- MacDonnells Law

LINKS WITH STRATEGIC PLANS

Corporate Plan 2020 to 2025

10.1 Facilitate the establishment of an Enterprise Development Strategy, identifying key sector opportunities.

10.2 Divestment of non-core council owned business.

STATUTORY REQUIREMENTS

Local Government Act 2009 (Qld)

Local Government Regulation 2012 (Qld)

Torres Strait Islander Land Act 1991 (Qld)

Native Title Act 1993 (Cth)

FINANCE AND RISK

Capital Cost

NIL

Operating Cost

NIL

Risk Assessment

Potential failure of business enterprises under new management and closure.

Risk of negative perception if Council revokes a previous divestment offer.

Potential cost to Council if Council retains asset ownership.

SUSTAINABILITY

Reduction in non-core local government financial liability.
Financial sustainability of Council (cost recovery).

CONCLUSION

As presented.



David Baldwin
A/CEO



Julia Maurus
Manager Legal Services

ATTACHMENTS

1. Advice from MacDonnells Law
2. Proposed Agreement for Sale and Purchase of Kiosk Building
3. Proposed Licence Agreement
4. Proposed Conditional Agreement to Lease
5. Proposed Lease
6. Proposed Indigenous Land Use Agreement

Our Ref: JPA:Ben Taylor:201450

24 November 2020

Torres Strait Island Regional Council
PO Box 7336
CAIRNS QLD 4870

By Email: Tony.Wynen@tsirc.qld.gov.au
Cc: julia.maurus@tsirc.qld.gov.au; cathy.david@tsirc.qld.gov.au

**TSIRC advice on asset ownership - Dauan Kiosk - asset 1000128 - Lot 39 on SP270872
aka Lot 64 (SLUP) Main Road**

We refer to the above matter and your request for advice in the **attached** Briefing email.

1. EXECUTIVE SUMMARY

- 1.1 Absent any further documentation we consider Council should proceed on the basis that it the kiosk owned by Council as trustee.
- 1.2 Until a transfer of land to Dauan RNTBC occurs, the appropriate way to transfer ownership of the Dauan Kiosk would be to enter into an arrangement giving occupation of the Kiosk (and land whether partially or entirely) to Dauan RNTBC under either a lease or licence.
- 1.3 Council does not need to comply with the provisions of the Local Government Regulation regarding Contracting where Council holds the land as trustee under a DOGIT.
- 1.4 Where Council as trustee is holding the relevant property, it can decide how best it should deal with that property. As a trustee, it should give consideration to all relevant circumstances. In the current circumstances where the proposed recipient is the underlying RNTBC, we do not see any prohibition to transferring/leasing the property at a peppercorn rate and we do not think there is any requirement to seek market value.
- 1.5 The provisions relevant to the disposal/divestment of assets are identified and reproduced below.

Background

Our advice is based on our understanding of the relevant background which is set out briefly below. Please advise if there are any inaccuracies as this may affect our advice.

1. In 2015, Council advertised the use of the Dauan Kiosk as a business opportunity.

2. The Dauan RNTBC said they would take it, but this arrangement was never finalised.
3. In 2017, a Licence was prepared but it was never signed.
4. On 30 June 2017, the Dauan Kiosk was marked as "disposed" in Council's asset register and it was noted "*The site is currently non-operational and has been listed for divestment*".
5. A site may be marked disposed/non-operational if, when the asset is reviewed Council cannot maintain compliance (fire risks etc) as it has been some time since the asset was operational.
6. The asset manager makes the decision to do disposals from the register. An asset like this that is currently treated as "disposed" can be made a current asset again.
7. No documents have been signed which purport to transfer the property or grant any occupation rights to any person in relation to the Dauan Kiosk.

Advice

Ownership of the Dauan Kiosk

The fact that the asset has been disposed of in Council's records, does not change the underlying ownership. We assume from your query that the Kiosk was owned by Council (perhaps having been built by Council) and the underlying land is owned by the Council as trustee.

That said, the disposal may well evidence the usual position of Landlord and Tenant that once the Tenant vacates property any infrastructure thereon would revert to the Landlord.

Absent any further documentation we consider Council should proceed on the basis that it is owned by Council as trustee.

Transfer ownership of Dauan Kiosk to Dauan RNTBC

We understand that in due course, the Dauan RNTBC will become the trustee of the land and the land and improvements on the land will transfer to them to hold on trust.

In the meantime, the appropriate way to transfer ownership of the Dauan Kiosk would be to enter into an arrangement giving occupation of the Kiosk (and land whether partially or entirely) to Dauan RNTBC on either a lease or licence.

Disposal of Dauan Kiosk as a valuable non-current asset

Chapter 6 of the *Local Government Regulation 2012* (Qld) (**LGR**) deals with Contracting.

Relevantly, Regulation 223 provides:

223 What pt 3 is about

- (1) *This part is about the requirements that a local government must comply with before entering into a contract, unless the local government decides to apply part 2.*

- (2) *This part applies to a contract for the disposal of land other than trust land, or an interest in trust land, that is the subject of a deed of grant in trust under which an indigenous local government is the trustee.*

Accordingly, where Council as trustee is holding the relevant property, it can decide how best it should deal with that property. As a trustee, it should give consideration to all relevant circumstances. In the current circumstances where the proposed recipient is the underlying RNTBC, we do not see any prohibition to transferring/leasing the property at a peppercorn rate and we do not think there is any requirement to seek market value.

Disposal of valuable non-current assets generally – relevant to enterprise divestment project

More generally, and bearing in mind the exception to trustee land identified in Regulation 223 of the LGR above, in relation to the enterprise divestment project, Council should have regard to the following Regulations in the LGR when considering a specific asset.

Depending on the type of asset and who owns it will determine whether Council needs to seek consideration and at what value.

- Regulations 224(5), (6), (7) and (8) of the LGR provide:

- (5) *A **valuable non-current asset contract** is a contract for the disposal of a valuable non-current asset.*

- (6) *The **disposal** of a valuable non-current asset by a local government includes the disposal of all or any part of an interest in the asset.*

Example—

the grant of a lease over land or a building

- (7) *A **valuable non-current asset** is—*

- (a) *land; or*

- (b) *another non-current asset that has an apparent value that is equal to or more than a limit set by the local government.*

- (8) *A limit set by the local government under subsection (7)(b) can not be more than the following amount—*

- (a) *for plant or equipment—\$5,000;*

- (b) *for another type of non-current asset—\$10,000.*

- Regulation 227 of the LGR provides:

227 Valuable non-current asset contract—tenders or auction needed first

- (1) *A local government can not enter into a valuable non-current asset contract unless it first—*

- (a) *invites written tenders for the contract under section 228; or*

(b) *offers the non-current asset for sale by auction.*

(2) *This section is subject to division 4.*

- Regulation 236 of the LGR provides:

236 Exceptions for valuable non-current asset contracts

(1) *Subject to subsections (2) to (4), a local government may dispose of a valuable non-current asset other than by tender or auction if—*

(a) *the valuable non-current asset—*

- (i) *was previously offered for sale by tender or auction but was not sold; and*
- (ii) *is sold for more than the highest tender or auction bid that was received; or*

(b) *the valuable non-current asset is disposed of to—*

- (i) *a government agency; or*
- (ii) *a community organisation; or*

(c) *for the disposal of land or an interest in land—*

- (i) *the land will not be rateable land after the disposal; or*
- (ii) *the land is disposed of to a person whose restored enjoyment of the land is consistent with Aboriginal tradition or Island custom; or*
- (iii) *the disposal is for the purpose of renewing the lease of land to the existing tenant of the land; or*
- (iv) *the land is disposed of to a person who owns adjoining land if—*
 - (A) *the land is not suitable to be offered for disposal by tender or auction for a particular reason, including, for example, the size of the land or the existence of particular infrastructure on the land; and*
 - (B) *there is not another person who owns other adjoining land who wishes to acquire the land; and*
 - (C) *it is in the public interest to dispose of the land without a tender or auction; and*
 - (D) *the disposal is otherwise in accordance with sound contracting principles; or*
- (v) *all or some of the consideration for the disposal is consideration other than money, for example, other land given in exchange for the disposal, if—*

- (A) *it is in the public interest to dispose of the land without a tender or auction; and*
 - (B) *the disposal is otherwise in accordance with sound contracting principles; or*
 - (vi) *the disposal is for the purpose of a lease for a telecommunication tower; or*
 - (vii) *the disposal is of an interest in land that is used as an airport or for related purposes if—*
 - (A) *it is in the public interest to dispose of the interest in land without a tender or auction; and*
 - (B) *the disposal is otherwise in accordance with sound contracting principles; or*
 - (d) *for the disposal of a valuable non-current asset, other than land, by way of a trade-in for the supply of goods or services to the local government—*
 - (i) *the supply is, or is to be, made under this part; and*
 - (ii) *the disposal is, or is to be, part of the contract for the supply; or*
 - (e) *for the disposal of a valuable non-current asset by the grant of a lease—the grant of the lease has been previously offered by tender or auction, but a lease has not been entered into; or*
 - (f) *the Minister exempts the local government from complying with section 227.*
- (2) *An exception mentioned in subsection (1)(a) to (e) applies to a local government disposing of a valuable non-current asset only if, before the disposal, the local government has decided, by resolution, that the exception may apply to the local government on the disposal of a valuable non-current asset other than by tender or auction.*
- (3) *A local government may only dispose of land or an interest in land under this section if the consideration for the disposal would be equal to, or more than, the market value of the land or the interest in land, including the market value of any improvements on the land.*
- (4) *However, subsection (3) does not apply if the land or interest in land is disposed of under subsection (1)(b), (1)(c)(ii) or (1)(f).*
- (5) *For subsection (3), a written report about the market value of land or an interest in land from a valuer registered under the Valuers Registration Act 1992 who is not an employee of the local government is evidence of the market value of the land or the interest in land.*
- (6) *An exemption under subsection (1)(f) may be given subject to conditions.*

Next steps

In relation to the Dauan Kiosk, once Council has had the opportunity to review and consider our advice, please let us know if you require any further assistance.

In relation to Council's Divestment Project, please let us know if you require any assistance with the drafting or review of the Policy and we can provide you with relevant estimates.

Yours faithfully

MacDonnells Law



Contact:	Ben Taylor
Position:	Lawyer
Direct:	+61 7 4030 0555
Email:	btaylor@macdonnells.com.au
Director:	Joanne Parisi

AGREEMENT FOR SALE AND PURCHASE OF KIOSK BUILDING

This Agreement is made on the

2021

between

Dauanalaw (Torres Strait Islanders) Corporation RNTBC [ICN 3610] ABN 54 264 399 290
("the Buyer")

and

Torres Strait Island Regional Council ("the Seller").

BACKGROUND

- A. The Seller is the registered proprietor of certain land located on Dauan Island ("the Land") and owns the Kiosk Building located on the Land.
- B. The Buyer is a Registered Native Title Body Corporate and holds on trust for the Dauan People certain native title rights and interests in respect of Dauan Island pursuant to a determination of the Federal Court.
- C. The Buyer wishes to establish an administrative office in the Kiosk Building on the Land to better facilitate the carrying out of its functions and the Seller and the Buyer have agreed to certain arrangements in that regard and in connection with such arrangements the Seller has agreed to sell the Kiosk Building to the Buyer on the terms of this Agreement.

AGREEMENT

1. The Seller warrants that it has the right, title and interest in and to the kiosk building particularised in Schedule 1 to this Agreement.

("the Kiosk Building").
2. The Seller, in exchange for consideration of \$ 1.00 (GST Inclusive), the payment and receipt of which is hereby acknowledged, hereby grants, sells, transfers and delivers to the Buyer, the Kiosk Building, effective immediately.
3. Possession and title to the Kiosk Building is to be given and taken immediately upon the execution of this Agreement and the Seller must immediately deliver and make available to the Buyer, at the location of the Kiosk Building, possession of the Kiosk Building.
4. Immediately upon completion, the Seller must deliver to the Buyer all such resolutions, documents or records as may reasonably be required by the Buyer to:
 - (a) transfer ownership and possession of the Kiosk Building to the Buyer free from any security interest or any other encumbrance whatsoever;
 - (b) evidence compliance with any permit, authority or approval obtained by the Seller in respect of the Kiosk Building.

5. The Buyer acknowledges that from completion, the Buyer shall be solely responsible for the future maintenance, repair, insurance and public liability of the Kiosk Building.
6. Except as otherwise provided for herein, the Buyer acknowledges that the Kiosk Building is granted, sold, transferred and delivered "as is, where is", and that the Seller does not warrant its fitness for purpose, condition or quality.
7. The Buyer warrants that it has had an opportunity to inspect the Kiosk Building prior to entry into this Bill of Sale.
8. The Buyer acknowledges that it shall be solely liable to assess and pay any Stamp Duty deemed payable on the grant, sale, transfer or delivery of the Kiosk Building by the Seller to the Buyer, and indemnifies the Seller entirely with respect such liability.
9. This Agreement is subject to and conditional upon execution, contemporaneously with execution of this Agreement, of:
 - (a) a Licence Agreement in respect of the Land on which the Kiosk Building is located by the Seller (as Licensor) and the Buyer (as Licensee); and
 - (b) an Agreement to Lease dated even date with this Agreement by the Seller (as Lessor) and the Buyer (as Lessee) in respect of the Land and common areas on the Land.
10. The Seller warrants that it has disclosed to the Buyer all facts and information affecting or likely to affect the Buyer's occupation and use of the Kiosk Building as an administrative office and the health and safety of the Buyer's employees, agents, contractors and invitees in so occupying and using the Kiosk Building.
11. The Seller warrants that at the time of the passing of the property in the Kiosk Building:
 - (a) the Seller has good and marketable title to, and the right to sell and transfer, the Kiosk Building;
 - (b) the Kiosk Building is granted, sold, transferred and delivered to the Buyer free of all mortgages, security interests, charges, liens, liabilities or encumbrances whatsoever;
 - (c) the Buyer shall have and enjoy quiet possession of the Kiosk Building.
12. The Seller warrants that at the giving and taking of possession of the Kiosk Building, where the Seller has done or caused or permitted to be done on or in respect of the Kiosk Building any works:
 - (a) any permit, authority or approval required by law was obtained;
 - (b) the works were completed in compliance with those permits, authorities or approvals;
 - (c) where appropriate, a code compliance certificate was issued for those works (including, without limitation, all electrical works).
13. The Seller warrants and undertakes that as at the date of this Agreement:
 - (a) the Seller has not given any consent or waiver and has not received any notice or demand from any government authority, statutory body or from any other party which directly or indirectly affects the Kiosk Building or the ability of the Buyer to occupy, use and enjoy the Kiosk Building as an administrative office from the date of this Agreement;
 - (b) the Seller is not aware of any outstanding fees, charges, levies or other imposts in respect of the Kiosk Building;
 - (c) the Kiosk Building may be lawfully occupied, used and enjoyed as an administrative office.

14. The Seller hereby indemnifies the Buyer and the Buyer's directors, employees and agents against any claims, losses or costs incurred by them directly or indirectly as a result of a breach of any warranty given by the Seller in this Agreement.
15. The parties agree to sign, execute and do all deeds, schedules, acts, documents and things as may be reasonably required by any party effectively to carry out and give effect to the terms and intentions of this Agreement, whether before or after completion.
16. The obligations, warranties, undertakings and indemnities undertaken or given pursuant to this Agreement, to the extent not already performed at completion, are not to merge on completion or on the execution or delivery of any document pursuant to this Agreement but are to remain enforceable to the fullest extent and notwithstanding any rule of law to the contrary.
17. This Agreement may be signed in counterparts and all counterparts taken together will constitute one instrument. A party may execute this Agreement by signing any counterpart. An executed counterpart may be delivered electronically, including by email. Execution and delivery of this Agreement by such means shall be deemed valid, binding and effective for all purposes.
18. At the request of any party hereto, all parties agree to execute an original of this Agreement as well as any electronic copy of this Agreement.

IN WITNESS WHEREOF this Agreement has been executed on the date first above written.

