



# Trustee Council Meeting | Agenda

**Date:** 23 January 2024

**Time:** 9.00am to 10.30am

**Venue:** TEAMS Meeting ID: 480 443 297 711  
Passcode: PrGwbk

Time	Subject
9.00am	<ol style="list-style-type: none"><li>1. Welcome   Quorum Confirmation   Opening Prayer</li><li>2. Apologies</li><li>3. Conflict of Interest (COI) - Declarable/Prescribed</li><li>4. Confirmation of Trustee Council Meeting Minutes – December 2023</li><li>5. Action Items from Previous Meetings</li><li>6. CHIEF EXECUTIVE OFFICER: Iama (Yam) Island, DOGIT</li><li>7. CORPORATE SERVICES: Delegations Update</li><li>8. BUSINESS ARISING</li><li>9. Next Council Meeting Date: <b>20 February 2024 (TEAMS)</b></li></ol>
10.25am	<ol style="list-style-type: none"><li>10. Official Close &amp; Prayer</li></ol>



# Draft Minutes

## TRUSTEE COUNCIL MEETING

12 - 19 December 2023

## Day 1 – Tuesday, 12 December 2023

### PRESENT:

#### Mayor:

Cr Phillemon Mosby

#### Officers:

Chief Executive Officer

Acting Executive Director Corporate Services

Secretariat Officer

Mr James William

Mr Gary Stevenson PSM

Mr Darryl Brooks

Mayor Mosby welcomed attendees and made the following acknowledgements:

- Our Heavenly Father for his awesome wisdom, knowledge, understanding, favour and blessings for our lives; upon our leadership, our Council and for our people right across the length and breadth of Zenadth Kes;
- Acknowledgements of Traditional Owners throughout Zenadth Kes and the communities and constituents that Council serves; and
- All Elders with us, past, present and emerging.

Mayor Mosby paid special acknowledgement on behalf of the entire Council to the Family and loved ones of the late Pastor Nelson Billy, acknowledging his life-time of public service and spiritual devotion to the entire Torres Strait Islander community and beyond. Mayor Mosby expressed his personal sentiments that Pastor Billy will now be laid to rest on his beloved home of Warraber and the Mayor's deepest thoughts and heartfelt prayers are with the entire Warraber community at this time.

The Mayor also acknowledged that other Torres Strait Islander community members are experiencing their own Sorry Business also during this time and extended to them as well the thoughts and prayers of Council.

The Mayor then delivered an opening prayer and a minute of silence was observed for reflection and to remember loved ones.

Mayor Mosby then declared the Trustee Council Meeting open at 9:04am. As anticipated, the Mayor observed that the meeting had not achieved a quorum due to the implications of Tropical Cyclone Jasper and with due regard for Sorry Business on Warraber Island. As there was no prospect of the meeting being quorate, Mayor Mosby declared the meeting adjourned until 9.00am on Tuesday 19 December 2023.

The meeting closed at 9.13am.

## Day 2 – Tuesday, 19 December 2023

### PRESENT:

#### Mayor

Division 1 - Boigu  
Division 2 – Dauan  
Division 3 – Saibai  
Division 4 – Mabuiag  
Division 5 – Badu  
Division 6 – Arkai  
Division 7 – Wug (St Pauls)  
Division 8 – Kirirri  
Division 9 - Iama  
Division 10 – Warraber  
Division 11 – Poruma  
Division 12 – Masig  
Division 13 - Ugar  
Division 14 - Erub  
Division 15 – Mer

Cr Phillemon Mosby  
Cr Dimas Toby  
Cr Torenzo Elisala  
Cr Conwell Tabuai  
Cr Keith Fell  
Cr Ranetta Wosomo  
Cr Lama Trinkoon  
Cr John Levi  
Cr Seriako Dorante  
Cr Getano Jui (Jnr) AM - **Deputy Mayor**  
Cr Kabay Tamu  
Cr Francis Pearson  
Cr Hilda Mosby  
Cr Rocky Stephen  
Cr Jimmy Gela  
*not represented*

### OFFICERS:

Chief Executive Officer  
Executive Director Building Services  
Executive Director Community Services  
Acting Executive Director Corporate Services  
Acting Executive Director Financial Services  
Corporate Services Support  
Executive Support Coordinator  
Executive Assistant to the Mayor  
Senior Executive Assistant

Mr James William  
Mr Wayne Green  
Mr Dawson Sailor  
Mr Gary Stevenson PSM  
Ms Nicola Daniels  
Ms Margaret Gatt  
Ms Sharon Russell  
Ms Trudy Lui  
Ms Julie Marino

*Joined meeting at 9.41am*

### OTHERS:

Moray & Agnew Lawyers

Mr Andrew Kerr

*Joined meeting at 10.36am*

## 1. Welcome & Quorum Confirmation

The Mayor formally opened Day 2 of the December 2023 Trustee Council Meeting at 9:04am, noting that a quorum of members was established.

The Mayor made the following special acknowledgements on behalf of the entire Trustee Council:

- Acknowledgement of Traditional Owners throughout Zenadth Kes and the communities and constituents that Trustee Council serves;
- All Elders with us, past, present and emerging; and
- Special acknowledgement of those members of the community who are experiencing Sorry Business and extended to them the thoughts and prayers of the Trustee Council at this time.

The Acting Executive Director Corporate Services advised the Trustee Council that the meeting was being recorded for minute taking purposes and asked the Trustee Council if there were any objections to this being done.

## 2. Opening Prayer

The Deputy Mayor delivered the opening prayer.

## 3. Apologies (Day 2)

Nil.

The Mayor advised that some Councillors were experiencing technical difficulties joining the TEAMS meeting as a result of ongoing weather conditions due to Cyclone Jasper.

The Mayor also advised the Trustee Council that the Chief Executive Officer will be joining the meeting in person later this morning.

## 4. Conflict of Interest (COI) - Declarable/Prescribed

The Mayor invited Councillors to make any relevant conflict of interest declarations and to also advise if they were currently involved in any legal proceedings which pertain to the Trustee Council business to be considered at the meeting.

- Cr John Levi** made a declarable Conflict of Interest in relation to Agenda Item 8 (*CORPORATE SERVICES: Land Holding Act (LHA) Lease Transfer: 84 Newilgau Street, Kubin Community*) as this matter involved a family relative.
- Cr Francis Pearson** declared a possible conflict of interest with regard to Agenda Item 9 (*CORPORATE SERVICES: Land Holding Act (LHA) Lease Transfer: 54 Olandi Street, Poruma Island*) as this matter involved a family relative (grandfather).

Mr Julian Bodenmann (Legal Consultant, Preston Law) advised that this matter was declarable and that Cr Pearson had the option to either leave the meeting when this item is discussed, or remain present but abstain from voting. Cr Pearson advised Council that he will step out of the meeting when Item 9 is discussed.

**5. Confirmation of Council Trustee Meeting Minutes - November 2023**

**RESOLUTION**

Moved: Cr Lama Trinkoon

Second: Cr Jimmy Gela

Trustee Council agrees that the Minutes for the Council Trustee Meeting held on 16 November 2023 are confirmed as a true and accurate record of that meeting.

**CARRIED UNANIMOUSLY**

**6. Action Items from Previous Trustee Council Meetings**

The Chief Executive Officer provided the Trustee Council with a verbal update on the status of Action Items arising from the previous meeting, as well as outstanding action items from previous meetings.

**7. CORPORATE SERVICES: Amendment of Social Housing Lease – Moa Island**

**OFFICER RECOMMENDATION:**

*That the Trustee delegate to the Chief Executive Officer the power to finalise and execute on behalf of the Trustee, the amendments considered in this report to Lease No. 718552835, which was granted by the Trustee as lessor to the State of Queensland (represented by Department of Housing).*

- *Mr Julian Bodenmann (Legal Consultant, Preston Law) spoke to the report.*
- *After round table discussion involving the Chief Executive Officer, the Deputy Mayor and Mr Bodenmann, it was decided to bring back the report for discussion at a future Trustee Council Meeting.*

**RESOLUTION**

Moved: Cr John Levi

Second: Cr Rocky Stephen

Trustee Council agrees that the agenda item (Amendment of Social Housing Lease – Moa Island) be laid on the table for consideration at a future Trustee Council Meeting.