EXECUTED:

Signed for and on behalf of **Torres Strait**)
Island Regional Council) (Mayor / CEO Signature)
this day of 2021)
in the presence of:) (Name Print)
)
) (Position title)

.....
(Signature)

.....
(Name of Witness Print)

Signed for and on behalf of **Dauanalgaw**)
(Torres Strait Islanders) Corporation) (Signature)
RNTBC)
this day of 2021) (Director 1: Name Print)
in the presence of:)
) (Signature)
)
) (Director 2: Name Print)
.....
(Signature)
.....
(Name of Witness Print)

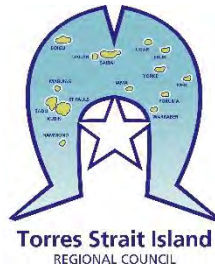
SCHEDULE 1 – THE KIOSK BUILDING

Being the kiosk building located on part of Lot 39 on SP270872 on Dauan Island and occupying the footprint as delineated on the aerial photograph attached at Annexure 1.

Annexure 1



TORRES STRAIT ISLAND REGIONAL COUNCIL



LICENCE AGREEMENT

**TORRES STRAIT ISLAND REGIONAL COUNCIL
(Licensor)**

and

**Dauanalgap Torres Strait Islander Corporation RNTBC
[ICN 3610]
ABN 54 264 399 290
(Licensee)**

THIS AGREEMENT is made on the day of 2021

BETWEEN: TORRES STRAIT ISLAND REGIONAL COUNCIL (*"Licensor"*)

AND: The Person named in the Schedule, as Licensee (*the "Licensee"*)

WHEREAS:

- A. The Licensor is the owner of the Land on Dauan Island and the Kiosk Building located on the Land.
- B. The Licensee is a Registered Native Title Body Corporate and holds on trust for the Dauan People certain native title rights and interests in respect of Dauan Island pursuant to a determination of the Federal Court.
- C. The Licensee wishes to establish an administrative office in the Kiosk Building on the Land to better facilitate the carrying out of its functions.
- D. In that regard the Licensee wishes to take a lease in respect of the Land which will require the registration of an Indigenous Land Use Agreement.
- E. In the interim, the Licensee wishes to purchase the Kiosk Building and licence the use of the Land for the purpose of establishing an administrative office in the Kiosk Building in anticipation of obtaining the abovementioned lease.
- F. The Licensor has agreed to licence the Land to the Licensee on the terms of this Agreement.

OPERATIVE PROVISIONS:

In consideration of the mutual covenants in this Agreement, the parties agree as set out in this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 Schedule:

<i>Licensee:</i>	Dauanalgalaw (Torres Strait Islanders) Corporation RNTBC [ICN 3610] ABN 54 264 399 290
<i>Land:</i>	Land at Part of Lot 39 on SP270872, as shown in Annexure 1.

<i>Kiosk Building:</i>	The demountable kiosk situated on the Land, shown in the aerial photograph in Annexure 1 .
<i>Commencement Date:</i>	
<i>Licence Fee:</i>	\$1.00 per annum (GST exclusive) payable upon demand
<i>Term:</i>	Twelve (12) months from the Commencement Date
<i>Option Term:</i>	Nil
<i>Days and Times:</i>	Unrestricted
<i>Permitted Use:</i>	Office administration and associated activities by Licensee staff, contractors, agents and assigns only.

- 1.2 **Definitions:** Unless a contrary intention appears in this Agreement, the following expressions shall have the following meanings:-

“Agreement” means this Agreement as amended or supplemented in writing.

“Building” means the Building specified in the Schedule.

“Claim” means action, claim, proceeding, expense, demand or damages.

“Common Area” means the walkways and driveways on the Land that allow access to and egress from the Kiosk Building.

“Commencement Date” means the date specified in the Schedule.

“Hazardous Chemicals” includes anything which may create a risk to health or safety of persons including the Licensee and anything which is a hazardous chemical as defined under the *Work Health and Safety Regulations 2011* (Cth) as amended from time to time.

“Land” means the Land specified in the Schedule.

“Licence Fee” means the amount specified in the Schedule.

“Licensee” means the Licensee specified in the Schedule.

“Licensor” means the Torres Strait Island Regional Council.

“Licensor’s Associates” means the Licensor’s officers, employees, invitees, contractors, subcontractors and agents.

“Major Maintenance” means any maintenance required to be undertaken to the Kiosk Building or fixtures contained therein.

“Minor Maintenance” means any minor works to be undertaken to the Kiosk Building and/or Land such as replacement of light bulbs, maintenance of gardens and lawns, cleaning air-conditioning filters, and rectification of all damage inflicted by the Licensee’s own acts or omissions.

“Option” means a further term that may be granted to the Licensee by the Licensor upon giving the Licensor at least three (3) months written notice of the intention to take up an Option Term specified in the Schedule.

“Outgoings” means electricity, water, waste disposal, telephone charges, internet charges etc arising solely in respect of the Land and the Kiosk Building and the Licensee’s use thereof.

“Permitted Use” means the use of the Land to host the Kiosk Building, in its location as at the date of this Agreement, for an administrative office.

“Term” means the period commencing on the Commencement Date and for that period specified in the Schedule.

“Workplace Health and Safety Requirements” means the *Work Health and Safety Act 2011* (Cth), and any approved codes under the *Work Health and Safety Act 2011* (Cth), and the *Work Health and Safety Act 2011* (Qld), other State, Territory or Federal laws and requirements of any competent authority related to health and safety from time to time.

1.3 **Interpretation:** Unless a contrary intention appears in this Agreement, a reference to:-

- (i) a clause or schedule is to a clause or schedule in this Agreement;
- (ii) the singular includes the plural and vice versa;
- (iii) any gender includes all other genders; and
- (iv) a person includes a corporation and an association whether incorporated or not and vice versa.

1.4 **Headings:** The clause headings appearing in this Agreement are inserted for convenience of reference and shall not affect the construction of this Agreement.

- 1.5 **Governing Law:** Notwithstanding the residence or domicile of any party to this Agreement, any matter related to this Agreement shall be governed by and this Agreement shall be construed in accordance with the laws of Queensland, but nothing in this Licence is to be construed as binding the Licensee to comply with laws which do not apply to it of their own force.

2. GRANT OF LICENCE

- 2.1 **Grant of Licence:** The Licenser grants a licence to the Licensee and the Licensee takes a licence of the Land for the Term.

- 2.2 **Rights with respect to Licence:** The Licensee pursuant to this Agreement shall have a right to occupy the Land on a non-exclusive basis, for the Term during the Days and Times each week specified in the Schedule. The Licenser agrees that it will not grant a licence to any other party to use the Land during the term.

- 2.3 **Common Area:** The Licensee may use the Common Area in common with the Licenser and in accordance with the purposes for which the Common Area is intended.

- 2.4 **No Tenancy:** Other than the rights granted under this Agreement, the grant of this Licence does not create nor confer upon the Licensee any tenancy or other estate or interest in the Land.

2.5 Condition Precedent

2.5.1 This Agreement is subject to and conditional upon execution, contemporaneously with execution of this Agreement, of:

- (a) an Agreement for Sale and Purchase of Kiosk Building dated even date with this Agreement by the Trustee (as seller) and the Applicant (as purchaser) in respect of the Kiosk Building and associated improvements currently situated on the Land ("the Kiosk Purchase"); and
- (b) an Agreement to Lease dated even date with this Agreement by the Trustee (as Lessor) and the Applicant (as Lessee) in respect of the Land and common areas on the Land.

2.6 Kiosk Building

- 2.6.1 The parties acknowledge and agree that:

- (a) ownership of the Kiosk Building is intended to be transferred from the Licensor to the Licensee pursuant to the Kiosk Purchase immediately following execution of this Agreement; and
- (b) in the event that ownership of the Kiosk Building is so transferred, at all times during the Term, the Licensee shall be permitted to keep the Kiosk Building in its location on the Land as at the date of this Agreement and have the exclusive use of the Kiosk Building as an administrative office.

3. LICENCE FEE

Licence Fee: The Licensee shall pay to the Licensor the Licence Fee on or before the Commencement Date.

4. OBLIGATIONS OF LICENSEE

4.1 Use of Land: The Licensee shall not use the Land for any purpose other than the Permitted Use specified in the Schedule.

4.2 Payment of Outgoings: The Licensee shall be responsible for all Outgoings.

4.3 Nuisance and Directions:

The Licensee shall not:-

- (i) cause any obstruction danger nuisance or annoyance to other users or occupiers of the Land;
- (ii) fail to comply with the directions of the Licensor or the Licensor's employees in relation to the use of the Land.

4.4 Licensee to Clean Land: The Licensee shall keep the Land clean and clear of all rubbish and deliver up the Land in a clean and tidy condition at the expiration of the Term.

4.5 Removal of Licensee's Property: Subject to clause 4.6, at the expiration, surrender or earlier determination of this Agreement, the Licensee shall remove the Licensee's property on the Land (including the Kiosk Building) and if the Licensee does not do so within one (1) month of the expiration, surrender or earlier determination of this Agreement (the Licensee being permitted to enter the Land during such period to remove the Kiosk

Building), then the Licensor shall be entitled to remove that property, and deal with it in a manner as the Licensor in its absolute discretion deems fit at the risk and at the cost of the Licensee.

- 4.6 **Clause 4.5 shall not apply if the Licensee has entered into a further license or a lease of the Land with the Licensor.**
- 4.7 **Obtain All Approvals:** The Licensee will obtain all approvals, consents and licences and permits, which are necessary to use the Land.
- 4.8 **Work Health and Safety:** The Licensee shall be solely responsible, at its own cost, for compliance with Work Health and Safety requirements with respect to its use of the Building and the Land.
- 4.9 **Assignment:** This Licence is personal to the Licensee and is not assignable nor transferable.
- 4.10 **Insurance:** To the extent that it has an insurable interest in the Kiosk Building, the Licensee will for the Term, take out and maintain the following insurances:-
- (i) insurance for the Building:
 - (A) for its full reinstatement or replacement value (including architects, surveyors and other professional fees, the cost of debris removal, demolition, site clearance, any works that may be required by a law and incidental expenses) at the time of loss or damage; and
 - (B) against loss or damage from fire, lightning, flood, storm and tempest, earthquake, water damage (including sprinkler leakage and rain water), explosion or concussion from explosion, impact by vehicles or aircraft or articles dropped from aircraft, radiation, riots, strikes, civil commotion, malicious damage; and
 - (ii) insurance cover for all Claims for injury, loss or damage to any person or property however sustained arising out of the use of the Building or the Land for not less than \$20,000,000.00 or for a greater reasonable amount which the Licensor or the Licensee may require from time to time,
- 4.11 **Maintenance:** The Licensee shall be responsible for all Minor Maintenance and Major Maintenance during the Term.

5. LICENSOR'S OBLIGATIONS

- 5.1 **Fit and proper condition:** The Licensor shall ensure that the Land is in fit

and proper condition at the commencement of the Licence, with regard to the Permitted Use.

- 5.2 **Services:** The Licensor must maintain, or provide, connection to the Building of the utilities and services specified in Schedule 1 that were in existence as at 1 January 2021. The Licensee will be responsible for the cost of such utilities and services as it uses on the Land. All utilities and services required by the Licensee shall be registered in the Licensee's name and used at the Licensee's cost.

6. RELEASES AND INDEMNITIES

- 6.1 **Indemnity Breach:** The Licensee shall indemnify the Licensor in respect of any Claim suffered by the Licensor to the extent caused by any failure of the Licensee to perform the obligations on the part of the Licensee expressed in this Agreement.

- 6.2 **Assumption of Risk:** Subject to the terms of this Agreement, the Licensee agrees to occupy and use the Land at its risk.

- 6.3 **Licensor Warranty:** The Licensor warrants that it has disclosed to the Licensee all facts and information affecting or likely to affect the Permitted Use and the health and safety of the Licensee's employees, agents, contractors and invitees in undertaking the Permitted Use and shall from time to time promptly disclose in writing to the Licensee any alterations or prospective alterations to such facts and information.

- 6.4 **Indemnity:** The Licensee indemnifies the Licensor for Claims suffered by the Licensor in respect of:

- (i) personal injury to, or death of, any person; or
- (ii) damage to the Land;

to the extent caused by the negligent act or omission of the Licensee in relation to their use of the Land.

- 6.5 The liability of the Licensee to indemnify the Licensor under clause 6.1 or 6.4 or both will be reduced proportionately to the extent that the Licensor or the Licensor's Associates contributed to or caused the Claim to arise.

- 6.6 The Licensee's indemnity under this clause 6 is limited to \$10,000,000.00 in the aggregate and will expire on the expiry or earlier termination of this Licence.

- 6.7 Immediately upon becoming aware of any event, circumstance or Claim

which may give rise to the Licensors relying on the indemnity in this clause 6, the Licensors shall:

- (i) notify the Licensee in writing of the event, circumstance or Claim and provide reasonable details; and
- (ii) use its best endeavours to mitigate any loss, damage or expenses arising out of or in connection with the event, circumstance or Claim.

6.8 The parties agree that if the Licensee requires, the Licensee will be entitled to have the conduct of any Claim in respect of which the indemnity in this clause 6 applies. The Licensors agree to co-operate with the Licensee in the conduct of the Claim.

7. GOODS AND SERVICES TAX

7.1 **Definitions:** In clauses 7.2 to 7.4 –

“GST”, “supply”, “taxable supply” and “tax invoice” have the same meanings as in the GST Act.

“GST Act” means the *A New Tax System (Goods and Services) Act 1999* (Cth).

7.2 **Licence Fee and other payments are exclusive of GST:** The consideration payable under a clause of this Agreement (except under clause 7.3) for a supply made by one party to the other party (including the Licence Fee) is exclusive of any amount attributable to GST (the “GST-exclusive consideration”).

7.3 **Licensee’s Obligation to pay Licensors:**

7.3.1 A party (Supplier) shall, in respect of any taxable supply made by the other party (Recipient) under this Agreement, pay to the Recipient, in addition to the GST-exclusive consideration and subject to clause 7.4 at the same time this Agreement requires, the GST-exclusive consideration to be paid, an amount which, under the GST Act, is equal to the GST payable on the supply in question.

7.3.2 No party may claim or retain from the other party an amount in relation to a supply made under this Licence for which the first party can obtain an input tax credit or decreasing adjustment.

7.4 **Tax Invoice:** The Supplier shall deliver to the Recipient a tax invoice for a taxable supply made by the Supplier to the Recipient at least seven (7) days before its due date.

8. GENERAL

- 8.1 **Costs:** Each party shall bear its own costs of and incidental to the preparation and execution of this Agreement.
- 8.2 **Notices:** Any notice or other document or writing served or given under this Agreement must be in writing and is given for all purposes by delivery in person, by prepaid post or by facsimile addressed to receiving party to the address for notice in Schedule 2. In the case of posting, notice will be deemed to have been given 25 (25) business days after the date of posting and in the case of a facsimile on the first business day after the date of transmission (providing the sending party receives a verification report indicating that the notice has been transmitted) but if hand delivery or facsimile transmission is not on a Business Day or is after 5:00pm on a Business Day, notice is taken to be received at 9:00am on the next Business Day.
- 8.3 **Waiver:** No right under this Agreement shall be deemed to be waived except by notice in writing signed by either party and any forbearance to delay or indulgence granted by either party to the other shall not be construed as a waiver of its rights under this Agreement.
- 1.1 **Severability:** If any term or condition in this Agreement shall become invalid or unenforceable, the remaining terms and conditions shall not be affected and shall be valid and enforceable to the full extent permitted by law. This clause has no effect if the severance materially alters the nature or intended effect of this document.
- 8.4 **Entire Agreement:** This Agreement constitutes the entire Agreement between the parties with respect to the Land.
- 8.5 **Termination:** Should the Licensor or Licensee, at any time and for whatever reason during the initial term or any extension of the initial term wish to terminate this Agreement, the Licensee shall be required to vacate the Premises upon at least three (3) calendar months' notice in writing. No compensation shall be claimed by either party from the other as a result of a party exercising rights under this clause 8.5, other than as required under clause 8.6 of this Agreement.
- 8.6 **Refund:** In the event of either party exercising rights under clause 8.5 of this Agreement, the Licensor shall repay to the Licensee within 14 days of receipt of notice under clause 8.5, proportionate unused Licence Fee of remaining Term.