**CARRIED UNANIMOUSLY**

- *Cr John Levi made a Declarable Conflict of Interest in relation to Item 8 and left the room at 9:45am.*

**8. CORPORATE SERVICES: Land Holding Act (LHA) Lease Transfer: 84 Newilgau Street, Kubin Community**

**OFFICER RECOMMENDATION:**

*The Trustee resolves pursuant to the Aboriginal and Torres Strait Islander Land Holding Act 2013 to:*

- *consent to the transfer of a trustee lease (Lease No. 715642236) over Lot 84 on SP271019 (title reference 51089441) from Penina Delora Levi to Penina Delora Levi, Alua Leroy Savage and Paula Emalda Savage; and*
- *delegate to the Mayor and the Chief Executive Officer each the power to execute the General Consent forms.*

**RESOLUTION**

Moved: Cr Lama Trinkoon

Second: Cr Jimmy Gela

The Trustee resolves pursuant to the Aboriginal and Torres Strait Islander Land Holding Act 2013 to:

- consent to the transfer of a trustee lease (Lease No. 715642236) over Lot 84 on SP271019 (title reference 51089441) from Penina Delora Levi to Penina Delora Levi, Alua Leroy Savage and Paula Emalda Savage; and
- delegate to the Mayor and the Chief Executive Officer each the power to execute the General Consent forms.

CARRIED UNANIMOUSLY

- Cr Francis Pearson makes a Declarable Conflict of Interest for Item 9 and left the room at 9.45am
- The Mayor reminds remaining Councillors to be mindful of maintaining a quorum.

**9. CORPORATE SERVICES: Land Holding Act (LHA) Lease Transfer: 54 Olandi Street, Poruma Island**

**OFFICER RECOMMENDATION:**

The Trustee resolves pursuant to the Aboriginal and Torres Strait Islander Land Holding Act 2013 to:

- consent to the transfer of a trustee lease (Lease No. 719325784) over Lot 43 on SP270862 (title reference 51078140) from Nora Catherine Pearson to Frank Paul David; and
- delegate to the Mayor and the Chief Executive Officer each the power to execute the General Consent form.

**RESOLUTION**

Moved: Cr Lama Trinkoon

Second: Cr Jimmy Gela

Against: Cr John Levi

The Trustee resolves pursuant to the Aboriginal and Torres Strait Islander Land Holding Act 2013 to:

- consent to the transfer of a trustee lease (Lease No. 719325784) over Lot 43 on SP270862 (title reference 51078140) from Nora Catherine Pearson to Frank Paul David; and
- delegate to the Mayor and the Chief Executive Officer each the power to execute the General Consent form.

CARRIED

- Cr Francis Pearson rejoined the meeting at 10.08am.

**10. CORPORATE SERVICES: Land Holding Act (LHA) Lease Transfer: Boigu Lot 20, Lot 26, Lot 36 and Lot 90**

**OFFICER RECOMMENDATION:**

*The Trustee resolves pursuant to the Aboriginal and Torres Strait Islander Land Holding Act 2013 to:*

- *consent to the transfer of a trustee lease (Lease No. 721602956) over Lot 20 on SP273190 (title reference 51146277) from Ned Kelly Banu to Ned Kelly Banu and Samuel Mackie Frank Banu; and*
- *consent to the transfer of a trustee lease (Lease No. 721602959) over Lot 26 on SP273190 (title reference 51146283) from Ned Kelly Banu to Ned Kelly Banu and Samuel Mackie Frank Banu; and*
- *consent to the transfer of a trustee lease (Lease No. 721007880) over Lot 36 on SP273190 (title reference 51146292) from Rosina Annita Gibuma to Ishmael Gibuma; and*
- *consent to the transfer of a trustee lease (Lease No. 720849951) over Lot 90 on SP273190 (title reference 51146341) from John Gibuma to Stanley Marama; and*
- *delegate to the Mayor and the Chief Executive Officer each the power to execute the General Consent forms for each of the above lease transfers.*

**RESOLUTION**

*Moved: Cr Torenzo Elisala*

*Second: Cr Francis Pearson*

**The Trustee resolves pursuant to the Aboriginal and Torres Strait Islander Land Holding Act 2013 to:**

- **consent to the transfer of a trustee lease (Lease No. 721602956) over Lot 20 on SP273190 (title reference 51146277) from Ned Kelly Banu to Ned Kelly Banu and Samuel Mackie Frank Banu;**
- **consent to the transfer of a trustee lease (Lease No. 721602959) over Lot 26 on SP273190 (title reference 51146283) from Ned Kelly Banu to Ned Kelly Banu and Samuel Mackie Frank Banu;**
- **consent to the transfer of a trustee lease (Lease No. 721007880) over Lot 36 on SP273190 (title reference 51146292) from Rosina Annita Gibuma to Ishmael Gibuma;**
- **consent to the transfer of a trustee lease (Lease No. 720849951) over Lot 90 on SP273190 (title reference 51146341) from John Gibuma to Stanley Marama; and**
- **delegate to the Mayor and the Chief Executive Officer each the power to execute the General Consent forms for each of the above lease transfers.**

**CARRIED UNANIMOUSLY**

**11. CORPORATE SERVICES: Information on Particular Trustee Matters**

**OFFICER RECOMMENDATION**

*That the Trustee Council resolves to note the report.*

**RESOLUTION**

*Moved: Cr Francis Pearson*

*Second: Cr Jimmy Gela*

**That the Trustee Council resolves to note the report.**

**CARRIED UNANIMOUSLY**

➤ *The meeting broke for 5 minutes at 10:30am.*



➤ *Mr Andrew Kerr (Moray & Agnew Lawyers) joined the meeting in person at 10.36am.*

**12. MOVE INTO CLOSED BUSINESS**

**RESOLUTION**

Moved: Cr Rocky Stephen

Second: Cr Keith Fell

That in accordance with section 84(3)(e) of the *Local Government Act 2009*, it is resolved for the meeting to go into closed session to allow the Trustee Council to discuss items listed on the agenda under Closed Business and for the reasons outlined under those items.

**CARRIED UNANIMOUSLY**

**13. MOVE OUT OF CLOSED BUSINESS**

**RESOLUTION**

Moved: Cr Rocky Stephen

Second: Cr Keith Fell

That the Trustee Council resolve to move out of Closed Business discussions.

**CARRIED UNANIMOUSLY**

**16. CONSIDERATION OF MATTERS DISCUSSED IN CLOSED BUSINESS**

**13. (STANDING AGENDA ITEM) – CORPORATE SERVICES: DOGIT Update (verbal update)**

**RESOLUTION**

Moved: Cr Rocky Stephen

Second: Cr Keith Fell

The Trustee Council notes the verbal update provided by the Chief Executive Officer in relation to DOGIT.

**CARRIED UNANIMOUSLY**

**Action:**

Acting Executive Director Corporate Services, in conjunction with the Chief Executive Officer, to look at possible dates for the Trustee Council to meet with the Queensland Minister for Housing, Local Government and Planning and Minister for Public Works (and the Premier) to discuss DOGIT matters.

➤ *Cr Seriako Dorante made a Declarable Conflict of Interest in relation to Agenda Item 14 as this matter involved a direct family member.*

*Mr Julian Bodenmann (Legal Consultant, Preston Law) recommended that the Trustee Council resolve, pursuant to Section 150ES3 of the Local Government Act 2009, that Cr Dorante not participate in discussion on this matter.*

**RESOLUTION**

Moved: Cr Keith Fell

Second: Cr Francis Pearson

The Trustee Council, pursuant to Section 150ES3 of the *Local Government Act 2009*, resolves that Cr Seriako Dorante not participate in discussion on Agenda Item 14 (CORPORATE SERVICES: Expressions of Interest – Lot 38 on SP 248418, Hammond Island) due to a Declarable Conflict of Interest in relation to Agenda Item 14 (direct family member).

**CARRIED UNANIMOUSLY**

➤ *Cr Seriako Dorante left the meeting at 10.53am.*

**14. CORPORATE SERVICES: Expressions of Interest – Lot 38 on SP 248418, Hammond Island**

**OFFICER RECOMMENDATION:**

*That the Trustee:*

- (a) enters into a conditional agreement to lease with Ilario Sabatino over Lot 38 on SP 248418 ("the Premises"), pursuant to the conditional approval provided by the Trustee in 2013 in respect of Mr Sabatino's expression of interest over the Premises and which the parties have partially progressed;*
- (b) delegates to the Chief Executive Officer the power to:*
  - (i) negotiate, finalise and execute on behalf of the Trustee, the conditional agreement to lease with Mr Sabatino in respect of the Premises;*
  - (ii) notify any other parties that have expressed interest in leasing the Premises of the Trustee's decision.*

**RESOLUTION**

*Moved: Cr John Levi*

*Second: Cr Kabay Tamu*

**That the Trustee:**

- (a) enters into a conditional agreement to lease with Mr Ilario Sabatino over Lot 38 on SP 248418 ("the Premises"), pursuant to the conditional approval provided by the Trustee in 2013 in respect of Mr Sabatino's expression of interest over the Premises and which the parties have partially progressed;**
- (b) delegates to the Chief Executive Officer the power to:**
  - (i) negotiate, finalise and execute on behalf of the Trustee, the conditional agreement to lease with Mr Sabatino in respect of the Premises;**
  - (ii) notify any other parties that have expressed interest in leasing the Premises of the Trustee's decision.**

**CARRIED UNANIMOUSLY**

➤ *Cr Seriako Dorante returned to the meeting room at 11.45am, following resolution on the above agenda item.*

**17. BUSINESS ARISING**

Nil.

**18. Next meeting: 23 January 2024 (TEAMS).**

**19. Closing remarks and Prayer**

The Mayor closed Day 2 of the Trustee Meeting at 1.04pm.

.....  
Mr James William  
Chief Executive Officer  
Torres Strait Island Regional Council  
Date:

.....  
Cr Phillemon Mosby  
Mayor  
Torres Strait Island Regional Council  
Date:



# TRUSTEE COUNCIL MEETING ACTION ITEMS

Agenda Item	Action	Action Area	Current Status
Dec 2023 Mtg  AI 13 (CB)  DOGIT Update (verbal update)	Acting Executive Director Corporate Services, in conjunction with the Chief Executive Officer, to look at possible dates for the Trustee Council to meet with the Queensland Minister for Housing, Local Government and Planning and Minister for Public Works (and the Premier) to discuss DOGIT matters.	ED Corporate Services	
Nov 2023 Mtg  AI 6  Action Items from Previous Meetings	<p><b>ACTION:</b></p> <ol style="list-style-type: none"> <li><u>DOGIT Matters</u> - Chief Executive Officer to arrange for the preparation of strategic options to be considered at the December 2023 Trustee Council meeting on ways forward for the current and incoming Trustee Council to engage effectively with the Queensland Government in relation to the impacts of current government policy on DOGIT transfer matters (including the 4 points highlighted by Andrew Kerr at the November 2023 Council Workshop): <ul style="list-style-type: none"> <li>to also include Trustee Council deputations to Brisbane to raise directly with the Premier and relevant Ministers the concerns of the Trustee in relation to DOGIT matters in the Torres Strait, including consideration on calling for a judicial review (<i>refer AI 7 from August 2023 meeting</i>); and</li> <li>isolate particular issues and articulate a way forward with those issues.</li> </ul> </li> <li><u>CEQ Matters</u> - Chief Executive Officer to liaise with Cr Dimas Toby in relation to CEQ Board engagement (particularly in relation to Seaswift matters, leasing, fuel matters and general pricing).</li> </ol>	Chief Executive Officer / Corporate Services (Legal Services)	<ol style="list-style-type: none"> <li>This remains a complex and ongoing matter. An update on progress will be provided at the Jan 2024 Meeting.</li> <li>Remains in progress.</li> </ol>

TRUSTEE Action Items  
Page 2 of 2

	3. <u>Saibai Island Church</u> /options to assist in the maintenance and/or restoration of heritage-listed sites and buildings to be considered at the December 2023 meeting.		3. Paper prepared for Dec 2023 Ordinary Council Meeting.
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# TORRES STRAIT ISLAND REGIONAL COUNCIL

## TRUSTEE INFORMATION REPORT

**ORDINARY MEETING:** January 2024

**DATE:** 23 January 2024

**ITEM:** Information Report for Noting by Trustee

**SUBJECT:** lama (Yam) Island, Deeds of Grant in Trust

**AUTHOR:** James William (CEO)

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### **Recommendation:**

That the Trustee note the report.

### **Executive Summary:**

The Minister for Resources has made two decisions contained in the **enclosed** Statement of Reasons ("Decisions") (**Attachment 1**). The Decisions effectively appoint Magani Lagaugal (Torres Strait Islanders) Corporation RNTBC ICN:4017 as the grantee of the majority of lama Island ("lama").

TSIRC, in its role as a Local Government, has challenged the validity of the Decisions by way of Judicial Review.

### **Background:**

The Trustee is the grantee of certain lands on lama ("subject land") under the *Torres Strait Islander Land Act 1991* (Qld) ("**TSIL Act**"). The subject land includes unimproved land, important community infrastructure (such as the airstrip, desalination plant, waste disposal and social housing et al).

On 6 November 2023 the Decisions were made under the TSIL Act.

On 5 December 2023, reasons were given for the Decisions.

On 8 January 2024, an application was filed pursuant to the *Judicial Review Act 1991* (Qld).

On 9 January 2024, a stay application was filed to seek an order preventing the Minister from carrying out the Decisions.

The Judicial Review Application is **enclosed** and sets out the concerns of the Local Government (**Attachment 2**).

### **Comment:**

Moray & Agnew have been engaged in relation to the Judicial Review Application.

Michael Jonsson KC has been formally briefed and settled the JR Application and is advising generally in the matter.

Ben Whitten of Counsel is also to be briefed for the stay application.

## **Considerations**

### Risk Management

Council's risk management is to involve experienced lawyers & counsel in relation to the merits of the JR Application.

### Council Finance

There will be significant costs as the JR Application progresses. However, those costs are likely to be less than the anticipated disruption should the Decisions be effected based upon previous transfers on Badu and Mer.

## **Consultation:**

- Deputy Mayor
- CEO
- Moray & Agnew

## **Links to Strategic Plans:**

TSIRC Corporate Plan 2020–2025

Delivery Pillar: Sustainability

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

- 8.1: Effective management of DOGIT Land as a Trustee

Operational Plan:

## **Statutory Requirements:**

*Torres Strait Islander Land Act 1991 (Qld)*

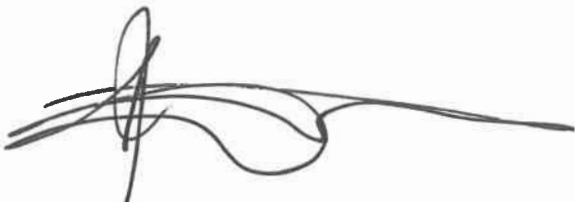
*Aboriginal and Torres Strait Islander Land Holding Act 2013 (Qld)*

*Judicial Review Act 1991 (Qld)*

## **Conclusion:**

It is recommended that the Trustee

- abide by lawful decisions of the Minister for Resources and determinations of the Court.
- whilst Trustee, continue holding the land in trust for the benefit of Islander Inhabitants.
- whilst Trustee, permit TSIRC to maintain the provision of services beneficial to Islander Inhabitants.



## **Endorsed:**

James William

Chief Executive Officer

## **Attachments:**

1. Statement of Reasons
2. Judicial Review Application

## Joshua McDiarmid

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**From:** John Heaney <johnh@paelaw.com>  
**Sent:** 5 December 2023 1:10 PM  
**To:** Andrew Kerr  
**Subject:** RE: lama - transfer under the TSILA - Statement of Reasons  
**Attachments:** CTS\_21327-23\_MIN\_SIGNED\_Attachment 1\_Statement of Reasons.pdf

 External email >

 Discusses sensitive information >

 Contains topics of a financial nature >

Dear Andrew

Pursuant to your request below, please find attached a Statement of Reasons.

Kind regards

**John Heaney** BSc LLB(Hons)

**SPECIAL COUNSEL**

[johnh@paelaw.com](mailto:johnh@paelaw.com)

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**From:** Andrew Kerr <AKerr@moray.com.au>  
**Sent:** Tuesday, November 7, 2023 4:36 PM  
**To:** John Heaney <johnh@paelaw.com>  
**Subject:** RE: lama - transfer under the TSILA

Dear John

I refer to your email below.

Torres Strait Island Regional Council requests a statement of reasons relating to the decision mentioned below under section 32 of the Judicial Review Act 1991 (Qld).

I look forward to receiving the statement of reasons within the prescribed time period.

Regards

**Andrew Kerr**

Partner

E [AKerr@moray.com.au](mailto:AKerr@moray.com.au)

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**From:** John Heaney <[johnh@paelaw.com](mailto:johnh@paelaw.com)>

**Sent:** 7 November 2023 4:01 PM

**To:** Andrew Kerr <[AKerr@moray.com.au](mailto:AKerr@moray.com.au)>

**Subject:** lama - transfer under the TSILA

**Importance:** High

Dear Andrew

Please be aware that the Minister for Resources, the Hon Scott Stewart, approved on 6 November 2023 the preparation of deeds of grant in fee simple for the transfer of the lama DOGIT and associated reserves under the *Torres Strait Islander Land Act 1991* (Qld). The land is to be held by the Magani Lagaugal (Torres Strait Islander) Corporation RNTBC for the native title holders of the land, being the lama and Tudu People.