8.7 **Counterparts:** This Agreement may be signed in Counterparts and all counterparts taken together will constitute one instrument. A party may execute this Agreement by signing any counterpart. An executed counterpart may be delivered electronically, including by email. Execution and delivery of this Agreement by such means shall be deemed valid, binding and effective for all purposes.

8.8 At the request of any party hereto, all parties agree to execute an original of this Agreement as well as any electronic copy of this Agreement.

8.9 **Variation:** This Agreement may be varied by approval of both Parties to this agreement in writing and annexed hereto.

SCHEDULE 1

Utilities and Services

1. Electricity;
2. Water;
3. Sewerage;
4. Waste disposal;
5. Telephone and internet.

SCHEDULE 2

Address for notices

Licensee:

Dauanalaw (Torres Strait Islanders) Corporation RNTBC [ICN 3610]
Lot 52 Main Road,
Dauan Island
via, THURSDAY ISLAND QLD 4875

Licensor:

Attention: Manager Legal Services
Torres Strait Island Regional Council
PO Box 7336 CAIRNS Qld 4870
Email: ceo@tsirc.qld.gov.au and julia.maurus@tsirc.qld.gov.au
Phone: 0740345734 (Legal Services Division, Administration Officer)

ANNEXURE 1: Map of Premises as Part of Lot 39 on SP270872



Conditional Agreement to Lease Torres Strait Islander Deed of Grant in Trust Land for Commercial Purposes

between

TORRES STRAIT ISLAND REGIONAL COUNCIL

and

DAUANALGAW (TORRES STRAIT ISLANDERS)
CORPORATION RNTBC
[ICN 3610]
ABN 54 264 399 290

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[UPDATE CONTENTS]

THIS AGREEMENT is made on the day of 2021.

BETWEEN: The party named in Item 1 of Schedule 1

(“the Trustee”)

AND: The party named in Item 2 of Schedule 1

(“the Applicant”)

BACKGROUND

- A. The Trustee is the trustee of the land on Dauan Island described in Item 3 in Schedule 1 and holds that land on trust for the purpose specified in Item 4 in Schedule 1.
- B. The Applicant is a Registered Native Title Body Corporate and holds on trust for the Dauan People certain native title rights and interests in respect of Dauan Island pursuant to a determination of the Federal Court.
- C. The Applicant wishes to establish an administrative office in the Premises to better facilitate the carrying out its functions.
- D. The Trustee proposes to grant the Lease to the Applicant pursuant to the power specified in Item 5 in Schedule 1.
- E. The parties wish to record the terms of their agreement.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, or the contrary intention appears, the following terms will have the meanings respectively assigned to them -

“**Agreement**” means this document and all schedules to this document.

“**Applicant**” means the person specified in Item 2 in Schedule 1.

“**Approvals**” means any consent or approval required by law.

“**Approval Date**” means that date specified in Item 7 in Schedule 1.

“**Assessment Manager**” has the same meaning as that term in Planning Act.

“**Business Day**” means a day that is not a Saturday, Sunday, public holiday or bank holiday for Cairns or the Torres Strait.

“**Condition**” means the condition specified in Schedule 2.

“**Completion Date**” means that date specified in Item 9 in Schedule 1, applying to the Works.

“Cultural Heritage Requirements” means that compliance with the *Torres Strait Islander Cultural Heritage Act 2003* is required before the Works can proceed.

“Date of this Agreement” means the date on which this Agreement is executed by the parties and if executed on different dates, the later of those dates.

“Deal” means to use, occupy, conduct works or otherwise conduct activities on the Land.

“Development Application” means an application for a Development Permit for the –

- (a) reconfiguration of the Land for the purposes of the lease plan for the Premises;
- (b) carrying out building work;
- (c) carrying out plumbing or drainage work;
- (d) carrying out operational work; or
- (e) making a material change in use of the Land,

as required by the Planning Act.

“Development Approval” means the approval of the Development Application, including all terms attaching to that approval.

“Development Permit” has the meaning given to that term in the Planning Act.

“DOGIT” has the same meaning given in the ALA or the TSILA, as applicable.

“GST” has the same meaning as in GST Law.

“GST Law” includes *A New Tax System (Goods and Services Tax) Act 1999* (Cth), order, ruling or regulation which imposes or purports to impose or otherwise deals with the administration or imposition of GST on a supply of goods or services in Australia.

“ILUA” means an indigenous land use agreement meeting the requirements of section 24BA, section 24CA or section 24DA of the *Native Title Act 1993* (Cth).

“Land” means the land described in Item 3 of Schedule 1.

“Lease” means a lease of the Premises together with the right to use the common areas of the Land on substantially the same terms as the lease in Schedule 5.

“Lodgment Date” means that date specified in Item 6 in Schedule 1.

“Month” means calendar month.

“Native Title Requirements” means such requirements of Part 2 Division 3 of the *Native Title Act 1993* (Cth) as must be complied with in order that the grant of Lease contemplated in this Agreement will be valid.

“Premises” means that part of the Land over which the Lease is to be granted as indicated on the map in Schedule 6, or an alternative area of the Land agreed in accordance with clause 6.1 and on which is situated a kiosk building (“the Kiosk Building”).

“Planning Act” means the *Planning Act 2006* (Qld).

“Supply” has the same meaning as that term in GST Law.

“Tax Invoice” has the same meaning as in GST Law.

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

“Trustee” means the party identified in Item 1 of Schedule 1.

“Works” means any form of earthmoving or construction on the Land as specified in Item 8 in Schedule 1.

“Works Area” means that part of the Land as shown on the plan in Schedule 1, if applicable.

- 1.2 A reference to a person includes a reference to corporations and other entities recognised by law.
- 1.3 In this Agreement the Table of Contents has been inserted for convenience of reference only and is not intended to be part of, or to affect the meaning, or interpretation of any of the terms and conditions of this Agreement.
- 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 In this Agreement the headings to the clauses have been inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.
- 1.6 In the case of any inconsistency between the schedules to this Agreement and a clause contained in this Agreement, the provisions of the clause will prevail to the extent of any inconsistency.
- 1.7 The singular includes the plural and vice versa.
- 1.8 Words importing one gender will include a reference to all other genders.
- 1.9 A reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment to this Agreement and includes any amendment to them made in accordance with this Agreement.
- 1.10 A covenant or agreement on the part of two or more persons will be deemed to bind them jointly and severally.
- 1.11 Where under, or pursuant to this Agreement, the day on or by which any act, matter or things is to be done is a Saturday, Sunday or public holiday in Queensland, such

an act, matter or thing may be done on the next proceeding Business Day in Queensland.

2. Commencement and Term

- 2.1 This Agreement commences on the Date of this Agreement and continues until the commencement of the Lease in accordance with this Agreement or until this Agreement is terminated in accordance with this Agreement, whichever shall be the sooner.
- 2.2 The Applicant may apply in writing to the Trustee for an extension of time in order to comply with the Conditions. The Trustee will not unreasonably refuse such request.
- 2.3 The Trustee will notify the Applicant in writing no later than 10 Business Days after receipt of the Applicant's request for an extension, as to whether or not the extension is granted.

3. Conditions

- 3.1 Condition Precedent This Agreement is subject to and conditional upon execution, contemporaneously with execution of this Agreement, of:
 - (a) an Agreement for Sale and Purchase of Kiosk Building dated even date with this Agreement by the Trustee (as seller) and the Applicant (as purchaser) in respect of the Kiosk Building and associated improvements currently situated on the Land ("the Kiosk Purchase"); and
 - (b) a Licence Agreement dated even date with this Agreement by the Trustee (as Licensor) and the Applicant (as Licensee) in respect of a licence of the Land and common areas on the Land.

Condition Subsequent

- 3.2 This Agreement is also subject to and conditional upon the satisfaction of the Condition set out in Schedule 2.
- 3.3 If the Condition referred to in clause 3.2 is not satisfied by the date for satisfaction, then this Agreement may be terminated by either party on not less than 30 days' prior written notice to the other party. Neither party will be entitled to any compensation or damages as a result of termination under this clause 3.

4. Lease

- 4.1 Subject to clause 3, the Trustee agrees to grant and the Applicant agrees to accept the Lease for the Term and at the Rent as set out in Schedule 1.
- 4.2 Subject to clause 4.3, the Lease will commence on that date which is 10 Business Days after the date on which the Applicant notifies the Trustee that the Condition referred to in clause 3.2 has been satisfied.
- 4.3 Despite any other provision of this Agreement, commencement of the Lease is subject to and conditional upon settlement of the Kiosk Purchase and

commencement of the Lease will not occur unless the Kiosk Purchase is first settled.

- 4.4 Each party must do all things which may reasonably be necessary to enable prompt settlement of the Kiosk Purchase.
- 4.5 The Trustee will sign the Lease promptly and return it to the Applicant for registration.
- 4.6 Subject to the satisfaction of the condition in clause 4.3, the Applicant will –
 - (a) sign and register the Lease as soon as practicable after receiving the signed Lease from the Trustee; and
 - (b) provide the Trustee with a copy of the registration confirmation statement.

5. Trustee's Obligations

- 5.1 The Trustee confirms and warrants the accuracy of the matters specified in Schedule 3.
- 5.2 The Trustee will give all reasonable assistance to the Applicant to meet the Native Title Requirements.
- 5.3 Where a Development Approval is required in order to register the Lease, the Trustee may consent to the making of the Development Application in its capacity as trustee of the Land. That consent does not fetter the discretion of the Trustee in relation to the determination of the Development Application where the Trustee, in its capacity as a local government, is the Assessment Manager.
- 5.4 The Trustee will confirm in writing prior to execution of the Lease, that there are no interests in the Land which may affect the proposed Lease.

6. Applicant's Obligations

- 6.1 Where consultation pursuant to the Native Title Requirements, or the Cultural Heritage Requirements determines that the Premises, or part of the Premises is not suitable for the Lease, then the Trustee and the Applicant must use their best endeavours to identify an alternative area on the Land no less advantageous to the Applicant to be the subject of the Lease.
- 6.2 If the Trustee and the Applicant agree on the alternative area, that area will be the Premises for the purposes of this Agreement and the Lease.
- 6.3 If the Trustee and the Applicant cannot agree on an alternative area, then either party may terminate this Agreement on not less than 30 days' prior written notice.
- 6.4 The Applicant must comply with the Native Title Requirements in accordance with this Agreement prior to the grant of the Lease, or prior to the commencement of any Works if the Works are to commence before the grant of the Lease.

- 6.5 Where there are Cultural Heritage Requirements, the Applicant must comply with those requirements prior to commencing any Works on the Land.
- 6.6 Where only a sketch plan has been attached in Schedule 6 and the Premises are required to be surveyed in order to meet registration requirements, the Applicant must arrange a survey of the Premises to a standard to satisfy registration requirements and provide a copy of the lease plan to the Trustee as soon as possible after the Date of this Agreement. The Trustee will give all reasonable assistance to the Applicant to meet the requirements of this clause.
- 6.7 The Applicant acknowledges that this Agreement does not give it any rights to Deal with the Land, except in accordance with this Agreement.

7. Works on the Land

- 7.1 Subject to clause 7.2, the Applicant must not commence any Works on the Land prior to the grant of the Lease, without the written consent of the Trustee.
- 7.2 Clause 7.1 does not apply where the Applicant is required to undertake Works in accordance with the Conditions.
- 7.3 If, for any reason, the Lease is not granted –
- (a) the Applicant will not be entitled to any compensation or damages for the Works undertaken in contravention of clause 7.1; and
 - (b) the Trustee may require the Applicant to remediate the Land and remove the Works at the cost of the Applicant.
- 7.4 Clause 7.3 does not apply if the failure to grant the Lease is due to the breach of this Agreement by the Trustee.

8. Statutory Obligations

The parties must comply with all other statutory obligations to give effect to this Agreement.

9. GST

- 9.1 The parties acknowledge that GST may be payable on a Supply under this Agreement.
- 9.2 Where GST is payable upon any Supply under this Agreement, the consideration payable by the recipient for the Supply will be adjusted in accordance with clauses 9.2 and 9.3.
- 9.3 Subject to the supplier issuing a valid Tax Invoice, the consideration payable by the recipient to the supplier for the Supply will be increased by the amount equal to that which the supplier is obliged to remit as GST on the Supply (“the Amount”).
- 9.4 If it is determined on reasonable grounds that the amount of GST collected from the recipient under this clause 9 differs, for any reason, from the amount of GST paid or payable by the supplier, including by reason of –

- (a) any amendment to the GST;
 - (b) the issue of a ruling or advice by the Commissioner of Taxation; or
 - (c) a refund to the supplier in respect of a Supply made under this Agreement,
- the recipient will be entitled to a refund of the additional consideration collected from the recipient, or will pay the additional amount of GST to the supplier, as the case may be.

9.5 The parties will exchange such information as is reasonably necessary for each to make a reasonable assessment of the amount of any refund or additional payment due under clause 9.4.

10. Termination

10.1 The Applicant may terminate this Agreement at any time prior to commencement of the Lease by giving the Trustee not less than 30 days' prior written notice informing the Trustee that the Applicant no longer wishes to pursue the Lease.

10.2 Termination under clause 6.3 or clause 10.1 will not give rise to any claim for compensation or damages by either party.

11. Governing Law

This Agreement is governed by and construed according to the law of the State of Queensland and the parties agree to submit to the jurisdiction of the courts of the State of Queensland.

12. Waiver

No right under this Agreement is deemed to be waived except by written notice signed by each party.

13. Variation

This Agreement may be varied at any time by a written agreement executed by both parties.

14. Costs

14.1 Each party must pay its own costs of and incidental to the negotiation, preparation and execution of this Agreement.

14.2 The Applicant must pay any stamp duty payable on this Agreement.

14.3 The Applicant must pay all reasonable costs associated with meeting the Native Title Requirements, unless otherwise agreed in writing by the parties.

14.4 Where the Applicant must satisfy Cultural Heritage Requirements, the Applicant must pay all reasonable costs associated with meeting those requirements.

14.5 The Applicant will pay the costs of lodgment and registration of the Lease, as specified in Schedule 4.

14.6 The Applicant will pay the costs of such survey as may be required under clause 6.6 (if any).

15. Entire Agreement

This Agreement constitutes the entire agreement between the parties. Any prior arrangements, agreements, warranties, representations or undertakings are superseded.

16. Trustee obligations

16.1 The Trustee:

- (a) in its capacity as Trustee of the Land, where the Lessee requires provision of services or utilities to the Premises, must use all reasonable endeavours to facilitate provision of those services or utilities by the service or utility provider to the boundary of the Premises for connection and use by the Lessee; and
- (b) in its capacity as a local government under the *Local Government Act 2009*, will ensure provision of services under its control to the Premises for connection and use by the Lessee.

17. Caveat

17.1 The Trustee acknowledges and agrees that upon execution of this Agreement by the parties, the Applicant will have a caveatable interest in the Land and the Trustee will not do anything or omit to do anything that will or may adversely affect the Applicant's interest in the Land.

17.2 The Trustee acknowledges that the Applicant may lodge a caveat or procure the lodgement of a caveat against the Land after the date of this Agreement to give notice of its interest in the Land under this Agreement.

17.3 If a caveat is lodged under this clause 17, the Applicant agrees to promptly consent to any dealing which relates to the Land but does not adversely affect their interest in the Land.

18. Notices

18.1 Notice to Applicant

Any notice or demand in writing required to be given by the Trustee to the Applicant shall be sufficiently served if:-

- (a) in the case of a notice under the Property Law Act 1974 in the manner prescribed by that Act;
- (b) in all other cases, unless otherwise required by the Property Law Act 1974:
 - (i) served personally or left addressed to the Applicant at the Applicant's address set out in Item 1 of the Reference Schedule;

- (ii) sent by facsimile machine to the Applicant's facsimile machine;
or
- (iii) forwarded by prepaid security post addressed to the Applicant.

The Lessee may nominate by written notice to the Trustee another address.