Kind regards

**John Heaney** BSc LLB(Hons)

SPECIAL COUNSEL

[johnh@paelaw.com](mailto:johnh@paelaw.com)

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**STATEMENT OF REASONS FOR DECISIONS MADE BY THE MINISTER FOR  
RESOURCES ON 6 NOVEMBER 2023 UNDER SECTIONS 34(1) AND 35(2) OF THE  
TORRES STRAIT ISLANDER LAND ACT 1991**

**Applicant:** Torres Strait Island Regional Council (**TSIRC**)

**Decisions:** Decisions made on 6 November 2023:  
(1) pursuant to s 34(1) of the *Torres Strait Islander Land Act 1991* (Qld) (**TSIL Act**) to direct that deeds of grant in fee simple be prepared over the land the subject of Deed of Grant in Trust 21296138 and associated land, being: Lot 1 on SP282718; Lots 2 to 13 on SP270867; Lot 14 on SP282720; Lots 15 to 53 on SP270867; Lot 54 on SP296836; Lots 55 to 57 on SP270867; Lot 58 on SP296837; Lots 59 to 67 on SP270867; Lots 68 and 69 on SP282719; Lots 70 to 84 on SP270867; Lots 90 to 115 on SP270867; Lots 213 and 313 on SP270867; Lot 541 on SP296836 and Lot 581 on SP296837 on lama (together, the **subject land**); and  
(2) pursuant to s 35(2) of the TSIL Act, to appoint the Magani Lagaugal (Torres Strait Islanders) Corporation RNTBC ICN:4017 (**RNTBC**) as grantee to hold the subject land for the native title holders of the land, being the lama and Tudu People.

**Decision maker:** Honourable Scott Stewart, Minister for Resources

## **INTRODUCTION**

1. On 6 November 2023, I:
  - a. directed pursuant to s 34(1) of the *Torres Strait Islander Land Act 1991* (Qld) (**TSIL Act**) that deeds of grant in fee simple be prepared for the subject land (**Transfer Decision**); and
  - b. appointed pursuant to s 35(2) of the TSIL Act the RNTBC to be the grantee of the land the subject of the deeds of grant prepared under s 34 of the TSIL Act (**Appointment Decision**).
2. On 7 November 2023, Mr John Heaney (Special Counsel, P&E Law), as legal representative for the Department of Resources (**Department**), wrote to Mr Andrew Kerr (Partner, Moray & Agnew Lawyers), as legal representative for **TSIRC**, notifying him of the Transfer Decision and the Appointment Decision.
3. Further on 7 November 2023, Mr Kerr requested a statement of reasons on behalf of **TSIRC** for the Transfer Decision and the Appointment Decision pursuant to s 32 of the *Judicial Review Act 1991* (Qld) (**JR Act**).
4. Pursuant to s 33(1) of the JR Act, the statement of reasons must be provided within 28 days after receiving the request.
5. The reasons for the Transfer Decision and the Appointment Decision are set out below.

## LEGISLATIVE FRAMEWORK

6. The preamble to the TSIL Act states that:

- 6 Some land has been set aside for Torres Strait Islander reserves or for the benefit of Torres Strait Islanders and deeds of grant in trust are held on behalf of certain Torres Strait Islanders.
- 7 The Parliament is satisfied that Torres Strait Islander interests and responsibilities in relation to land have not been adequately and appropriately recognised by the law and that this has contributed to a general failure of previous policies in relation to Torres Strait Islanders.
- 8 The Parliament is further satisfied that special measures need to be enacted for the purpose of securing adequate advancement of the interests and responsibilities of Torres Strait Islanders and to rectify the consequences of past injustices.
- 9 It is, therefore, the intention of the Parliament to make provision, by the special measures enacted by this Act, for the adequate and appropriate recognition of the interests and responsibilities of Torres Strait Islanders in relation to land and thereby to foster the capacity for self-development, and the self-reliance and cultural integrity, of Torres Strait Islanders.

7. A 'Torres Strait Islander' is a person who is a descendant of an indigenous inhabitant of the Torres Strait Islands.<sup>1</sup>

### Transfer of transferable land

8. Part 4 of the TSIL Act concerns the grant of transferable land as Torres Strait Islander land. 'Transferable land' is land that is to be granted under Part 4 of the TSIL Act.<sup>2</sup> 'Torres Strait Islander land' is 'transferred land',<sup>3</sup> meaning land that is granted under Part 4 of the TSIL Act.<sup>4</sup>
9. Transferable lands are DOGIT land, Torres Strait Islander reserve land, and available State land the Minister declares to be transferable land, subject to certain exceptions.<sup>5</sup>
10. 'DOGIT land' is defined in s 10 of the TSIL Act and includes land (other than a road or prescribed DOGIT land) that, at the beginning of the enactment day, was:
  - a. granted in trust under the *Land Act 1962* (Qld) (**1962 Land Act**) for the benefit of Torres Strait Islander inhabitants or for the purpose of a Torres Strait Islander reserve (**trust land**); or
  - b. within the external boundaries of an area of trust land provided it satisfies one of the conditions in s 10(1)(b), including that it was reserved and set apart for, or dedicated to, a public purpose under the 1962 Land Act.<sup>6</sup>
11. The 'enactment day' is the day the TSIL Act receives the Royal Assent.<sup>7</sup>

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<sup>1</sup> Section 5.

<sup>2</sup> Section 8(1).

<sup>3</sup> Section 7.

<sup>4</sup> Section 8(2).

<sup>5</sup> Section 9.

<sup>6</sup> Section 10(1)(b)(i).

<sup>7</sup> Schedule 1.



12. 'Road' means a surveyed or unsurveyed road that is, under an Act, dedicated, notified or declared to be a road for public use.<sup>8</sup>
13. 'Prescribed DOGIT land' means land comprised in any of the following deeds of grant in trust held for the benefit of Islander inhabitants:<sup>9</sup>
  - a. deed of grant in trust (title reference 21328057) for Bamaga;
  - b. deed of grant in trust (title reference 21296131) for Hammond Island;
  - c. deed of grant in trust (title reference 21352022) for Seisia.
14. 'External boundaries' is not defined in the TSIL Act.
15. 'Available State land' is defined in s 19 of the TSIL Act to mean (subject to ss 21 and 22) land, other than excluded land:
  - a. in which no person other than the State has an interest; or
  - b. that is subject to an interest issued by the State, if an available State land agreement is in force for the land (meaning an agreement entered into under s 20).
16. 'Excluded land' means any of the following:<sup>10</sup>
  - a. land outside the Torres Strait area;
  - b. city or town land or township land;
  - c. a reserve under the *Land Act 1994* (Qld);
  - d. land that is set apart and declared as a State forest or timber reserve under the *Forestry Act 1959* (Qld);
  - e. a road;
  - f. land that has become unallocated State land, if a person has a right, other than under this Act, against the State to the grant of an interest in that land.
17. Under s 34(1) of the TSIL Act, the chief executive must prepare such deeds of grant in fee simple as the Minister considers necessary and directs over transferable lands.<sup>11</sup>

### **Appointment of grantee of the transferred land**

18. If the transferable land is:<sup>12</sup>
  - a. land for which a determination has been made under the Commonwealth Native Title Act that native title exists in relation to all or a part of the land; and
  - b. there is a registered native title body corporate for the determination,
 the Minister may with the consent of that body corporate appoint the body corporate to be the grantee of the land under a deed of grant prepared under s 34.<sup>13</sup> The body corporate appointed holds the land for the native title holders of the land the subject of the native title determination.<sup>14</sup>
19. In considering whether to appoint a registered native title body corporate, the Minister may have regard to any matter the Minister considers relevant to the proposed appointment, including, for example:<sup>15</sup>

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<sup>8</sup> Schedule 1.

<sup>9</sup> Schedule 1.

<sup>10</sup> Schedule 1.

<sup>11</sup> Section 34(1).

<sup>12</sup> Section 35(1).

<sup>13</sup> Section 35(2).

<sup>14</sup> Section 35(3).

<sup>15</sup> Section 35(4).

- a. whether the making of the proposed appointment was a matter relevant to the native title claim under the Commonwealth Native Title Act that resulted in the determination that native title existed in relation to all or a part of the land; and
  - b. whether any Torres Strait Islanders particularly concerned with the land, other than the native title holders of the land, may be adversely affected by the proposed appointment; and
  - c. if the Minister is satisfied Torres Strait Islanders particularly concerned with the land will be adversely affected by the proposed appointment – any action the registered native title body corporate intends to take to address the concerns of the Torres Strait Islanders.
20. Torres Strait Islanders are particularly concerned with land if they are members of a group that has a particular connection with the land under Island custom, or they live on or use the land or neighbouring land.<sup>16</sup>
21. Before appointing a grantee of land under Part 4 of the TSIL Act (other than an entity nominated in an Indigenous Land Use Agreement as the proposed grantee for the land), the Minister must:<sup>17</sup>
- a. publish notice of the Minister's intention to appoint the grantee in a newspaper or other publication circulating generally in the area in which the land the subject of the deed of grant is situated; and
  - b. consider all written representations made to the Minister about the proposed appointment within the stated period by a Torres Strait Islander particularly concerned with the land.
22. The notice must:<sup>18</sup>
- a. include a description of the land; and
  - b. state the following:
    - i. the name of the proposed grantee;
    - ii. that a Torres Strait Islander particularly concerned with the land may make written representations to the Minister about the proposed appointment;
    - iii. the place where the representations may be made;
    - iv. the period in which the representations must be made, which must end at least 28 days after the notice is published.<sup>19</sup>
23. A Torres Strait Islander is particularly concerned with land if the Torres Strait Islander has a particular connection with the land under Island custom, or lives on or uses the land or neighbouring land.<sup>20</sup>

### Timing

24. The Minister must, as soon as practicable after:
- a. the commencement of ss 34 and 36, give all necessary directions under s 34, and make all necessary appointments under s 35 or 36, in relation to land that is transferable land on the enactment day;<sup>21</sup> or
  - b. the land becomes transferable land (if land becomes transferable land under s 9(1)(c) or 11 of the TSIL Act after the enactment day), give all necessary directions

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<sup>16</sup> Section 3(2).

<sup>17</sup> Section 37(1), (4).

<sup>18</sup> Section 37(2).

<sup>19</sup> Section 37(3).

<sup>20</sup> Section 3(1).

<sup>21</sup> Section 38(1).



under s 34, and make all necessary appointments under s 35 or 36, in relation to the land.<sup>22</sup>

25. However, s 38(3) of the TSIL Act provides that the Minister need not act as described in paragraph 24 above until the Minister is reasonably satisfied.<sup>23</sup>

- (a) arrangements are in place to ensure—
- (i) the Commonwealth and the State can continue to provide services to communities on the land after it is granted; and
  - (ii) the local government for the area in which the land is situated can continue to provide local government services to communities on the land after it is granted; and

*Example of an arrangement for paragraph (a)—*

a lease

- (b) if the land is proposed to be granted to an entity other than a registered native title body corporate, arrangements that the Minister considers necessary—
- (i) to support use of the land by Torres Strait Islanders particularly concerned with it; and
  - (ii) to ensure appropriate services, including, for example, social housing, public works and community infrastructure, can be provided for communities on the land;

are in place to deal with matters relevant to the use of the land after it is granted; and

*Example of an arrangement for paragraph (b)—*

an ILUA

- (c) if the land is or includes township land, arrangements are in place to provide for—
- (i) the township land to continue to be used as township land; and
  - (ii) residents of the township land to continue to live on and access the land, and obtain tenure over the land under this Act.

*Examples of an arrangement for paragraph (c)—*

an ILUA, a townsite lease or another lease

### **Effect of the transfer**

26. A deed of grant prepared under s 34 takes effect on delivery of the deed to the grantee, at which time the land the subject of the deed becomes Torres Strait Islander land that is transferred land.<sup>24</sup>

27. Section 41 of the TSIL Act provides for certain interests existing in transferable land immediately before the land became Torres Strait Islander land to continue in existence after the land becomes Torres Strait Islander land.

28. 'Interest' includes:<sup>25</sup>

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<sup>22</sup> Section 38(2).

<sup>23</sup> 'Local government services' in s 38 includes 'any services a local government might ordinarily provide for the community in its local government area'.

<sup>24</sup> Section 40(1), (2).

<sup>25</sup> Section 41(7).

- a. native title;
  - b. a right of a local government to access, occupy, use or maintain a facility on the land; and
  - c. an interest in favour of the State or Commonwealth other than an interest that is not registered.
29. If a local government has an existing interest under s 41 to access, occupy, use or maintain a facility on Torres Strait Islander land, then:<sup>26</sup>
- a. if the local government does not intend to continue to access, occupy, use or maintain the facility, the local government must give the trustee of the land notice of that fact; or
  - b. otherwise, the local government and the trustee of the land must use their best endeavours to provide for the continued access, occupation, use or maintenance of the facility under a registered interest in the land given by the trustee of the land.

## BACKGROUND

### Tenure of the subject land

30. Lot 14 on SP282720 is land reserved and set apart for a public purpose (being for a State School) under the *Land Act 1962* (Qld) (**1962 Land Act**) (**School Land**). The trustee is the State of Queensland (represented by the Department of Education). This reserve was gazetted on 12 October 1985.
31. On 17 October 1985, Deed of Grant in Trust 21296138 was granted to the then-Yam Island Council under the 1962 Land Act for the benefit of Torres Strait Islander inhabitants and for no other purpose whatsoever (**lama DOGIT**). The lama DOGIT comprises the following lots (together, **lama DOGIT land**):
- a. Lots 2 to 13 on SP270867;
  - b. Lots 15 to 53 on SP270867;
  - c. Lot 54 on SP296836;
  - d. Lots 55 to 57 on SP270867;
  - e. Lot 58 on SP296837;
  - f. Lots 59 to 67 on SP270867;
  - g. Lots 68 and 69 on SP282719;
  - h. Lots 70 to 84 on SP270867;
  - i. Lots 90 to 115 on SP270867;
  - j. Lots 213 and 313 on SP270867;
  - k. Lot 541 on SP296836; and
  - l. Lot 581 on SP296837.
32. The lama DOGIT land is currently held in trust by **TSIRC**.
33. Lot 1 on SP282718 (presently part of the lama airstrip) (**Airstrip Land**) was excluded from the lama DOGIT at the time of its grant.

### Native title determination

34. On 13 December 2004, the Federal Court of Australia determined that native title existed over the majority of the subject land (David on behalf of the lama People and Tudulaig v State of Queensland, Federal Court Number QUD6052/1998) (**native title determination**).

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<sup>26</sup> Section 41A.



35. The following lands on lama are not subject to the native title determination:
  - a. the School Land;
  - b. the Airstrip Land;
  - c. Lot 97 on SP270867;
  - d. Lot 50 on SP270867;
  - e. Lot 104 on SP270867; and
  - f. all roads in the lama DOGIT that existed at the time of the native title determination.
36. The lama Land Transfer Indigenous Land Use Agreement (**lama Transfer Agreement**) has been drafted to facilitate the transfer of the subject land under the TSIL Act and the terms are currently being negotiated between the relevant parties.
37. The existing lama Housing and Infrastructure Indigenous Land Use Agreement (**lama Housing and Infrastructure Agreement**) provides for native title consent for future State and Commonwealth infrastructure on lama. To the extent not covered by the lama Housing and Infrastructure Agreement, native title consent for future development can be obtained under the future act regime in Part 2, Division 3 of the *Native Title Act 1993* (Cth).

#### **Request for transfer of the subject land**

38. Following the native title determination, the RNTBC requested that the Department of Resources transfer the lama DOGIT land, and that the RNTBC be appointed grantee of that land, under the TSIL Act.
39. On 4 October 2023, I made a declaration under s 9(1)(c) of the TSIL Act that the Airstrip Land is transferable land for the purposes of that Act.

#### **Consultation about the proposed transfer**

40. On 6 March 2020, the Honourable Shannon Fentiman MP (as Ministerial Champion of the Torres Strait)<sup>27</sup> wrote to the Honourable Dr Anthony Lynham MP (then Minister for Natural Resources, Mines and Energy) advising of concerns raised by Ned David, Chair, Gur A Baradharaw Kod Torres Strait Sea and Land Council (**Sea and Land Council**), about delays in the transfer of the lama DOGIT and requesting advice on what could be done to expedite the transfer process.
41. On 1 April 2020, Dr Lynham advised that the Department had deferred its planned engagement with TSIRC and the RNTBC as a consequence of measures introduced to mitigate the impact of Coronavirus within island communities and would reschedule the commencement of the engagement program in consultation with the RNTBC and TSIRC when it was safe to do so.
42. In 2022 and 2023, officers from the Department undertook consultation with Torres Strait Islanders particularly concerned with the land, the RNTBC, TSIRC and other relevant parties under the TSIL Act for the transfer of the subject land.

#### **Publication of the Minister's intention to appoint the proposed grantee**

43. I caused the Department to publish a notice in the Torres News on 24 August 2023 titled 'Notice of Intention to Appoint a Grantee' (**First Notice**) which stated that:

<sup>27</sup> Minister for Employment and Small Business; Minister for Training and Skills Development; Ministerial Government Champion for Torres Strait.



- a. I intended to appoint the RNTBC as grantee of the subject land (excluding the Airstrip Land) under the TSIL Act;
  - b. calling for representations from a Torres Strait Islander person particularly concerned with the land to be received in writing by 5.00pm on 22 September 2023.
44. On 22 September 2023, TSIRC wrote to the Department in response to the First Notice.
45. I further caused the Department to publish a notice in the Torres News on 5 October 2023 titled 'Notice of Intention to Appoint a Grantee' (**Second Notice**) which stated that:
- a. I intended to appoint the RNTBC as grantee of the Airstrip Land under the TSIL Act;
  - b. calling for representations from a Torres Strait Islander person particularly concerned with the land to be received in writing by 5.00pm on 3 November 2023.
46. On 6 October 2023, TSIRC wrote to the Department in response to the Second Notice.
47. On 12 October 2023, the Department responded to TSIRC's letters dated 22 September 2023 and 6 October 2023.