18.2 Notice to Trustee

Any notice or application in writing required to be given by the Applicant to the Trustee shall be sufficiently served if:-

- (c) in the case of a notice under the Property Law Act 1974 in the manner prescribed by that Act;
- (d) in all other cases, unless otherwise required by the Property Law Act 1974:
 - (i) served personally or left addressed to the Trustee of the Trustee's address set out in Item 1 of the Reference Schedule;
or
 - (ii) sent by facsimile machine to the Trustee's facsimile machine; or
 - (iii) forwarded by prepaid security post addressed to the Trustee.

The Trustee may nominate by written notice to the Lessee another address.

18.3 Time of Service

Any notice, demand or application given under this Agreement if sent by post shall be deemed to have been given 25 business days after the date of posting and in the case of a facsimile, notice will be deemed to have been given on the date of transmission (providing the sending party receives a verification report indicating that the notice has been transmitted) but if hand delivery or facsimile transmission is not on a Business Day or is after 5:00pm on a Business Day, notice is taken to be received at 9:00am on the next Business Day.

19. Dispute resolution

19.1 Unless otherwise provided in this Agreement, if a party considers that there is a dispute in respect of any matter arising out of, or in connection with this Agreement, then that party shall immediately give notice to the other party setting out details of the dispute. The parties will endeavour in good faith to resolve the dispute between themselves within 10 Business Days of the receipt of such notice, failing which the parties will endeavour in good faith within a further 20 Business Days to appoint a mediator and seek to resolve the dispute, time being of the essence.

19.2 Neither party will commence legal proceedings against the other except for injunctive relief before following the procedure set out in clause 19.1.

20. Further assurances.

20.1 The parties agree to execute and deliver such instruments and take such further actions as any party may, from time to time, reasonably request in order to carry out and to effectuate fully the intent and purposes of this Agreement.

21. Counterpart execution

- 21.1 This Agreement may be executed in any number of counterparts and all counterparts, taken together, shall constitute one instrument. A party may execute this Agreement by signing any counterpart. An executed counterpart may be delivered electronically, including by email. Execution and delivery of this Agreement by such means shall be deemed valid, binding and effective for all purposes.
- 21.2 At the request of any party hereto, all parties agree to execute an original of this Agreement as well as any electronic copy of this Agreement.

SCHEDULE 1

Item 1	Trustee	Torres Strait Island Regional Council
Item 2	Applicant	Dauanalgaw (Torres Strait Islanders) Corporation RNTBC [ICN 3610] ABN: 54 264 399 290
Item 3	Land	All the land contained in Lot 39 on SP270872 having Title Reference number 51093448
Item 4	Purpose for which the Land is held	For the benefit of Torres Strait Islander inhabitants and for no other purpose.
Item 5	Power to Grant Lease	Part 8, Divisions 1 & 2, TSILA.
Item 6	Lodgment Date for the Development Application	Not applicable
Item 7	Approval Date for the Development Application	Not applicable
Item 8	Works	NIL
Item 9	Completion Date for Works	NIL
Item 10	Local Government division for Community Poll	Not applicable
Item 11	Term of Lease	Ten (10) years
Item 12	Rent	Fixed at \$1 per annum for the Term (payable on demand)

SCHEDULE 2

CONDITIONS

1. Native Title Requirements

Condition 1: Native Title Requirements

- 1.1 This Agreement is conditional on the Applicant satisfying the Native Title Requirements on or before that date which is two (2) years after the Date of this Agreement.
- 1.2 The Applicant must notify the Trustee no later than 10 Business Days after the date specified in condition 1.1 (or any later date agreed by the parties), as to whether or not the terms of condition 1.1 have been satisfied.
- 1.3 When giving the notice under condition 1.2 that the terms of condition 1.1 have been satisfied, the Applicant must provide, to the Trustee, a copy of –
 - (a) the notice from the National Native Title Tribunal confirming that the ILUA has been registered;
 - (b) the notice given under section 24KA of the *Native Title Act 1993* (Cth); or
 - (c) the notice given under section 24JAA of the *Native Title Act 1993* (Cth).

SCHEDULE 3

Trustee Confirmations

The Trustee confirms that the following actions have been undertaken -

A. The Applicant is eligible to be granted a lease of the Land pursuant to –

***cross the applicable box**

- ☐ section 119(1)(a)(i) of the *Aboriginal Land Act 1991* (Qld)
- ☒ sections 84 and 85 of the *Torres Strait Islander Land Act 1991* (Qld) (Grant of lease by trustee of Torres Strait Islander land)
- ☐ sections 84 and 86 of the *Torres Strait Islander Land Act 1991* (Qld) (Grant of lease by lessee of townsite lease)

B. The Trustee considers that the grant of the Lease would be for the benefit of persons for whom the Trustee holds the land.

C. The Trustee has explained to those Aboriginal or Torres Strait Islander people (as applicable) particularly concerned with the land, the nature, purpose and effect of the grant of the lease and those people are generally in agreement with the grant of the Lease.

SCHEDULE 4

Lease
(Form 7 and Form 20 attached)

SCHEDULE 5

Sketch Plan or Survey Plan of Premises



SCHEDULE 6

NOTICE

Applicant

Lot 52 Main Road,
Dauan Island
via, THURSDAY ISLAND QLD 4875

Trustee

Street Address: Lot 12 Francis Road
 Hammond Island QLD 4875

Postal Address: PO Box 7336
 CAIRNS QLD 4870

Facsimile Number: 07 4034 5750

**EXECUTED AND DELIVERED AS A DEED ON THE DATE FIRST HEREINABOVE
WRITTEN**

Signed for and on behalf of the **Torres Strait
Island Regional Council** as Trustee and in its
capacity as local government)
)
)
)

this day of 2021)
)
)
)

by)
(full name))
)
)

Mayor/Chief Executive Officer)
)
)
)

in the presence of:)
)
)
)

.....)
(witness))
)
)
)

.....
(signature)

Signed for and on behalf of **Dauanalgaw**)
(Torres Strait Islanders) Corporation)
RNTBC)
)
)

this day of 2021)
)
)
)

in the presence of:)
)
)
)

.....)
(Signature))
)
)

.....
(Name of Witness Print)

.....
(Signature)

.....
(Director 1: Name Print)

.....
(Signature)

.....
(Director 2: Name Print)

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W see the department's website.

1. Lessor	Lodger (Name, address, E-mail & phone number)	Lodger Code
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		
2. Lot on Plan Description	County	Title Reference
Part Lot 39 on SP270872	TORRES	51093448
3. Lessee	Given names	Surname/Company name and number (include tenancy if more than one)
DAUANALGAW (Torres Strait Islanders) CORPORATION RNTBC [ICN: 3510]		
4. Interest being leased DEED OF GRANT IN TRUST		
5. Description of premises being leased LEASE A in Lot 39 on SP270872, Dauan Island, Torres Strait		
6. TERM OF LEASE Commencement date/event: 1 July 2021 Expiry date: 30 June 2031 #Options: Nil #Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)		7. Rental/Consideration See Reference 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

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

.....signature

TORRES STRAIT ISLAND REGIONAL COUNCIL

.....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

.....
Mayor / Chief Executive Officer
Lessor's Signature

9. Acceptance

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

.....signature

DAUANALGAW (TSI) CORPORATION
RNTBC [ICN: 3510]

.....full name

.....
Director 1 Signature

.....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

.....
Director 2 Signature

Title Reference 51093448

1. REFERENCE SCHEDULE

THE REFERENCE SCHEDULE		
ITEM NO.	DATA	DETAILS
Item 1	PARTIES Name and Address of Trustee:	Torres Strait Island Regional Council ABN 15 292 645 165 PO Box 7336 CAIRNS QLD 4870 Telephone 07 4034 5700 Facsimile 07 4034 5726
	Name and Address of Lessee:	Dauanalgaw (Torres Strait Islander) RNTBC ICN: 3510 Lot 52 Main Road, Dauan Island via, THURSDAY ISLAND QLD 4875
Item 2	ADDRESS Address of Premises:	Part of Lot 39 on SP270872, Dauan Island, Torres Strait
Item 3	TERM Term:	Ten (10) years
Item 4	OPTION TO RENEW	Not applicable
Item 5	RENT Rent Rent Reviews Rent Review Date Rent Review Method	\$1.00 per annum payable on demand. Not applicable. Not applicable. Not applicable.
Item 6	Permitted Use:	All activities for, and ancillary to, the operation of an administrative office, including the hosting on the Premises of the Kiosk Building.
Item 7	Public Risk Insurance:	\$10,000,000.00 (ten million dollars)

2. INTERPRETATION AND DEFINITIONS

2.1 DEFINITIONS

In this Lease, unless the context requires otherwise:

‘Act’ means the *Torres Strait Islander Land Act 1991* (Qld) or as amended from time to time.

‘Business Day’ means any day in the State of Queensland which is not a Saturday, Sunday or public holiday either in the locality of the Premises or in Cairns.

‘Commencement Date’ means the date of commencement of this Lease as specified in Item 6.

‘DOGIT’ means the deed of grant in trust granted over the Trust Land.

‘Expiry Date’ means the date of expiry of this Lease as specified in Item 6.

‘Indemnified Parties’ Associates’ means the Indemnified Parties’ officers, employees, invitees, contractors, subcontractors and agents.

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'Improvements or Alterations' means any structures, improvements, alterations or additions made to the Premises by the Lessee either prior to or after the Commencement Date and includes the Kiosk Building.

'Index Number' means the Index Number in the Consumer Price Index: All Groups, Brisbane as at the relevant date.

'Item' unless otherwise stated means the relevant Item number of the Form 7 of which this Schedule forms part.

'Kiosk Building' means the kiosk building, 'as is, where is', and located on the Premises as at the Date of this Lease and which is the property of the Lessee.

'Lease' means this Lease including the Reference Schedule and Schedules.

'Lessee' means the Lessee named in Item 1 of the Reference Schedule and in the case of a corporation its successors in title and permitted transfers and in the case of a natural person his heirs executors administrators and permitted transfers.

'Minister' means the Minister administering the *Land Act 1994* (Qld).

'Native Title Holders' means Dauanalgalw (Torres Strait Islanders) Corporation RNTBC ICN: 3510 which has consented to the grant of this Lease under an Indigenous Land Use Agreement.

'Parties' means the Trustee and the Lessee;

'Permitted Use' means the Permitted Use specified in Item 6 of the Reference Schedule and includes any purpose which the Lessee is entitled to carry on pursuant to the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (Qld).

'Person' includes any corporation and vice versa.

'Plan' means the [Survey Plan](#) in Schedule 1.

'Premises' means all that land described in Item 5 of the Form 7 together with Improvements or Alterations or Trustee's Fixtures thereon but excluding the Kiosk Building which is the property of the Lessee.

'Reference Schedule' means the Schedule in clause 1 of this Lease.

'Rent' means the annual sum specified in, or calculated in accordance with (as the case may be), the Reference Schedule and where the context requires, any instalment or instalments of Rent or part thereof.

'Term' means the term of this Lease specified in Item 6 of the Form 7.

'Trustee' means the Lessor named in Item 1 of the Form 7.

'Trustee's Fixtures' means all improvements fixtures and fittings existing on the Premises from time to time which are not the Lessee's (or any Sub-Lessee's) Improvements or Alterations.

'Trust Land' means the land described in Item 2 of the Form 7.

2.2 INTERPRETATION

(a) **PLURALS:** Words importing the singular number include the plural and vice versa.

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- (b) **GENDER:** Words importing any particular gender include all genders.
- (c) **OBLIGATIONS OF PARTIES:** The respective obligations of the parties as set out herein whether positive or negative shall be construed as if each such obligation is a separate and independent covenant made by one party in favour of the other party and continuing (unless the context otherwise requires) throughout the Term and thereafter so long as the same remains to be performed.
- (d) **SEVERABILITY:** If any term covenant or condition of this Lease or the application thereof to any person or circumstance shall be or become invalid or unenforceable the remaining terms covenants and conditions shall not be affected thereby and each term covenant and condition shall be valid and enforceable to the fullest extent permitted by law.
- (e) **IMPLIED COVENANTS:** The covenants implied by law (statutory or otherwise) are not negated but shall be deemed to have been modified (where so permitted) to the extent of any inconsistency with the provisions hereof.
- (f) **STATUTES AND REGULATIONS:** Reference to statutes regulations ordinances or by-laws includes all statutes regulations ordinances or by-laws amending consolidating or replacing the same.
- (g) **BODIES AND ASSOCIATIONS:** Reference to authorities institutes associations and bodies whether statutory or otherwise shall if such authority institute association or body has ceased to exist or been reconstituted renamed or replaced or the powers or functions thereof have been transferred to any other authority institute association or body be deemed to be a reference to the authority institute association or body established or constituted in lieu thereof and/or as nearly as may be succeeding to the powers or functions thereof.
- (h) **LESSEES JOINTLY AND SEVERALLY BOUND:** Where two or more persons are Lessees the covenants and obligations on their part contained in this Lease shall bind them jointly and each of them severally.
- (i) **HEADINGS:** Headings and sub-headings have been included for ease of reference only and shall not form part of the context or limit or govern the construction of this Lease.

3. GRANT OF LEASE

The Trustee hereby grants the Lessee a lease of the Premises upon the following terms and conditions.

4. COMMENCEMENT AND TERM OF LEASE

The Term of this Lease shall be that term described in Item 6 of the Form 7.

5. PERMITTED USE

The Lessee shall not without the prior written consent of the Trustee during the whole of the Term of this Lease, use or permit the Premises to be used for any purpose other than the Permitted Use described in Item 6 of the Reference Schedule.

6. RENT

The Rent payable by the Lessee to the Trustee is fixed for the duration of the Term at the sum specified at Item 5 of the Reference Schedule.

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7. OUTGOINGS

- 7.1 The Lessee shall pay all applicable local government rates, charges and taxes (if any) in respect of the Premises and shall pay all charges and expenses for any additional services required by the Lessee from external providers incurred during the Term in respect of the Premises.
- 7.2 The Lessee is responsible for establishing accounts in its own name, wherever possible, for any additional services required by the Lessee from external providers, and paying all fees and charges for the use of the Utilities provided to the Premises.

8. NO WARRANTIES

The Trustee gives no warranty as to the suitability of the Premises.

9. NUISANCE

The Lessee shall conduct its operations on the Premises in an orderly and respectable manner and will not do or suffer to be done anything in upon or about the Premises which shall or may be or become an illegal nuisance to the residents of [Dauan](#) Island or the owners or occupiers of any adjoining or neighbouring lands.

10. USE AND DEVELOPMENT

The Lessee must ensure that the use and development of the Premises conforms to the Planning Scheme, Local Laws and requirements of the Trustee binding on the Lessee. For clarity, the Trustee warrants that the Premises and the Kiosk Building comply with all such requirements as at the date of this Lease.

11. DECLARED PESTS AND PLANTS

The Lessee is required to control pest plants and animals on the Premises during the Term in accordance with the *Land Protection (Pest and Stock Route Management) Act 2002* (Qld) and requirements of the Trustee.

12. CLEARING OF VEGETATION

The Lessee must not remove or destroy any vegetation on the Premises, unless in accordance with the *Vegetation Management Act 1999* (Qld) and the *Integrated Planning Act 1997* (Qld) and in consultation with the Trustee.

13. ENVIRONMENT PROTECTION

- 13.1 The Lessee shall 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 land in such a way as it may leak, wash or be blown or otherwise enter into any watercourse or the sea.
- 13.2 The Lessee shall store and keep all trade refuse and garbage in proper containers and shall ensure all refuse and garbage is disposed of regularly and hygienically in an approved rubbish dump outside the local government area and shall do so without causing pollution or damage to the surrounding land or sea.
- 13.3 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 and/or the Trust Land if there is damage caused to the Premises and/or the Trust Land as a result of or incidental to the Lessee's use or any use under any sub-lease of the Premises.
- 13.4 The Lessee shall comply with all applicable laws relating to the protection of the environment.

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14. COMPLIANCE WITH LAWS

The Lessee shall observe all the restrictions as to the use of the Premises imposed by any law for the time being in force in the State of Queensland.