### **Recommendation from the Department**

48. On 6 November 2023, I received a Minister's Briefing Note from the Department (**Briefing Note**) which recommended, amongst other things, that I:
- a. sign a Direction to Issue Title to direct deeds of grant in fee simple be prepared over the subject land;
  - b. note that the execution of the Direction to Issue Title is subject to me being reasonably satisfied of the matters in s 38(3) of the TSIL Act;
  - c. sign a Direction to Appoint a Grantee for Transferable Land to appoint the RNTBC as grantee of the subject land under the TSIL Act; and
  - d. note that the execution of the Direction to Appoint a Grantee for Transferable Land is subject to me being reasonably satisfied of the matters in s 38(3) of the TSIL Act, any other matters I consider relevant, and my consideration of the responses received from TSIRC to the First Notice and the Second Notice.
49. On 6 November 2023, I:
- a. approved the recommendations made in the Briefing Note;
  - b. signed the Direction to Issue Title; and
  - c. signed the Direction to Appoint a Grantee for Transferable Land.

### **DECISIONS**

50. After reviewing the material outlined below under the heading 'Material and other evidence considered', I decided:
- a. that it was necessary for deeds of grant in fee simple to be prepared for the subject land and I made a direction to that effect under s 34(1) of the TSIL Act (Transfer Decision); and
  - b. to appoint the RNTBC under s 35(2) of the TSIL Act to be the grantee of the subject land under the deeds of grant prepared under s 34 (Appointment Decision).
51. The material I relied upon, and the findings of fact I made in making the Transfer Decision and the Appointment Decision, are outlined below.

## MATERIAL AND OTHER EVIDENCE CONSIDERED

No.	Description
1.	Undated extract from the National Native Title Register for Iama and Tudu People Native Title Determination (Federal Court Number: QUD6052/1998; NNTT Number: QCD2004/009)
2.	Certificate of Registration of an Aboriginal and Torres Strait Islander Corporation dated 18 February 2009 for Magani Lagaugal (Torres Strait Islanders) Corporation RNTBC ICN:4017
3.	Letter dated 6 March 2020 from the Honourable Shannon Fentiman MP (Minister for Employment and Small Business; Minister for Training and Skills Development; Ministerial Government Champion for Torres Strait) to the Honourable Dr Anthony Lyman MP (Minister for Natural Resources, Mines and Energy)
4.	Letter dated 1 April 2020 from the Honourable Dr Anthony Lynham MP (Minister for Natural Resources, Mines and Energy) to the Honourable Shannon Fentiman MP (Minister for Employment and Small Business; Minister for Training and Skills Development; Ministerial Government Champion for Torres Strait)
5.	Public notice published in the Torres News on 24 August 2023 titled 'Notice of Intention to Appoint a Grantee' regarding the subject land (excluding Lot 1 on SP282718) and calling for representations to be received in writing by 5.00pm on 22 September 2023
6.	Letter dated 22 September 2023 from TSIRC to J Brogan (Director, Indigenous Land Operations, Native Title and Indigenous Land Services, Department) regarding 'Notice to Appoint Grantee – Iama Island'
7.	Public notice published in the Torres News on 5 October 2023 titled 'Notice of Intention to Appoint a Grantee' regarding Lot 1 on SP282718 and calling for representations to be received in writing by 5.00pm on 3 November 2023
8.	Letter dated 6 October 2023 from TSIRC to J Brogan (Director, Indigenous Land Operations, Native Title and Indigenous Land Services, Department) regarding 'Notice to Appoint Grantee – Lot 1 on SP 282718, Iama Island'
9.	Letter dated 12 October 2023 from J Brogan (Director, Indigenous Land Operations, Native Title and Indigenous Land Services, Department) to TSIRC
10.	Attachments 12 to 31 (summary of meetings) to the report dated 30 October 2023 titled 'Report: Considerations and consultation relevant to the appointment of a grantee for the transfer of land under the <i>Torres Strait Islander Land Act 1991</i> ' prepared on behalf of the Minister for Resources by Indigenous Land Transfers and Leasing, Native Title and Indigenous Land Services, Lands Division, Department
11.	Minister's Briefing Note CTS:07210/23 approved on 6 November 2023, including Attachments, being: Attachment 1 – Direction to Issue Title Attachment 2 – Direction to Appoint a Grantee for Transferable Land Attachment 3 – Iama lease schedules Attachment 4 – TSIRC response to the Public Notification of the Minister's intention to Appoint a Grantee for the majority of the Iama DOGIT Attachment 5 – TSIRC response to the Public Notification of the Minister's intention to Appoint a Grantee for the Iama airstrip (Lot 1 on SP282718) Attachment 6 – Department of Resources response to Torres Strait Island Regional Council's representations Attachment 7 – Locality Map Attachment 8 – Survey Plans Attachment 9 – Report of Considerations and Consultation (Attachment to Ministers Briefing Note CTS:07210/23) (including consultation meeting records)



## **FINDINGS ON MATERIAL QUESTIONS OF FACT**

52. In making the Transfer Decision and the Appointment Decision, I made the following findings on material questions of fact.

### **Transferable lands (s 9)**

53. The 'enactment day' for the purposes of the TSIL Act is 12 June 1991.
54. At the beginning of 12 June 1991:
- a. the lama DOGIT land was land (other than a road or prescribed DOGIT land) granted in trust under the 1962 Land Act for the benefit of Torres Strait Islander inhabitants pursuant to Deed of Grant in Trust 21296138. None of the lama DOGIT land is 'prescribed DOGIT land' because the prescribed DOGIT land concerns land other than lama;
  - b. the School Land was within the external boundaries of the lama DOGIT and reserved and set apart for State School purposes under the 1962 Land Act.
55. The Airstrip Land was vacant Crown land. On 4 October 2023, I made a declaration pursuant to s 9(1)(c) of the TSIL Act that the Airstrip Land is transferable land.
56. Accordingly, I found that the subject land was 'transferable land' within the meaning of s 9(1) of the TSIL Act.

### **Minister to act as soon as possible (s 38)**

57. Sections 34 and 36 of the TSIL Act commenced on 21 December 1991.
58. On 13 December 2004, the native title determination was made.
59. Following the native title determination, the RNTBC requested that the Department of Resources transfer the lama DOGIT land, and that the RNTBC be appointed grantee of that land, under the TSIL Act.
60. On 1 April 2020, the former Minister for Natural Resources, Mines and Energy advised that the Department's consultation with TSIRC and the RTNBC about the proposed transfer was delayed as a consequence of measures introduced to mitigate the impact of Coronavirus within island communities.
61. In 2022, the Department commenced the consultation process for the transfer of the subject land.
62. The Airstrip Land became transferable land after 12 June 1991, on 4 October 2023.
63. I was not required to give a direction that the subject land be transferred, and a grantee appointed to that land, until I was reasonably satisfied of the matters in s 38(3) of the TSIL Act.

### ***Arrangements to ensure continuity of services to lama***

64. The proposed lama Transfer Agreement will address the continuity of services on lama post transfer of the subject land to the RNTBC. Negotiations about the proposed lama Transfer Agreement commenced on 20 October 2023.

Commonwealth and State services (s 38(3)(a)(i))

65. Two Commonwealth agencies (Department of Agriculture, Fisheries and Forestry and Department of Home Affairs) currently have Licence Agreements with TSIRC to occupy the former Regional Transaction Centre on Lot 50 on SP270867. Depending on the terms of the transfer, these Licence Agreements can either be renewed by TSIRC and the respective Commonwealth agencies or new agreements can be entered into between the RNTBC and respective Commonwealth agencies either under the lama Transfer Agreement or under the existing lama Housing and Infrastructure Agreement.
66. There are a number of registered leases held by State. The State leases will continue in force upon transfer of the land with the current lessor, TSIRC, being replaced by the incoming grantee automatically under s 41(2)(c).
67. The reserve over the School Land will be revoked upon the transfer and native title consent for the grant of the lease from the RNTBC to the Department of Education will be provided for under the proposed lama Transfer Agreement to allow continuation of services.
68. Native title consent for future State and Commonwealth infrastructure is provided for under the existing lama Housing and Infrastructure Agreement. To the extent not covered by the lama Housing and Infrastructure Agreement, native title consent for future development can be obtained under the future act regime in Part 2, Division 3 of the *Native Title Act 1993* (Cth)

Local government services (s 38(3)(a)(ii))

69. TSIRC is the local government for the subject land. The proposed lama Transfer Agreement will provide for the grant of leases over existing TSIRC infrastructure by the RNTBC to TSIRC.
70. The existing lama Housing and Infrastructure Agreement provides native title consent for future TSIRC infrastructure land requirements.
71. In relation to social housing, TSIRC are currently the registered housing provider for social housing on the subject land under the *Housing Act 2003* (Qld). TSIRC will continue as the registered housing provider after transfer of the subject land. The proposed lama Transfer Agreement will provide for the grant of leases from the RNTBC to TSIRC over all social housing on lama. This includes social housing occupied by both native title holders and other Torres Strait Islanders particularly concerned with the land.
72. Native title consent for future social housing requirements can be obtained under the future act regime in Part 2 Division 3 of the *Native Title Act 1993* (Cth).

Other services

73. In addition to existing State and TSIRC infrastructure, Community Enterprise Queensland operate the community store on Lot 8 on SP270867 and will require a lease from the RNTBC post the transfer of the subject land.
74. The terms of the lease will require agreement between the RNTBC and Community Enterprise Queensland. Native title consent for this lease will be provided for under the proposed lama Transfer Agreement.



75. Other registered leases held by Ergon Energy and Amplitel Pty Ltd (owned by Telstra) will also continue under s 41 of the TSIL Act post-transfer of the subject land.

***Arrangements to support use of the land and to ensure the provision of appropriate services (s 38(3)(b))***

76. Because the subject land is proposed to be granted to the RNTBC, I did not need to consider whether there are necessary arrangements in place to support the use of the land by Torres Strait Islanders particularly concerned with it, and to ensure appropriate services can be provided for communities on the subject land.

***Arrangements to provide for the use and occupation of township land (s 38(3)(c))***

77. Because the subject land is not township land, I did not need to consider whether there are arrangements in place to provide for township land to continue to be used as township land, and residents of township land to continue to live on and access that land and obtain tenure of that land under the TSIL Act.

***Summary***

78. Having regard to the matters above, and for the reasons set out below, I was reasonably satisfied that arrangements are in place to ensure:
- a. the Commonwealth and the State can continue to provide services to community on the subject land after it is transferred; and
  - b. TSIRC can continue to provide local government services to the lama community after the subject land is transferred.

***Procedure for appointing a grantee (s 37)***

***First Notice***

79. The First Notice was published in the Torres News on 24 August 2023.
80. The First Notice:
- a. included a description of the subject land (excluding the Airstrip Land);
  - b. stated:
    - i. that I, as Minister for Resources, intend to appoint the RNTBC as grantee of the subject land (excluding the Airstrip Land);
    - ii. that a Torres Strait Islander particularly concerned with the land may make written representations to the Minister about the proposed appointment;
    - iii. that written representations may be made to the Minister care of Julie Brogan (Director), Indigenous Land Operations, Department of Resources, PO Box 15216, City East QLD 4002;
    - iv. that representations must be received by 5.00pm on 22 September 2023.
81. The stated period ended more than 28 days after the First Notice was published.
82. I was satisfied the First Notice complied with the requirements of s 37 of the TSIL Act.
83. No written representations in response to the First Notice were received from a Torres Strait Islander particularly concerned with the land.

***Second Notice***

84. The Second Notice was published in the Torres News on 5 October 2023.

85. The Second Notice:
- a. included a description of the Airstrip Land;
  - b. stated:
    - i. that I, as Minister for Resources, intend to appoint the RNTBC as grantee of the Airstrip Land;
    - ii. that a Torres Strait Islander particularly concerned with the land may make written representations to the Minister about the proposed appointment;
    - iii. that written representations may be made to the Minister care of Julie Brogan (Director), Indigenous Land Operations, Department of Resources, PO Box 15216, City East QLD 4002;
    - iv. that representations must be received by 5.00pm on 3 November 2023.
86. The stated period ended more than 28 days after the Second Notice was published.
87. I was satisfied the Second Notice complied with the requirements of s 37 of the TSIL Act.
88. No written representations in response to the Second Notice were received from a Torres Strait Islander particularly concerned with the land.

**Appointment of a registered native title body corporate as grantee (s 35)**

89. On 13 December 2004, the Federal Court of Australia determined that native title existed over the majority of the subject land.
90. The RNTBC:
- a. was registered on 13 May 2002 under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth); and
  - b. is the registered native title body corporate for the Iama and Tudu People native title determination area.
91. The RNTBC has consented to being the grantee of the subject land under deeds of grant prepared under s 34 of the TSIL Act.
92. Accordingly, I was satisfied that it was open to me to appoint the RNTBC under s 35(2) of the TSIL Act as the grantee of the subject land under the deeds of grant prepared under s 34.

***Matters considered relevant to the proposed appointment (s 35(4))***

93. In considering whether to appoint the RNTBC as the grantee, I could have regard to any matter I considered relevant to the proposed appointment.
94. For the reasons below, I considered the following matters to be relevant to the proposed appointment of the RNTBC as grantee:
- a. the potential adverse effect of the proposed appointment on Torres Strait Islanders particularly concerned with the land, other than native title holders; and
  - b. the correspondence received from TSIRC in response to the First Notice and the Second Notice.

*Potential adverse effect of the proposed appointment on Torres Strait Islanders particularly concerned with the land, other than the native title holders*



95. There is some sensitivity about how land will be held on lama given some of the community members are not native title holders and are of Papuan origin, with previous generations having been accommodated on lama over time. A system of Papuan settlement has been agreed on lama allowing people of Papuan origin to live on and use lama land.
96. Throughout the community consultation meetings, the RNTBC and TSIRC reaffirmed their commitment to decisions made by previous generations that no lama resident, including non-native title holders, would be disadvantaged by the transfer.
97. The continuity of services on lama post-transfer of the subject land is considered above. Post-transfer TSIRC will continue to provide local government services and will remain the social housing provider working in partnership with the State to continue to deliver social housing to the lama community. The RNTBC will assume land management functions as grantee under the TSIL Act, including the granting of interests in the land such as leases.
98. Accordingly, I was not satisfied that Torres Strait Islanders particularly concerned with the land, other than native title holders, will be adversely affected by the appointment of the RNTBC. Even if it could be argued that there was an adverse effect, I am satisfied that the proposed actions to be taken by the RNTBC will satisfactorily address those effects.

Correspondence from TSIRC

99. The Department received a letter from TSIRC dated 22 September 2023 in response to the First Notice. TSIRC is not a Torres Strait Islander particularly concerned with the land for the purposes of s 3(1) of the TSIL Act.
100. The concerns raised in TSIRC's letter were, in summary:
  - a. loss of income stream to TSIRC by the transfer of land subject to leases where TSIRC is currently the lessor and receiving rent;
  - b. TSIRC is the more appropriate trustee of the land as it is subject to more stringent compliance requirements;
  - c. for current local government or community infrastructure, it would be inappropriate for a grantee other than TSIRC to be appointed over the land;
  - d. the RNTBC is not representative of the entire community which includes Torres Strait Islanders who are not native title holders and other Australian citizens residing on lama on a permanent or temporary basis;
  - e. the RNTBC has not demonstrated capacity to manage community assets and land for the benefit of the entire community and no proposal has been provided to the lama community how land management will occur; and
  - f. TSIRC is not aware of any arrangement relating to how local government services can continue to be provided, how social housing will be managed and delivered and how public works and community infrastructure is to be delivered where TSIRC is no longer the trustee of the land and no longer the owner of community infrastructure.
101. TSIRC stated that the appointment of the RNTBC as grantee would adversely affect them (on behalf of the lama community) in the following ways:
  - a. the RNTBC is effectively a private company with membership limited to native title holders and objects solely designed to further interests of native title holders lama / Tudu People only;



- b. the RNTBC will effectively become the owner of a majority of lama including essential community assets and public housing funded by the Commonwealth, State and local government with public funds;
  - c. the RNTBC is not representative of the entire community which includes Torres Strait Islanders who are not native title holders and other Australian citizens residing on lama on a permanent or temporary basis;
  - d. the RNTBC is not subject to regular, transparent election procedures and its actions are not capable of being scrutinised by non-members;
  - e. the RNTBC has no demonstrated capacity to manage community assets and land for the benefit of the entire community and no proposal has been provided to the lama Community how land management will occur;
  - f. the RNTBC is not subject to the same stringent financial management and audit regime which apply to local governments such as TSIRC;
  - g. the appointment of the RNTBC as grantee of the land will impact on the ability for the community to be developed for the benefit of the entire lama community due to a shortage of available and suitable land.
102. On 6 October 2023, the Department received a response from TSIRC to the Second Notice. TSIRC argued against the appointment of the RNTBC as the grantee of the subject land on similar grounds as stated in its letter dated 22 September 2023, and noted TSIRC (on behalf of the lama community) would be adversely affected by the appointment of the RNTBC as grantee of the Airstrip Land because:
- a. the RNTBC is effectively a private company with membership limited to native title holders and objects solely designed further the interests of native title holders lama / Tudu People only;
  - b. the RNTBC will effectively become the owner of an essential community asset namely the lama airstrip;
  - c. the RNTBC is not representative of the entire community which includes Torres Strait Islanders who are not native title holders and other Australian citizens residing on lama on a permanent or temporary basis;
  - d. the RNTBC is not subject to regular, transparent election procedures and its actions are not capable of being scrutinised by non-members;
  - e. the RNTBC has no demonstrated capacity to manage community assets such as the lama airstrip for the benefit of the entire community and no proposal has been provided to the lama community how land management will occur;
  - f. the RNTBC is not subject to the same stringent financial management and audit regime which apply to local governments such as TSIRC;
  - g. the appointment of the RNTBC grantee of the Airstrip Land will impact on TSIRC's ability to seek funding from the State and Commonwealth for maintenance and upgrades of the lama airstrip as TSIRC will not be the owner of the asset on current indications.
103. On 12 October 2023, the Department responded to TSIRC's letters noting that (in summary):
- a. the RNTBC has made several public commitments that no one on lama should be disadvantaged by the transfer. Given the expected negligible impact of transfer on the delivery of services under the proposed lease back arrangements, the State is confident services will continue to be delivered to all lama residents without discrimination;
  - b. all essential community assets, including public housing, will be leased back to the relevant service provider to operate and control or remain under current leasing arrangements, allowing the continuation of community services;
  - c. it is not the role of the RNTBC or any landowner to represent the community. This is TSIRC's role, and this function will not change post transfer;