15. ACCESS

The employees, agents, contractors, consultants and invitees of the Lessee shall be permitted reasonable access to the Premises along such routes as may be agreed between the Parties from time to time, and in the absence of agreement, along the most direct practical route which minimises nuisance, or interference to the Trustee and is culturally appropriate but the Trustee cannot deny reasonable access. The provisions of Clause 21 Insurance and 21.10 Release and Indemnity will apply to the exercise by the Lessee of its rights pursuant to this Clause 15.

16. ASSIGNMENT AND SUBLETTING

- 16.1 The Lessee shall not transfer, sublet or mortgage this Lease or part with possession of the Premises, save with the prior written permission of the Trustee as required under the Act.
- 16.2 If the Lessee is a corporation, any change in the effective control of the Lessee shall be deemed a transfer requiring the Trustee's approval which is not to be unreasonably withheld.

17. IMPROVEMENTS OR ALTERATIONS

- 17.1 The Lessee, upon receiving consent in writing from the Trustee, is authorised at the cost of the Lessee to: -
- (a) Construct Improvements or Alterations on the Premises;
 - (b) Modify or extend the Improvements or Alterations from time to time in order to meet the requirements of the Lessee; and
 - (c) Construct other Improvements or Alterations to replace the Improvements or Alterations (or any part of them) in the event of destruction of the initial Improvements or Alterations (or any part of them).
- 17.2 Before constructing any Improvements or Alterations the Lessee must obtain any applicable approvals required by law.
- 17.3 Subject to Clause 24, all Improvements or Alterations remain the property of the Lessee throughout the Term.
- 17.4 Notwithstanding any other provision herein, the Trustee acknowledges and agrees that the Kiosk Building is the property of the Lessee and the Trustee consents to the hosting of the Kiosk Building on the Land for the duration of the Lease.

18. COSTS

- 18.1 The Lessor and the Lessee shall bear their own costs of and incidental to the negotiation, preparation and registration of this Lease.
- 18.2 The Lessee shall pay any registration fees, stamp duty and survey fees necessary for the purposes of registration of this Lease.

19. OWNERSHIP

- 19.1 The Lessee shall be deemed to be the owner of the leasehold of the Premises for the duration of the Lease.
- 19.2 At its cost, the Lessee must:

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- (a) keep the Premises in a clean, tidy and hygienic state; and
- (b) maintain the outward appearance of the Premises in a state of cleanliness and good repair so as not to diminish the outward appearance of the general locality in which the Premises are situated.

19.3 The Lessee must maintain and repair the Premises at its cost, including maintenance and repair due to fair wear and tear.

20. PLANNING

In the event that this Lease constitutes reconfiguring a lot for the purposes of the *Planning Act 2016* (Qld) and therefore requires a subdivision in accordance with that Act, the Lessee accepts the obligation to pursue at its own cost all necessary planning applications and for this purpose the Lessee is authorised by the Trustee to make a subdivision application pursuant to the *Planning Act 2016* (Qld) and shall, on behalf of the Trustee comply with such provisions of that Act as may pertain to such a subdivision application.

21. INSURANCE

21.1 Public Liability

The Lessee must effect a public liability insurance policy with an insurer authorised under the *Insurance Act 1973* (Commonwealth) or, in any other case, to the satisfaction of the Minister, naming the Lessee as the insured covering 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 thereof subject to the terms and conditions of the insurance policy. Such policy must:-

- (a) be for an amount of not less than ten million dollars (\$10,000,000.00) in respect of all claims arising out of a single event or such higher amounts as the Minister may reasonably require; and
- (b) be 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) be maintained at all times during the currency of this Lease, and upon receipt of any Notice of Cancellation, the Lessee must immediately effect another public liability insurance policy in accordance with the terms and conditions of this Lease.

21.2 The Lessee must forward a certificate of currency to the Minister within 10 business days of the commencement of each respective renewal period.

21.3 The Lessee must, within 10 business days of becoming aware of any of the following occurrences, inform the Minister in writing, of any such occurrences:-

- (a) the Lessee's failure to renew the public liability insurance cover as required under the terms and conditions of this Lease;
- (b) the Lessee's failure to forward to the Trustee within 10 business days after the commencement of a renewal period for such cover, a copy of the certificate of currency as required under this Lease;
- (c) receipt by the Trustee of a Notice in Cancellation in relation to such cover.

21.4 Clauses 21.1 and 21.2 will be satisfied if the Lessee is the State of Queensland 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.

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- 21.5 Clauses 21.1 to 21.3 will be satisfied if the Lessee is the Commonwealth of Australia or a statutory authority eligible for cover under the Comcover Insurance Fund and is insured and continues to be insured by Comcover.
- 21.6 Clauses 21.1 to 21.3 will be satisfied if the Minister approved by separate letter a replacement clause or clauses for inclusion in another document that forms part of the Lease. For this Clause 21.6 to have effect, the replacement clause or clauses must be included in that other document and other original of the letter approval must have been lodged in the land registry with a document that forms part of this Lease.
- 21.7 The Lessee must, as soon as practicable, inform the Minister, 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 and must ensure that the Minister is kept fully informed of subsequent actions and developments concerning the claim.
- 21.8 To remove doubt, the requirements of this Clause 21 apply to any other area of the leased land used by the Lessee.

21.9 **Insurance of Improvements**

During the Term of this Lease, the Lessee will insure the Improvements against damage by:

- (a) fire;
- (b) lightning;
- (c) impact by aircraft;
- (d) earthquake;
- (e) explosion;
- (f) impact by vehicles and animals;
- (g) malicious damage other than by persons in or about the Improvements with the actual or implied consent of the Lessee, any sub-lessee, or licensee;
- (h) rainwater; and
- (i) storm and tempest

in broad cover form with repair and replacement terms on terms and conditions reasonable in the market at the time the insurance is effected.

21.10 **Keep Lessor Informed**

The Lessee must, as soon as practicable, inform the Lessor 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 and must ensure that the Lessor is kept fully informed of subsequent actions and developments concerning the claim.

22. RELEASE AND INDEMNITY

- 22.1 The Lessee indemnifies and agrees to keep indemnified the Minister, the State of Queensland, and the Trustee (**'the Indemnified Parties'**) against all actions, suits, proceedings, claims, demands, costs, losses, damages and expenses (**'Claim'**) connected to or caused by any breach of this Lease, wilful misconduct, or negligent act or omission in relation to this Lease by the Lessee (all of which are referred to as **'the indemnified acts or omissions'**) save to the extent that the Claim arises as a result of any breach of this Lease, wilful misconduct or negligent act or omission of the Indemnified Parties or the Indemnified Parties'

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Associates, however, any breach of Lease, negligent act or omission of one of the Indemnified Parties does not negate the indemnity to any of the other Indemnified Parties.

- 22.2 The Lessee hereby releases and discharges the Indemnified Parties from any Claim relating to the indemnified acts or omissions which may be made against the Indemnified Parties, save to the extent that the Claim arises as a result of any breach of Lease, wilful misconduct or negligent act or omission of the Indemnified Parties or the Indemnified Parties' Associates, however, any such act or omission of one of the Indemnified Parties does not negate the release and discharge in favour of any of the other Indemnified Parties.
- 22.3 To remove doubt, the Lessee specifically agrees that the indemnity provided by the Lessee in Clause 22.1 extends to any Claim (as defined by Clause 22.1) connected to or caused by any negligent act or omission or wilful misconduct by the Lessee in relation to use of any other area of the Premises by the Lessee.
- 22.4 Each of the Indemnified Parties must use all reasonable endeavours to mitigate its costs, losses, damages and any expenses arising in connection with any Claim.
- 22.5 The Trustee warrants that it has disclosed to the Lessee all facts and information affecting or likely to affect the Permitted Use and the health and safety of the Lessee's employees, agents, contractors and invitees in undertaking the Permitted Use and shall from time to time promptly disclose in writing to the Lessee any alterations or prospective alterations to such facts and information.

23. QUIET ENJOYMENT

Upon the Lessee paying the Rent and observing and performing its covenants and the conditions of this Lease, the Trustee hereby covenants that the Lessee shall be entitled to quietly enjoy the Premises without interruption or disturbance by the Trustee or any person claiming under or through the Trustee or the Native Title Holders.

24. INSPECTION BY LESSOR

- 24.1 After giving 20 Business Days' written notice to the Lessee, the Lessor 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.
- 24.2 Any inspection under clause 24.1 must be undertaken in the presence of a nominated officer of the Lessee.
- 24.3 Despite clause 24.1, the Lessee may give notice to the Lessor that access to certain areas of the Premises is excluded by law, or due to reasonable security, or public concerns, having regard to the particular nature of the Permitted Use to which the Premises are put.
- 24.4 Where the Lessee has given notice under clause 24.3, the Lessee must provide a written report to the Lessor 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.

25. DEFAULT AND TERMINATION

- 25.1 Subject to the provisions of Section 124 of the *Property Law Act 1974* (Qld), the Trustee may terminate this Lease if: -
- (a) The Lessee abandons the Premises; or

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- (b) Default is made by the Lessee in the performance or observance of any covenant or condition of this Lease, including, where such default is capable of remedy, such default is not remedied within twenty-one (21) days (or such other time as the Trustee may allow after taking into account what needs to be done and the time required to remedy the default) and after notice in writing specifying such default and requiring the Lessee to remedy the same has been given to the Lessee

whereupon the Trustee shall be entitled to re-enter the Premises and terminate this Lease.

- 25.2 Upon termination of this Lease and if the right to remove Improvements or Alterations within a stated time is given to the Lessee in accordance with the provisions of clause **Error! Reference source not found.** and the Improvements or Alterations are not removed within that stated time, all Improvements or Alterations included in the Premises shall become the property of the Trustee.

26. REMOVAL OF IMPROVEMENTS

- 26.1 At the expiry or sooner termination of this Lease:

- (a) the Lessee must remove all of the Lessee's Improvements or Alterations and its other property, within 3 months of the date that this Lease ends and the Lessee must repair any damage caused by the removal of the Lessee's Improvements, unless in its sole discretion the Trustee agrees to retain any or all of the Lessee's Improvements;
- (b) the Lessee must leave the Premises in a clean and tidy state; and
- (c) if the Trustee agrees to retain the Lessee's Improvements, then the Lessee must leave the Lessee's Improvements in good and tenable condition.

- 26.2 The Lessee agrees that the provisions of clause 21 (Insurance) and clause 22 (Release and Indemnity) apply to all acts and omissions of the Lessee under this clause 26.

- 26.3 Subject to clause 26.1(c) where the Trustee agrees to retain any of the Lessee's Improvements, those improvements will become the property of the Trustee upon the Lessee providing vacant possession.

27. REPOSSESSION NOT TO PREJUDICE OTHER ACTIONS

The recovery of possession of the Premises in accordance with clause 25 (Default and Termination) shall not defeat or prejudice any claim or right of action or any other remedy that the Trustee may have for arrears of Rent or breach of covenant or agreement on the part of the Lessee before or at the time of recovery of possession of the Premises nor shall the Trustee in any way be liable to the Lessee or any person claiming through or on behalf of the Lessee for any damage caused to or loss of property or effects ejected or removed from the Premises in the course of the recovery of their possession by the Trustee.

28. NO LIABILITY ON RE-ENTRY

In the event of recovery of possession in accordance with clause 25 (Default and Termination) the Trustee shall not in any way be liable to the Lessee or any person claiming through or on behalf of the Lessee for any damage caused to or loss of the property or effects ejected or removed from the Premises or any part thereof.

29. NO WAIVER

Should there be any delay or indulgence on the part of the Trustee in the exercise by it of any 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 Trustee except where specifically communicated to the Lessee in writing.

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30. NATIVE TITLE

- 30.1 The Trustee, the Lessee and the Native Title Holders have entered into an Indigenous Land Use Agreement ('**the ILUA**') consenting to the grant of this Lease by the Trustee.
- 30.2 Despite any other provision in this Lease to contrary effect, the Parties acknowledge and agree that this Lease is not intended to, and nothing in this Lease shall be construed or operate to, extinguish any native title as may exist in relation to the Premises immediately before the Commencement Date.

31. CULTURAL HERITAGE

The Lessee must carry out any activity on the Premises in accordance with the provisions of the *Torres Strait Islander Cultural Heritage Act 2003* (Qld). The Lessee must take all reasonable and practicable measures to ensure its activity does not harm Torres Strait Islander cultural heritage. The Parties agree that this Lease is not an agreement for the purposes of the *Torres Strait Islander Cultural Heritage Act 2003* (Qld).

32. CANCELLATION OF LEASE

- 32.1 If the DOGIT is cancelled or the area on which the Premises are located is removed from the DOGIT, then this Lease is cancelled on the date that the DOGIT is cancelled, or the area removed.
- 32.2 If this Lease is cancelled under clause 32.1:-
- (a) Then no person has a right to a claim for compensation in respect of such cancellation; and
 - (b) The Lessee must remove the Lessee's Improvements or Alterations within a reasonable time stated by the Trustee and if the Lessee's Improvements or Alterations are not removed within that stated time, all of the Lessee's Improvements or Alterations on the Premises become the property of the Trustee.
 - (c) Any such cancellation shall be without prejudice to any rights that shall have accrued to the benefit of a Party prior to such cancellation.

33. GENERAL PROVISIONS

33.1 NOTICE TO LESSEE

Any notice or demand in writing required to be given by the Trustee to the Lessee shall be sufficiently served if:-

- (a) served personally or left addressed to the Lessee at the Lessee's address set out in Item 1 of the Reference Schedule;
- (b) sent by facsimile machine to the Lessee's facsimile machine; or
- (c) forwarded by prepaid security post addressed to the Lessee.

The Lessee may nominate by written notice to the Trustee another address.

33.2 NOTICE TO TRUSTEE

Any notice or application in writing required to be given by the Lessee to the Trustee shall be sufficiently served if:-

- a) served personally or left addressed to the Trustee of the Trustee's address set out in Item 1 of the Reference Schedule; or

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- b) sent by facsimile machine to the Trustee's facsimile machine; or
- c) forwarded by prepaid security post addressed to the Trustee.

The Trustee may nominate by written notice to the Lessee another address.

33.3 TIME OF SERVICE

Any notice, demand or application given under this Lease if sent by post shall be deemed to have been given 25 days following the day on which the same was posted and if sent by facsimile shall be deemed to have been served at the time and on the day that the whole of the notice demand or application has been transmitted from the sending facsimile machine and a successful transmission report is received. If the fax is sent outside of business hours, receipt is deemed to be on the next Business Day.

33.4 MORATORIUM NEGATIVED

Unless application is mandatory by law any statute proclamation order regulation or moratorium present or future shall not apply to this Lease so as to abrogate extinguish impair diminish fetter delay or otherwise prejudicially affect any rights powers remedies or discretions given or accruing to the Trustee.

33.5 PROPERTY LAW ACT

If and when any inconsistency exists between these provisions and those expressed or implied by the *Property Law Act 1974* (Qld) as amended the provisions herein shall prevail over those expressed or implied by the said Act subject always to the provisions of the *Torres Strait Islander Land Act 1991* (Qld). The obligations and powers implied under sections 105 and 107 of the *Property Law Act 1974* (Qld) are expressly excluded from this Lease.

33.6 CONSENTS

Any permission, consent or approval to be given by the Lessor must not be unreasonably withheld but may be given subject to reasonable conditions.

33.7 FURTHER ASSURANCES

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 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.

33.8 LEASE CONTAINS ENTIRE AGREEMENT

The Lessee acknowledges that, with the exception of the ILUA (see clause 30 (Native Title)), the terms covenants and conditions set out in this Lease and any consent in writing given pursuant to any of the provisions hereof contain the entire agreement as concluded between the Trustee and the Lessee and that there are no other oral or collateral agreements between the parties relating to the Premises notwithstanding any negotiations or discussions between the parties prior to the execution hereof. No representation made by the Trustee its servants or agents concerning the Premises shall be an implied term of this Lease or form the subject matter of a separate agreement subsidiary to or collateral with this Lease. The Lessee further acknowledges that it has not been induced to accept this Lease by any representation oral or otherwise made by or on behalf of the Trustee its servants or agents which is not included in this Lease or the ILUA.

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34. POWER OF ATTORNEY

- 34.1 The Lessee, other than if the Trustee is the Commonwealth of Australia or the State of Queensland, appoints the Trustee to act as the Lessee's attorney and authorises the Trustee to execute all such documents and to perform such acts on the Lessee's behalf as necessary to procure the registration of a surrender of this Lease to the Trustee.
- 34.2 The Trustee must not use its power pursuant to this clause unless:
- (a) the Lessee has breached a term or condition of this Lease;
 - (b) the Trustee has given written notice of the breach to the Lessee and has allowed the Lessee 20 business days (or such other time as the Lessee may allow after taking into account what needs to be done and the time required to remedy the breach) from the delivery of that written notice to remedy the breach; and
 - (c) the Lessee has not remedied the breach by the expiration of the 20 business day period (or such other time as the Lessee has allowed);

And the Trustee is entitled to end this Lease as provided for under this Clause 34 and take possession of the Premises.

35. GOODS AND SERVICES TAX

- 35.1 In this sub-clause:-

'Act' means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

'Creditable Acquisition' has the meaning attributed to that term in the GST Law;

'GST' has the meaning attributed to that term in the GST Law from time to time;

'GST Date' means the date upon which this Lease becomes subject to GST for the purposes of the GST Law;

'GST Exclusive Market Value' has the meaning attributed to that term in the GST Law;

'GST Free' has the meaning attributed to that term in the GST Law;

'GST Law' has the meaning given to that term in the Act or should the Act be repealed, means any act of parliament imposing or relating to the imposition or administration of a goods and services tax in Australia and any subordinate legislation made under that act of parliament;

'Input Tax Credit' has the meaning attributed to that term in the GST Law;

'Payee' means the party receiving the Payment;

'Payer' means the party making the Payment;

'Payment' means:-

- a) the amount of monetary consideration (exclusive of GST); or
- b) the GST Exclusive Market Value of any non-monetary consideration (including any act or forbearance)
- c) required to be paid or provided by the Payer to the Payee for a Supply in accordance with the terms of this Lease;

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‘Supply’ has the meaning attributed to that term in the GST Law;

‘Taxable Supply’ has the meaning attributed to that term in the GST Law;

‘Tax Invoice’ has the meaning attributed to that term in the GST Law.

- 35.2 Any Payment required to be made under this Lease after the GST Date shall be increased by any GST payable by the Trustee in respect of a Supply made under this Lease by or through the Trustee other than a GST Free Supply or a Supply which is not a Taxable Supply.
- 35.3 The Payee must deliver a Tax Invoice for a Payment to the Payer before or at the time a Payment to which clause 35.2 applies is due.
- 35.4 Where a Payment is a repayment of, or contribution to, a Creditable Acquisition made by the Payee (including any repayment or contribution to levies, charges, expenses or other outgoings in respect of the Premises), the Payment shall, prior to the increase provided for by clause 35.2, be discounted by an amount equal to the Input Tax Credit to which the Payee is entitled for that Creditable Acquisition under the GST Law.

36. SURRENDER

The Lessee may at any time during the continuance of this Lease surrender its interest in the Lease by giving not less than three (3) months written notice to the Trustee of its decision to do so. Upon the expiration of the notice period the Lessee will provide to the Trustee an executed surrender in registrable form. The Trustee must execute the surrender and return it to the Lessee within 14 days for lodgement in the Land Registry and registration.

37. STORAGE ETC. OF LIQUOR

The Lessee shall not permit the storage, sale or supply of liquor on the Premises, except with the prior approval of the Trustee and only on obtaining any necessary licences for the storage, sale or supply of liquor and in accordance with the conditions of any licences so obtained.

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SCHEDULE 1

Survey Plan

**ENTERPRISE DIVESTMENT
INDIGENOUS LAND USE
AGREEMENT (BODY
CORPORATE AGREEMENT)**

PARTIES

**Torres Strait Island Regional Council
ABN: 15 292 645 165
“TSIRC”**

AND

**Dauanalgap (TSI) Corporation RNTBC [ICN: 3510]
“Corporation”**

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[UPDATE INDEX]

ENTERPRISE DIVESTMENT INDIGENOUS LAND USE AGREEMENT (BODY CORPORATE AGREEMENT)

DATED:

PARTIES:

Dauanalgaw (TSI) Corporation RNTBC [ICN: 3510]

("Corporation")

And

Torres Strait Island Regional Council
ABN: 15 292 645 165

("TSIRC")

RECITALS:

- A. The TSIRC is a local government constituted pursuant to the provisions of the *Local Government Act 2009* (Qld) and has local government jurisdiction over the local government area of the Torres Strait Island Regional Council area. The TSIRC is the trustee of the Dauan Island deed of grant of trust.
- B. The Corporation is the registered Native Title body corporate under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).
- C. The Parties have agreed to the doing of Agreed Acts by TSIRC.
- D. This Deed is entered into as an Indigenous Land Use Agreement (Body Corporate Agreement) and is intended to be registered by the Native Title Registrar and entered on the Register.

THIS DEED WITNESSES:

1. DEFINITIONS

1.1 In this Deed unless a contrary intention appears:

"Act" has the meaning given in the Native Title Act;

"Agreed Acts" means:

- a) all acts necessary pursuant to the Agreement to Grant Lease and to obtain approval to the grant of a Standard Lease by TSIRC to the Corporation;
- b) the consent of the Minister to the grant of the Standard Lease if required;
- c) all acts necessary to operate the Business in accordance with the Standard Lease throughout the term of the Standard Lease;
- d) all acts necessary to give effect to those acts.

“Agreement” means this document including all schedules;

“Agreement to Grant Lease” means the agreement between the Corporation and TSIRC to obtain the necessary approvals and to do all things necessary to enter into a Standard Lease a copy of which is contained in Schedule 2;

“Business” means the carrying on of the administrative office and support for the Corporation

“Business Day” means a day that is not a Saturday, Sunday, public holiday or bank holiday for Cairns or the Torres Strait;

“Commencement Date” means the date this Deed is signed by the last of the Parties;

“Confidential Information” means the negotiations between the parties in relation to this Agreement, including any information provided by, or on behalf of, any of the parties during those negotiations;

“Corporation” means Dauanalaw (TSI) Corporation RNTBC [ICN 3510]

“Deed” means this Deed and all Schedules to it;

“Dispute” means any question or difference between two or more Parties relating to or arising out of this Deed;

“Dispute Notice” means written notice containing full particulars of the Dispute;

“Dispute Party” means a Party who is a party to a Dispute;

“Future Act” has the meaning given in the Native Title Act;

“ILUA Area” means part of Lot 39 on SP270872 on Dauan Island, Torres Strait described in Schedule 1;

“Local Business” means a business owned by, on behalf of or for the benefit of the Torres Strait Islanders or their respective groups, sub-groups and families;

“Minister” means the Minister administering the *Torres Strait Islander Land Act 1991* (Qld);

“Native Title” and “Native Title Rights and Interests” means the native title determined to exist and the nature and extent of the native title rights and interests, in relation to the ILUA Area, as determined by the Federal Court of Australia in *Dauan People v Queensland* [2000] FCA 1064

“Native Title Act” means the *Native Title Act 1993* (Cth);

“Native Title Holders” means the people who were determined by the Federal Court of Australia in *Dauan People v Queensland* [2000] FCA 1064 to be the holders of native title rights and interests of the land referred to in Item 2 of the Form 7 of the Standard Lease;

“Native Title Registrar” has the meaning given in the Native Title Act;

“Native Title Representative Body” means the Torres Strait Regional Authority (Native Title Office) or any other entity that may from time to time be determined to be a representative native title body for the Torres Strait region under the Native Title Act for all or part of the ILUA Area;

“Non-Extinguishment Principle” has the meaning given in the Native Title Act;

“Parties” means TSIRC and the Corporation;

“PBC Regulations” means the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth);

“Register” means the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act;

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

“Regulations” means *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth);

“Standard Lease” means a Standard Lease in substantially the same terms as the Lease contained in Schedule 3;

“Torres Strait Islander Cultural Heritage” has the meaning given in the *Torres Strait Islander Cultural Heritage Act 2003* (Qld);

“TSIRC” means the Torres Strait Island Regional Council constituted pursuant to the provisions of the *Local Government Act 1993* (Qld) with jurisdiction over the Torres Strait Island Regional Council area;

“TSRA” means the Torres Strait Regional Authority of 2 Victoria Parade, Thursday Island in the State of Queensland.

2. INTERPRETATION

2.1 In this Deed, unless the contrary intention appears:

- (a) a reference to this Deed or another instrument includes this Deed or that instrument as varied;
- (b) headings, subheadings and the table of contents are inserted for convenience only and are not to be used to interpret this Deed;
- (c) a reference to a statute includes all instruments under the statute, amendments to the statute and any legislation which replaces or substitutes the statute or which incorporates any of its provisions (to the extent they are incorporated);
- (d) words importing any gender include all other genders;
- (e) words importing the singular include the plural number and vice versa;
- (f) a reference to a party means a party to this Deed and includes that party's administrators, executors, heirs, permitted assigns and successors;
- (g) a reference to a clause, paragraph, recital, schedule or subclause is a reference to a clause, paragraph, recital, schedule or subclause of this Deed;

- (h) a reference to a person includes a natural person, corporation, incorporated association, statutory corporation, the Crown (in any of its capacities) and any other type of legal entity;
- (i) a reference to a body or authority is, if the body or authority has ceased to exist and unless otherwise prescribed by law, a reference to the body or authority which then has substantially the same objects as that body or authority and any reference to the president, chairman or managing director of a body or authority is a reference to the senior officer or acting senior officer for the time being of that body;
- (j) if an act required to be done under this Deed is done after 5 pm on any day, it is to be taken to have been done on the day after that day;
- (k) "including" is not a word of limitation;
- (l) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (m) a reference to the Corporation includes the employees, servants, agents, contractors and sub-contractors of the Corporation and the employees, servants and agents of such contractors and sub-contractors engaged for the purposes of any activity permitted under the Standard Lease and any obligation or duty imposed upon the Corporation shall, where the Corporation has engaged an agent, contractor or sub-contractor to undertake any activity which the Corporation is required or authorised to undertake under this Deed, be construed as an obligation or duty upon the Corporation to procure that its agent, contractor or sub-contractor and the employees, servants and agents of such contractor performs that obligation or duty;
- (n) a reference to the State includes the employees, servants, agents, contractors and sub-contractors of the State and the employees, servants and agents of such contractors and sub-contractors engaged for the purposes of any activity permitted under the Standard Lease and any obligation or duty imposed upon the State shall, where the State has engaged an agent, contractor or sub-contractor to undertake any activity which the State is required or authorised to undertake under this Deed, be construed as an obligation or duty upon the State to procure that its agent, contractor or sub-contractor and the employees, servants and agents of such contractor performs that obligation or duty;
- (o) a reference to a Queensland statute or regulation is to be interpreted in accordance with the *Acts Interpretation Act 1954* (Qld);
- (p) a reference to a Commonwealth statute or regulation is to be interpreted in accordance with the *Acts Interpretation Act 1901* (Cth).

3. COMMENCEMENT

3.1 This Deed commences on the Commencement Date.

4. PROVISIONS FOR THE PURPOSES OF THE NATIVE TITLE ACT

4.1 The Parties intend this Deed to:-

- (a) apply to the ILUA Area; and

- (b) be registered as an Indigenous Land Use Agreement under Subdivision B of Division 3 of Part 2 of the Native Title Act and Regulation 6 of the Regulations.
- 4.2 The Corporation and the TSIRC will do all things reasonably necessary to be done by them to secure and maintain the registration of this Deed on the Register.
- 4.3 The Parties agree that the Corporation is authorised to apply in writing to the Native Title Registrar under section 24BG(1) of the Native Title Act for this Deed (and any variation of this Deed made in accordance with clause 26) to be registered on the Register.
- 4.4 Part 2, Division 3, Subdivision P of the Native Title Act is not intended to apply to the doing of the Agreed Acts.
- 4.5 The Non-Extinguishment Principle applies to each Future Act for which the Native Title Party has given consent under this Deed.

5. BINDING EFFECT OF DEED

- 5.1 On the Commencement Date, this Deed is binding upon:-
 - (a) the Parties; and
 - (b) the Native Title Holders of the ILUA Area who have authorised the Native Title Party to enter into this Deed and who have legal capacity to be bound by this Deed.

6. NATIVE TITLE HOLDERS WARRANTY

- 6.1 The Corporation:-
 - (a) warrants that it:-
 - i) has informed the Native Title Representative Body of its intention to enter into this Deed in accordance with section 24BD(4) of the Native Title Act;
 - ii) has complied with [clause 14 and any other relevant rules of the Rulebook](#) of the [Corporation](#);
 - iii) has met the requirement in subregulation 4(2)(c) of the PBC Regulations;
 - iv) is the Registered Native Title Body Corporate for the Agreement Area; and
 - v) holds Native Title in relation to the Agreement Area in trust for the Native Title Holders.
 - (b) agrees that it shall provide the National Native Title Tribunal with all things necessary to satisfy the requirements of section 24BG of the Native Title Act following the application for registration of the Deed on the Register.
- 6.2 The Corporation represents and warrants that prior to executing this Agreement:

- (a) it consulted the Native Title Holders and obtained their consent to enter into this Agreement in accordance with regulation 8 of the PBC Regulations;
- (b) it informed the TSRA of its intention to enter into this Agreement; and
- (c) a document on the terms attached in Schedule 4 was executed in accordance with the sub regulation 9(3) of the PBC Regulations.

7. CONSENT TO AGREED ACTS

- 7.1 The Parties consent to the Agreed Acts subject to the terms and conditions contained in this Deed.

8. COMPENSATION

There will be no Native Title compensation payable under this agreement.

9. CULTURAL HERITAGE

Subject to this Agreement being registered on the Register, the parties intend that this Agreement is not a native title agreement or other agreement with a Torres Strait Islander party 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 2003* (Qld).

10. ENVIRONMENTAL PROTECTION

The Corporation shall use all reasonable endeavours to overcome and minimise any deleterious effects upon the environment arising directly from its use of the ILUA Area and shall use all reasonable endeavours to rehabilitate the ILUA Area if there is damage caused to the ILUA Area as a direct result of its use of the ILUA Area.

11. NOXIOUS PLANTS

The Corporation is required to control noxious plants as defined by the *Land Act 1994* (Qld) within the ILUA Area during the term of the Lease.

12. REMOVAL OF TREES

The Corporation must not destroy any trees within the ILUA Area, unless in accordance with the *Vegetation Management Act 1999* (Qld) and the *Sustainable Planning Act 2009* (Qld), and in consultation with the other Parties.

13. DISPOSAL OF RUBBISH

During the period when the Corporation operates the Business on the ILUA Area it will:

- (a) store and keep all refuse and garbage on the ILUA Area in proper containers; and
- (b) dispose of all refuse and garbage referred to in paragraph (a) of this clause in accordance with the requirements of TSIRC.

14. TITLE TO THE CORPORATION'S IMPROVEMENTS

- 14.1 At the expiry or sooner termination of the Lease:

- (a) Subject to (c) below, the Corporation must remove all of the Corporation's Improvements or Alterations and its other property, within 3 months of the date that the Lease ends as per clause 26 of the Lease. The Corporation must repair any damage caused by the removal of the Corporations Improvements, unless in its sole discretion the TSIRC agrees to retain any or all of the Corporation's Improvements;
 - (b) the Corporation must leave the Premises in a clean and tidy state; and
 - (c) if TSIRC agree to retain the Corporation's Improvements, then the Corporation must leave the Corporation's Improvements in good and tenantable condition.
- 14.2 The Corporation agrees that during the currency of the Lease the provisions of clause **Error! Reference source not found.** (Insurance) and clause **Error! Reference source not found.** (Release and Indemnity) of the Lease apply to all acts and omissions of the Corporation under this clause 16.
- 14.3 Where TSIRC agrees to retain any of the Corporation's Improvements, those improvements will become the property of TSIRC upon the Corporation providing vacant possession.

15. EMPLOYMENT AND TRAINING OPPORTUNITIES

- 15.1 The Corporation must, in the course of carrying out the Business (including, where relevant, in relation to the construction, upgrade and maintenance of facilities associated with the Business), maximise employment and training and contracting, and opportunities for Torres Strait Islanders, and must ensure that as many Torres Strait Islanders as is practicable are employed or contracted by the Corporation, where they are willing and capable of carrying out in a satisfactory manner the particular work required.

The Corporation must give on-the-job training to each Torres Strait Islander employed in the Business where that Torres Strait Islander demonstrates a desire and capacity to be trained.

16. REVIEW OF DEED

- 16.1 The Parties must, upon request by any Party but not more than once every 5 years, meet on a mutually agreeable date to review the operation of this Deed.

The Parties must negotiate in good faith to implement such changes that may be required to ensure that this Deed operates fairly and for the benefit of each of the Parties.

- 16.2 Clauses 7 and 8 are not reviewable under clause 18.1.

17. TRANSFER OF LAND

- 17.1 To avoid any doubt, this Deed will continue to apply to any part of the ILUA Area where all or part of the land comprising the ILUA Area held by the TSIRC is transferred to a land trust or registered native title body corporate under the *Torres Strait Islander Land Act 1991* (Qld) or any other statute, regulations or by-laws in circumstances where the TSIRC continues to exercise its functions under the *Local Government Act 1993* (Qld) or any other statute, regulations or by-laws in relation to that area including, but not limited to, its local government functions.

- 17.2 In the event that all or part of the land comprising the ILUA Area currently held by the TSIRC is transferred to a land trust or registered native title body corporate under the *Torres Strait Islander Land Act 1991* (Qld) or any other legislation, any obligation currently owed by a party under this Deed to the TSIRC is owed to the land trust or registered native title body corporate as grantees of the land.
- 17.3 In the event that all or part of the land comprising the ILUA Area currently held by the TSIRC is transferred to a land trust or registered native title body corporate under the *Torres Strait Islander Land Act 1991* (Qld) or any other legislation, any obligation currently owed by the TSIRC to a party under this Deed is assumed by the land trust or registered native title body corporate as grantee of the land.

18. DISPUTE RESOLUTION

- 18.1 This clause will apply in the event of a Dispute arising under this Deed.
- 18.2 Any Party claiming that a Dispute has arisen under this Deed may give the other Party or Parties to the Dispute a Dispute Notice:

(a) stating that it is a Dispute Notice under this clause 20; and

(b) specifying in reasonable detail:

(i) the nature of the dispute; and

(ii) the matters on which the Parties are unable to agree as at the date of that notice.

20.3 In the first instance, the Parties to the Dispute shall meet as soon as practicable following the giving of a Dispute Notice and negotiate in good faith to attempt to resolve the Dispute, such negotiations to be between a nominated representative of each of the Dispute Parties.

20.4 If the Dispute is not resolved in accordance with clause 20.3 after a period of 20 Business Days from the date the Dispute Notice was given, either Party may give notice to the other Party that the Party, would like to appoint a mediator to mediate the dispute in accordance with the Australian Institute of Arbitrators and Mediators Mediation Rules (**Mediation Notice**).

20.5 If the Party who receives the Mediation Notice does not agree with the mediator nominated in the Mediation Notice, either Party may request the President of the Queensland Law Society Inc. to nominate a mediator, who is:

(a) appropriately qualified to mediate the dispute with at least five years professional standing as a mediator in native title matters;

(b) independent of either Party; and

(c) prepared to accept the appointment.

20.6 The Parties agree to bear their own costs in relation to the negotiation, mediation and resolution of any Dispute arising under this Deed.

20.7 The Parties must use reasonable endeavours to attend the mediation and to attempt to resolve the dispute within 20 Business Days after the Mediation Notice is given.

20.8 If the dispute remains unresolved after a period of 40 Business Days from the date the Mediation Notice is given, either party may seek to resolve the dispute in a court of competent jurisdiction in Queensland.

20.9 This clause 20 will not prevent either Party applying to a court at any stage for injunctive, declaratory or other relief from a court which may be urgently required.

19. NOTICES

21.1 Any notice which a Party is required or wants to give to the other Party must be given in writing and may only be:-

- (a) hand delivered;
- (b) sent by prepaid ordinary mail; or
- (c) sent by facsimile transmission,

to the address for service of notices in Schedule 6.

21.2 A notice given in accordance with clause 22.1 will be deemed to be given:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid ordinary mail, on the tenth Business Day after the date of posting;
- (c) if sent by facsimile, on the date the sender's facsimile machine notes a complete and successful transmission;

but if hand delivery, or facsimile transmission is not on a Business Day or is after 5:00pm on a Business Day, notice is taken to be received at 9:00am on the next Business Day.

21.3 A Party may update its contact details listed in Schedule 6 from time to time by giving the other written notice

20. GOVERNING LAW

This Deed is governed by and is to be construed in accordance with the laws of the Commonwealth of Australia and the State of Queensland and the Parties submit to the non-exclusive jurisdiction of the courts of those jurisdictions and any courts competent to hear appeals from those courts. Any proceedings will be issued in the State of Queensland.

21. CONFIDENTIALITY

The Parties must not disclose Confidential Information without the prior written consent of the other Parties unless:

- (a) required by law;
- (b) it is in, or enters the public domain, other than in breach of this Agreement;
- (c) it has been, or is published, other than in breach of this Agreement;

- (d) it was known, or becomes known, to a party by lawful means on a non-confidential basis;
- (e) it is disclosed to the employees, legal advisers or professional consultants of the Parties provided they shall be bound to keep the information confidential in accordance with this Agreement; or
- (f) it is required to be disclosed for reporting or accountability purposes under a statute.

22. FURTHER ASSURANCES

Each Party must, and must ensure that its employees and agents will, execute all documents and do all things necessary to give full effect to the arrangements contemplated by this Deed.

23. UNDERSTANDING

This Deed contains the entire understanding and agreement between the Parties as to the subject matter of this Deed.

24. VARIATION

This Deed may not be varied other than by a later written document executed by the Parties.

25. WAIVER

No delay by a Party in exercising any right under this Deed will operate as a waiver of that right; nor will any waiver by a Party of any right under this Deed operate as a waiver of any other right of that Party; nor will any single or partial exercise of any right preclude any further exercise of that or any other right under this Deed.

26. BINDING ON SUCCESSORS

This Deed enures for the benefit of and is binding upon the Parties and their assigns, executors, heirs and successors.

27. SEVERANCE

If any provision of this Deed is in any way unenforceable, it is to be read down so as to be enforceable or, if it cannot be read down, the provision (or where possible, the offending part) is to be severed from this Deed without affecting the enforceability of the remaining provisions (or parts of those provisions) which will continue in effect. This clause has no effect if the severance materially alters the nature or intended effect of this document.

28. COUNTERPARTS

This Deed may be executed in any number of counterparts. All counterparts taken together will constitute one instrument.

29. COSTS

The Parties must bear their own costs of and incidental to the negotiation, preparation and execution of this Deed.

EXECUTED AS A DEED

SIGNED SEALED and DELIVERED for and)

on behalf of the **Torres Strait Island Regional Council**

this day of 2021)

by)
(full name))

.....)
(designation))

in the presence of:

.....
(signature of Witness)

.....
(print name of witness)

(signature)

SIGNED SEALED and DELIVERED for and)

on behalf of the of Dauanalgaw (Torres Strait
Islanders) Corporation RNTBC ICN: 3510

this day of 2021)

in the presence of: _____)

.....)

.....

Director 1 (signature)

Director 1 (name print)

Director 2 (signature)

Director 2 (name print)

SCHEDULE 1
THE ILUA AREA



SCHEDULE 2

Conditional Agreement to Lease

SCHEDULE 3

Lease

SCHEDULE 4

We, the undersigned certify that:

1. this is a document for the purpose of subregulations 8(1), 8A, 9(4) and 9(5) of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth);
2. attached to this document and marked "A" is a copy of the Indigenous Land Use Agreement ("the ILUA") that the Dauanalgap (TSI) RNTBC ("the PBC") is proposing to enter into;
3. we are all members of the PBC and the Dauanalgap People whose native title rights and interests would be affected by the PBC entering into the ILUA;
4. the Dauanalgap People have been consulted about, and have consented to, the PBC entering into the ILUA; and
5. prior to the Dauanalgap People consenting to the PBC entering into the ILUA:
 - (a) the Torres Strait Regional Authority was consulted; and
 - (b) the Torres Strait Regional Authority's views about the PBC entering into the ILUA were considered in accordance with subregulation 8(3) of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

.....
(Signature)

.....
(Signature)

.....
(Full Name)

.....
(Full Name)

this day of 2021

this day of 2021

in the presence of

in the presence of

.....
(Signature of Witness)

.....
(Signature of Witness)

.....
(Full Name of Witness)

.....
(Full Name of Witness)

.....
(Signature)

.....
(Full Name)

this day of 2021

in the presence of

.....
(Signature of Witness)

.....
(Full Name of Witness)

.....
(Signature)

.....
(Full Name)

this day of 2021

in the presence of

.....
(Signature of Witness)

.....
(Full Name of Witness)

.....
(Signature of Witness)

.....
(Full Name of Witness)

this day of 2021

in the presence of

.....
(Signature of Witness)

.....
(Full Name of Witness)

SCHEDULE 5

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

I, _____ authorised officer of the Torres Strait Regional Authority ("TSRA"), certify that the TSRA has been consulted about the proposed decision by Dauanalaw (Torres Strait Islanders) Corporation RNTBC [ICN: 3510) to enter into the Commonwealth represented by the Department of Home Affairs Care Indigenous Land Use Agreement.

Signature by authorised officer of the TSRA

.....
(Signature)

.....
(Full Name)

this day of 2021

.....
(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 6

NOTICE

Corporation

Lot 52 Main Road,
Dauan Island
via, THURSDAY ISLAND QLD 4875
email: Cr.Torenzo.Elisala@tsirc.qld.gov.au

Torres Strait Island Regional Council

Street Address: Lot 12 Francis Road
Hammond Island QLD 4875

Postal Address: PO Box 7336
CAIRNS QLD 4870

Facsimile Number: 07 4034 5750

TSRA

c/- The Principal Legal Officer
Torres Strait Regional Authority (Native Title Office)

Street Address: 2 Victoria Pde
Thursday Island Qld 4875

Postal Address: PO Box 261
Thursday Island Qld 4875

Facsimile: 4069 2582

TORRES STRAIT ISLAND REGIONAL COUNCIL

TRUSTEE REPORT

COUNCIL TRUSTEE MEETING

DATE: May 2021

SUBJECT: Transfer of Mabuiag LHA (Katter) Lease from Pele Mooka to Shania and Stephanie Mooka

AUTHOR: Peter Krebs, Senior Legal Counsel

PERSONAL INTERESTS

Councillors are reminded to declare any prescribed or declarable conflicts of interests relating to:

- Pele Mooka, Shania Mooka, and Stephanie Mooka
- Traditional Owner interests at Mabuiag

RECOMMENDATION

That pursuant to the Aboriginal and Torres Strait Islander Land Holding Act 2013 (Qld), the Council as Trustee consent to the transfer of the Land Holding Act (Katter) lease 720577066 from Pele Mooka to Shania and Stephanie Mooka for 12 Map Street (Lot 12 on SP273192) on Mabuiag.

PURPOSE

This report provides information to Council on the application for the transfer of a Katter lease from Pele Mooka to Shania & Stephanie Mooka.

As trustee for Mabuiag Island Deed of Grant in Trust, it is TSIRC's role to provide consent to an LHA lease transfer. This report is for the Trustee to consider providing consent to the lease transfer.

BACKGROUND

1. The Katter lease for 12 Map street (Lot 12 on SP273192) was granted to Pele Mooka. TSIRC is the lessor of the lease.
2. On 15 March 2021, DATSIP advised TSIRC that Pele Mooka wished to transfer his Katter lease to Shania & Stephanie Mooka (**Attachment 1**).
3. The 2013 Act (Section 64) states that a lease may be transferred only to an Aboriginal or Torres Strait Islander person, or a spouse, or former

spouse, of an Aboriginal or Torres Strait Islander person who is deceased, and the lessor must not unreasonably withhold their consent.

OFFICER COMMENT

Since this is a requested transfer to a family member who is eligible, there is no impediment to the transfer by Council.

The Form 18 (**Attachment 2**) needs to be signed by the Mayor to become effective.

CONSULTATION

- Cr Keith Fell
- CEO
- DATSIP

LINKS WITH STRATEGIC PLANS

Operational Plan:

To be advised

STATUTORY REQUIREMENTS

Torres Strait Islander Land Act 1991 (Qld)

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

Land Title Act 1994 (Cth)

FINANCE AND RISK

Capital Cost

NIL

Operating Cost

NIL

Risk Assessment

NIL

SUSTAINABILITY

NA

CONCLUSION

As presented.



David Baldwin
A/CEO



Peter Krebs
Senior Legal Counsel

ATTACHMENTS:

1. Letter dated 15 March 2021 from DATSIP requesting the transfer.
2. General Consent for transfer (FORM 18)



Department of
Seniors, Disability Services and
Aboriginal and Torres Strait
Islander Partnerships

Our Ref: LHA MB16/89
Date: 15 March 2021

Mr Peter Krebs
Torres Strait Island Regional Council
PO Box 7336
Cairns QLD 4870

Dear Mr Krebs,

Please find attached a General Consent for a transfer of a Land Holding Act lease. The transferor is seeking Trustee execution by Mayor Mosby or the Chief Executive Officer TSIRC, to progress the transfer.

Details of the transfer are:

- Lot/plan – Lot 12 on SP273192
- Address – 12 Map Street, Mabuiag Island
- Transferor – Pele Mooka
- Transferee – Shania Mooka and Stephanie Mooka
- Reason – wishes to transfer the lease to a family member for love and affection

I have enclosed a stamped, self-addressed envelope for return of the document as well as a copy of the executed Form 1 Transfer document for reference, if required.

Should you have any questions concerning any of the above, please do not hesitate to contact me on 4252 5117 or via e-mail john.coyle@datsip.qld.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "John Coyle".

John Coyle

**Manager Home Ownership Team
Remote Indigenous Land and Infrastructure Program Office
Infrastructure and Coordination**

Cairns Corporate Tower
Level 9, 15 Lake Street
Cairns QLD 4870

Telephone: +61 7 4252 5129
www.datsip.qld.gov.au

ABN: 73882262700

1. Lot on Plan Description

Title Reference

LOT 12 ON SP273192

51176733

2. Instrument/document being consented to

Instrument/document type TRANSFER OF TRUSTEE LEASE 720577066

Dated

Names of parties PELE MOOKA AS TRANSFEROR AND SHANIA MOOKA AND STEPHANIE MOOKA AS TRANSFEREES

3. Instrument/document under which consent required

Instrument/document type TRUSTEE LEASE

Dealing No. 720577066

Name of consenting party 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

4. Execution by consenting party

The party identified in item 3 consents to the registration of the instrument/document identified in item 2.

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

.....signature

.....full name

.....qualification

/ /
Execution Date

Witnessing Officer

.....
**Mayor/Chief Executive Officer
Torres Strait Island Regional Council
Consenting Party's Signature**

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

Mortgagee's Australian Credit Licence (if any)

Privacy Statement

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Print one-sided only

1. Interest being transferred (if shares show as a fraction)

TRUSTEE LEASE NO 720577066

Lodger (Name, address, E-mail & phone number)

Attn: John Coyle

DATSIP

PO Box 5461

Cairns QLD 5870

FNQCSP@datcip.qld.gov.au

(07) 4252 5124

Lodger Code

175

Note: A Form 24 - Property Information (Transfer) must be attached to this Form where interest being transferred is "fee simple" (Land Title Act 1994), "State leasehold" (Land Act 1994) or "Water Allocation" (Water Act 2000)

2. Lot on Plan Description

LOT 12 ON SP273192

Title Reference

51176733

3. Transferor

PELE MOOKA

4. Consideration

FOR NATURAL LOVE AND AFFECTION

5. Transferee

Given names

Surname/Company name and number

(include tenancy if more than one)

SHANIA

MOOKA

TENANTS IN COMMON in

STEPHANIE

MOOKA

the interests of $\frac{1}{2}$ and $\frac{1}{2}$ respectively

6. **Transfer/Execution** The Transferor transfers to the Transferee the estate and interest described in item 1 for the consideration and in the case of monetary consideration acknowledges receipt thereof. The Transferor declares that the information contained in items 3 to 6 on the attached Form 24 is true and correct. The Transferee states the information contained in items 1, 2, 4 to 6(h) on the attached Form 24 is true and correct. Where a solicitor signs on behalf of the Transferee the information in items 1, 2, 4 to 6(h) on the Form 24 is based on information supplied by the Transferee.

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Separate executions are required for each transferor and transferee. Signatories are to provide to the witness, evidence that they are the person entitled to sign the instrument (including proof of identity).

Ian Lindsay Noble
Justice of the Peace (Qualified)
State of Queensland

Witnessing Officer (signature, full name & qualification)

Ian Lindsay Noble

Execution Date

15/03/2021

Transferor's Signature

PJ Mooka

Justice of the Peace (Qualified)
State of Queensland

Witnessing Officer (signature, full name & qualification)

Ian Lindsay Noble

Execution Date

15/03/2021

*Transferee's or Solicitor's Signature

Shania

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

*Note: A Solicitor is required to print full name if signing on behalf of the Transferee and no witness is required in this instance

Ian Lindsay Noble
Justice of the Peace (Qualified)
State of Queensland

Witnessing Officer (signature, full name & qualification)

Execution Date

15/03/2021

*Transferee's or Solicitor's Signature

Shania

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

*Note: A Solicitor is required to print full name if signing on behalf of the Transferee and no witness is required in this instance

TORRES STRAIT ISLAND REGIONAL COUNCIL

TRUSTEE REPORT

COUNCIL TRUSTEE MEETING

DATE: May 2021

SUBJECT: Transfer of Mabuiag LHA (Katter) Lease from Kame Paipai to Nalam Paipai

AUTHOR: Peter Krebs, Senior Legal Counsel

PERSONAL INTERESTS

Councillors are reminded to declare any prescribed or declarable conflicts of interests relating to:

- Kame Matthew Paipai, and Nalam Bethalia Falcia Paipai
- Traditional Owner interests at Mabuiag

RECOMMENDATION

That pursuant to the Aboriginal and Torres Strait Islander Land Holding Act 2013 (Qld), the Council as Trustee consent to the transfer of the Land Holding Act (Katter) lease 719506879 from Kame Paipai to Nalam Paipai for 14 Map Street (Lot 14 on SP273192) on Mabuiag.

PURPOSE

This report provides information to Council on the application for the transfer of a Katter lease from Kame Paipai to Nalam Paipai.

As trustee for Mabuiag Island Deed of Grant in Trust, it is TSIRC's role to provide consent to an LHA lease transfer. This report is for the Trustee to consider providing consent to the lease transfer.

BACKGROUND

1. The Katter lease for 14 Map street (Lot 14 on SP273192) was granted to Kame Paipai. TSIRC is the lessor of the lease.
2. On 2 December 2020, DATSIP advised TSIRC that Kame Paipai wished to transfer his Katter lease to Nalam Paipai (**Attachment 1**).
3. The 2013 Act (Section 64) states that a lease may be transferred only to an Aboriginal or Torres Strait Islander person, or a spouse, or former

spouse, of an Aboriginal or Torres Strait Islander person who is deceased, and the lessor must not unreasonably withhold their consent.

OFFICER COMMENT

Since this is a requested transfer to a family member who is eligible, there is no impediment to the transfer by Council.

The Form 18 (**Attachment 2**) needs to be signed by the Mayor to become effective.

CONSULTATION

- Cr Keith Fell
- CEO
- DATSIP

LINKS WITH STRATEGIC PLANS

Operational Plan:

To be advised

STATUTORY REQUIREMENTS

Torres Strait Islander Land Act 1991 (Qld)

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

Land Title Act 1994 (Cth)

FINANCE AND RISK

Capital Cost

NIL

Operating Cost

NIL

Risk Assessment

NIL

SUSTAINABILITY

NA

CONCLUSION

As presented.

A handwritten signature in dark ink, appearing to read "David Baldwin", with a stylized flourish at the end.

**David Baldwin
A/CEO**

A handwritten signature in dark ink, appearing to read "Peter Krebs", with a stylized flourish at the end.

**Peter Krebs
Senior Legal Counsel**

ATTACHMENTS:

1. Letter dated 2 December 2020 from DATSIP requesting the transfer.
2. General Consent for transfer (FORM 18)



Department of
**Seniors, Disability Services
and Aboriginal and Torres
Strait Islander Partnerships**

Our reference: MB15/89
Date: 02 December 2020

CEO Bruce Ranga
Torres Strait Island Regional Council
PO Box 7336
Cairns, QLD 4870

ATTENTION: Peter Krebs

Dear Peter,

Please find attached a General Consent for a transfer of a Land Holding Act, the transferor is seeking Trustee execution by Mayor Mosby or yourself as CEO, to progress the transfer.

Details of the transfer are:

- Lot/plan – Lot 14 on SP273192
- Address – 14 Map Street, Mabuiag Island
- Transferor – Kame Matthew Paipai
- Transferee – Nalam Bethalia Falicia Maurie Paipai
- Reason – wishes to transfer the lease to a family member for love and affection

I have enclosed a stamped, self-addressed envelope for return of the document as well as a copy of the executed Form 1 Transfer document for reference, if required.

If you have any questions please don't hesitate to call me on 4252 5117 or 1800 001 931.

Yours sincerely,

A handwritten signature in black ink, appearing to read "John Coyle".

John Coyle

Manager Home Ownership Team
Remote Indigenous Land and Infrastructure Program Office
Infrastructure and Coordination

Cairns Corporate Tower
Level 9, 15 Lake Street
Cairns QLD 4870

Telephone: +61 7 4252 5129
www.datsip.qld.gov.au

ABN: 73882262700

1. Lot on Plan Description

LOT 14 ON SP273192

Title Reference

51176735

2. Instrument/document being consented to

Instrument/document type TRANSFER OF TRUSTEE LEASE NO 719506879

Dated

Names of parties KAME MATTHEW PAIPAI AS TRANSFEROR AND NALAM BETHALIA FALICIA MAURIE
PAIPAI AS TRANSFEREE

3. Instrument/document under which consent required

Instrument/document type TRUSTEE LEASE

Dealing No. 719506879

Name of consenting party 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

4. Execution by consenting party

The party identified in item 3 consents to the registration of the instrument/document identified in item 2.

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

.....
Consenting Party's Signature

Mortgagee's Australian Credit Licence (if any)

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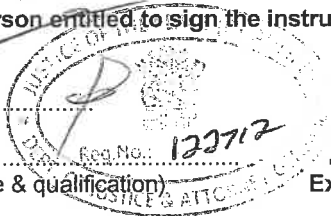
1. Interest being transferred (if shares show as a fraction) TRUSTEE LEASE NO 719506879	Lodger (Name, address, E-mail & phone number) John Coyle, Manager, RILIPO, DATSIP homeownership@dotsip.qld.gov.au	Lodger Code 175
Note: A Form 24 - Property Information (Transfer) must be attached to this Form where interest being transferred is "fee simple" (Land Title Act 1994), "State leasehold" (Land Act 1994) or "Water Allocation" (Water Act 2000)		
2. Lot on Plan Description LOT 14 ON SP273192	Title Reference 51176735	
3. Transferor KAME MATTHEW PAIPAI		
4. Consideration FOR NATURAL LOVE AND AFFECTION		
5. Transferee Given names NALAM BETHALIA FALICIA MAURIE	Surname/Company name and number PAIPAI (include tenancy if more than one)	
6. Transfer/Execution The Transferor transfers to the Transferee the estate and interest described in item 1 for the consideration and in the case of monetary consideration acknowledges receipt thereof. The Transferor declares that the information contained in items 3 to 6 on the attached Form 24 is true and correct. The Transferee states the information contained in items 1, 2, 4 to 6(h) on the attached Form 24 is true and correct. Where a solicitor signs on behalf of the Transferee the information in items 1, 2, 4 to 6(h) on the Form 24 is based on information supplied by the Transferee.		

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Separate executions are required for each transferor and transferee. Signatories are to provide to the witness, evidence that they are the person entitled to sign the instrument (including proof of identity).

David Frank Jardine
Justice of the Peace (Qualifying)
State of Queensland

Witnessing Officer (signature, full name & qualification)



Execution Date

12/11/2020

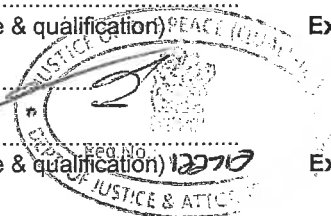
Transferor's Signature

MAIPAI

Witnessing Officer (signature, full name & qualification)

David Frank Jardine
Justice of the Peace (Qualifying)
State of Queensland

Witnessing Officer (signature, full name & qualification)



Execution Date

12/11/2020

*Transferee's or Solicitor's Signature

NPAIPAI

Witnessing Officer (signature, full name & qualification)

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

Execution Date

*Transferee's or Solicitor's Signature

*Note: A Solicitor is required to print full name if signing on behalf of the Transferee and no witness is required in this instance

TORRES STRAIT ISLAND REGIONAL COUNCIL

TRUSTEE REPORT

COUNCIL TRUSTEE MEETING

DATE: May 2021

SUBJECT: Transfer of St Pauls LHA (Katter) Lease from Rose Alau to Wallington Monwell Kris

AUTHOR: Peter Krebs, Senior Legal Counsel

PERSONAL INTERESTS

Councillors are reminded to declare any prescribed or declarable conflicts of interests relating to:

- Rose Alau and Wallington Monwell Kris
- Traditional Owner interests at St Pauls

RECOMMENDATION

That pursuant to the Aboriginal and Torres Strait Islander Land Holding Act 2013 (Qld), the Council as Trustee consent to the transfer of the Land Holding Act (Katter) lease 719331045 from Rose Alau to Wallington Monwell Kris for 56 Anu Namai Street (Lot 22 on SP256048) on St Pauls.

PURPOSE

This report provides information to Council on the application for the transfer of a Katter lease from Rose Alau to Wallington Kris.

As trustee for the St Pauls Deed of Grant in Trust, it is TSIRC's role to provide consent to an LHA lease transfer. This report is for the Trustee to consider providing consent to the lease transfer.

BACKGROUND

1. The Katter lease for 56 Anu Namai street (Lot 22 on SP256048) was granted to Rose Alau. TSIRC is the lessor of the lease.
2. On 22 March 2021, DATSIP advised TSIRC that Rose Alau wished to transfer her Katter lease to Wallington Kris (**Attachment 1**).
3. The 2013 Act (Section 64) states that a lease may be transferred only to an Aboriginal or Torres Strait Islander person, or a spouse, or former

spouse, of an Aboriginal or Torres Strait Islander person who is deceased, and the lessor must not unreasonably withhold their consent.

OFFICER COMMENT

Since this is a requested transfer to a family member who is eligible, there is no impediment to the transfer by Council.

The Form 18 (**Attachment 2**) needs to be signed by the Mayor to become effective.

CONSULTATION

- Cr John Levi
- CEO
- DATSIP

LINKS WITH STRATEGIC PLANS

Operational Plan:

To be advised

STATUTORY REQUIREMENTS

Torres Strait Islander Land Act 1991 (Qld)

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

Land Title Act 1994 (Cth)

FINANCE AND RISK

Capital Cost

NIL

Operating Cost

NIL

Risk Assessment

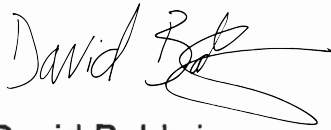
NIL

SUSTAINABILITY

NA

CONCLUSION

As presented.

A handwritten signature in black ink, appearing to read "David Baldwin", with a long horizontal flourish extending to the right.

David Baldwin
A/CEO

A handwritten signature in black ink, appearing to read "Peter Krebs", with a long horizontal flourish extending to the right.

Peter Krebs
Senior Legal Counsel

ATTACHMENTS:

1. Letter dated 22 March 2021 from DATSIP requesting the transfer.
2. General Consent for transfer (FORM 18)



Department of
**Seniors, Disability Services
and Aboriginal and Torres
Strait Islander Partnerships**

Our Ref: LHA SP9/87
Date: 22 March 2021

Mr Peter Krebs
Senior Legal Counsel
Torres Strait Island Regional Council
PO Box 7336
Cairns QLD 4870

Dear Peter

Please find enclosed a Form 18 General Consent for a transfer of a Land Holding Act lease. The transferor is seeking Trustee execution by Mayor Mosby or Bruce Ranga as Chief Executive Officer, to progress the transfer.

Details of the transfer are:

- Lot/plan – Lot 22 on SP256048
- Address – 56 Anu Namai Street, St Pauls
- Transferor – Rose Alau
- Transferee – Wallington Monwell Kris
- Reason – wishes to transfer the lease to a family member for love and affection

I have enclosed a stamped, self-addressed envelope for return of the document as well as a copy of the executed Form 1 Transfer document for reference, if required.

If you have any questions, please don't hesitate to call me on 4252 5117 or 1800 001 931.

Yours sincerely

A handwritten signature in black ink, appearing to read "John Coyle".

John Coyle

**Manager, Home Ownership
Remote Indigenous Land and Infrastructure Program Office
Infrastructure and Coordination**

Cairns Corporate Tower
Level 9, 15 Lake Street
Cairns QLD 4870

Telephone: +61 7 4252 5129
www.datsip.qld.gov.au

ABN: 73882262700

1. Lot on Plan Description

LOT 22 ON SP256048

Title Reference

51067368

2. Instrument/document being consented to

Instrument/document type TRANSFER OF TRUSTEE LEASE 719331045

Dated

Names of parties ROSE ALAU AS TRANSFEROR AND WALLINGTON MONWELL KRIS AS TRANSFEREE.....

3. Instrument/document under which consent required

Instrument/document type TRUSTEE LEASE

Dealing No. 719331045

Name of consenting party 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

4. Execution by consenting party

The party identified in item 3 consents to the registration of the instrument/document identified in item 2.

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

.....signature

.....full name

.....qualification

Witnessing Officer

/ /

Execution Date

.....
Mayor/CEO
Torres Strait Island Regional Council
Consenting Party's Signature

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

Mortgagee's Australian Credit Licence (if any)

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copy

1. Interest being transferred (if shares show as a fraction)

TRUSTEE LEASE NO 719331045

Note: A Form 24 - Property Information (Transfer) must be attached to this Form where interest being transferred is "fee simple" (Land Title Act 1994), "State leasehold" (Land Act 1994) or "Water Allocation" (Water Act 2000)

Lodger (Name, address, E-mail & phone number)

John Coyle,

Manager,

RILIPO, DATSIP

homeownership@datsip.qld.gov.au

Lodger

Code

175

2. Lot on Plan Description

LOT 22 ON SP256048

Title Reference

51067368

3. Transferor

ROSE ALAU

4. Consideration

FOR NATURAL LOVE AND AFFECTION

5. Transferee

Given names

Surname/Company name and number

(include tenancy if more than one)


WALLINGTON MONWELL

KRIS


6. **Transfer/Execution** The Transferor transfers to the Transferee the estate and interest described in item 1 for the consideration and in the case of monetary consideration acknowledges receipt thereof. ~~The Transferor declares that the information contained in items 3 to 6 on the attached Form 24 is true and correct. The Transferee states the information contained in items 1, 2, 4 to 6 on the attached Form 24 is true and correct. Where a solicitor signs on behalf of the Transferee the information in items 1, 2, 4 to 6 on Form 24 is based on information supplied by the Transferee.~~

NOTE: Witnessing officer must be aware of their obligations under section 162 of the Land Title Act 1994.

Separate executions are required for each transferor and transferee. Signatories are to provide to the witness, evidence that they are the person entitled to sign the instrument (including proof of identity).


.....
KIMAT LUI
Witnessing Officer (signature, full name & qualification)

4/3/2021
Execution Date
Rose Alau
Rose Alau, Transferor


.....
KIMAT LUI
Witnessing Officer (signature, full name & qualification)

4/3/2021
Execution Date
Wallington Monwell Kris, Transferee

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

*Note: A Solicitor is required to print full name if signing on behalf of the Transferee and no witness is required in this instance