- d. the ownership of land is not determined by election. Just like all other landholders in Queensland, the RNTBC will be subject to all relevant laws of the State and the Commonwealth;
- e. all community assets will remain under current management arrangements. Regarding the management of land, the RNTBC has exhibited management capacity in regard to agreements for future acts under the *Native Title Act 1993* (Cth). The RNTBC and the State has presented at numerous community meetings regarding these issues;
- f. TSIRC as a local government and the RNTBC as a landowner will be subject to different financial and audit regimes. Although the regimes are different, the RNTBC will be subject to strict requirements under the *Corporations (Aboriginal and Torres Strait Islander) 2006* enforced by the Commonwealth Office of the Registrar of Indigenous Corporations;
- g. the transfer will not have an impact on the amount of available land in the community. It will be in the RNTBC's interests for community infrastructure to be developed on lama, as members of the RNTBC are members of the lama community;
- h. extensive consultation for the transfer has taken place with lama community members, the RNTBC, the Sea and Land Council relevant State and Commonwealth agencies, utility providers, and TSIRC.

## REASONS FOR DECISION

- 104. Having regard to the material and findings referred to above, I decided:
  - a. that it was necessary for deeds of grant in fee simple to be prepared for the subject land and I made a direction to that effect under s 34(1) of the TSIL Act (Transfer Decision); and
  - b. to appoint the RNTBC under s 35(2) of the TSIL Act to be the grantee of the subject land under the deeds of grant prepared under s 34 (Appointment Decision).
- 105. Under s 38(1) of the TSIL Act, I was required to give all necessary directions under s 34 for the transfer of the subject land, and make all necessary appointments under (relevantly) s 35, as soon as practicable after:
  - a. 21 December 1991, for the subject land excluding the Airstrip Land; and
  - b. 4 October 2023, for the Airstrip Land.
- 106. However, I was not required to do so until I was reasonably satisfied of the matters in s 38(3) of the TSIL Act.
- 107. As set out in paragraphs 64 to 75 and 78, I was reasonably satisfied that arrangements are in place to ensure the continuity of Commonwealth, State and local government services post transfer of the subject land. In particular:
  - a. section 41 of the TSIL Act provides that a local government's existing interests (including a right to access, occupy, use or maintain a facility on the land) continue in force post-transfer, without necessarily securing a new interest. There is a risk that TSIRC may not enter into the proposed lama Transfer Agreement and / or may refuse to sign new leases over the relevant infrastructure. In that event, TSIRC's existing rights could be relied upon by TSIRC under s 41 to continue to provide local government services, to the extent applicable; and
  - b. under section 41A of the TSIL Act, TSIRC and the RNTBC must use their best endeavours to provide for the continued access, occupation, use or maintenance of TSIRC infrastructure on lama post-transfer.
- 108. Upon being reasonably satisfied of the matters in s 38(3)(a), I was required under s 38(1) of the TSIL Act to:

- a. give a direction for the transfer of the subject land under s 34(1); and
  - b. appoint a grantee of that land under either of s 35 or 36.
109. Given the above, there was no other option available to me but to make the Transfer Decision.
110. As set out in paragraphs 89 to 92, because the native title determination had been made that native title exists in relation to part of the subject land and the RNTBC is the registered native title body corporate for that determination, it was open to me to appoint the RNTBC as the grantee of the subject land provided it consented to that appointment (which it did).
111. As noted in paragraph 93, in considering whether to appoint the RNTBC as grantee, I could have regard to any matter I considered relevant to the proposed appointment.
112. In finding that Torres Strait Islanders particularly concerned with the land will not be adversely affected by the appointment of the RNTBC, I considered:
- a. the statements and assurances made by the RNTBC and TSIRC;
  - b. the effect of ss 41 and 41A of the TSIL Act;
  - c. the fact that no written representations to the First Notice and the Second Notice were received from a Torres Strait Islander particularly concerned with the land; and
  - d. the fact that throughout the consultation process, Torres Strait Islanders particularly concerned with the land, including native title holders, provided support for the appointment of the RNTBC as grantee of the subject land.
113. Even though TSIRC is not a Torres Strait Islander particularly concerned with land under the requirements of the TSIL Act, I considered the representations made by TSIRC in its correspondence to the Department to be relevant to my consideration of whether to appoint the RNTBC as the grantee as it may have revealed potential adverse effects of the proposed appointment on Torres Strait Islanders particularly concerned with the land, other than native title holders. As set out in the letter from the Department to TSIRC dated 12 October 2023 (summarised at paragraph 103 above) extensive consultation for the transfer has taken place and TSIRC has been informed about the need to enter lease back arrangements with the RNTBC to ensure delivery of council services post-transfer.
114. Having regard to the matters I considered to be relevant to the proposed appointment of the RNTBC as grantee, I decided to appoint the RNTBC under s 35(2) of the TSIL Act as grantee of the subject land under the deeds of grant to be prepared under s 34.

## **HUMAN RIGHTS**

115. As a public entity, it is unlawful for me to:<sup>28</sup>
- a. make a decision in a way that is not compatible with human rights; or
  - b. in making my decision, fail to give proper consideration to human rights.

## **Transfer Decision**

116. The obligations described in paragraph 115 do not apply where a public entity cannot reasonably act differently or make a different decision because of a statutory provision.
117. Having been reasonably satisfied of the matters in s 38(3) of the TSIL Act, I was required to give all necessary directions under s 34 in relation to the subject land.

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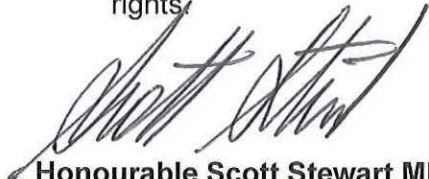
<sup>28</sup> *Human Rights Act 2019*, ss 9, 58(1).



118. Accordingly, pursuant to s 58(2) of the *Human Rights Act 2019* (Qld) (**HR Act**), I did not need to consider human rights further in making my decision.

#### **Appointment Decision**

119. In making the decision to appoint the RNTBC under s 35(2) of the TSIL Act to be the grantee of the subject land under the deeds of grant prepared under s 34, I gave full and proper consideration to human rights relevant to the decision and came to the conclusion a decision to appoint the RNTBC as grantee would not be incompatible with human rights.

A handwritten signature in black ink, appearing to read 'Scott Stewart', is positioned above the printed name.

**Honourable Scott Stewart MP,  
Minister for Resources  
Department of Resources  
4 December 2023**



# TORRES STRAIT ISLAND REGIONAL COUNCIL

## TRUSTEE REPORT

**MEETING:** January 2024

**DATE:** 23 & 24 January 2024

**ITEM:** Agenda Item for Resolution by Trustee

**SUBJECT:** Delegations Update

**AUTHOR:** Julia Mauro, Senior Legal Officer

### Recommendations:

#### 1. Updates to existing delegations:

That, pursuant to section 257 of the *Local Government Act 2009*, the Trustee delegate to the Chief Executive Officer the exercise of powers under the following statutory instruments and these powers must be exercised subject to Ailan Kastom and any limitations contained in Schedule 2 of the attached Instruments of Delegation (consistent with Attachment 2):

Statutory Instrument:	The powers delegated are contained in Schedule 1 of the Instrument of Delegation attached to this report as:
Land Act 1994 (Qld) (LANA)	Attachment 1

#### 2. Annual confirmation of existing delegations:

That, pursuant to section 257 of the *Local Government Act 2009*, the Trustee renew its delegation to the Chief Executive Officer to exercise powers under the following statutory instruments and these powers must be exercised subject to the consolidated "Schedule 2 Standard Limitations to the Exercise of Power" contained in Attachment 2:

Statutory Instrument:	The powers delegated are contained in Schedule 1 of the Instrument of Delegation attached to this report as:
Land Title Act 1994 (LATA)	Attachment 3
Mineral Resources Act 1989 (MIRA)	Attachment 4

#### 3. Powers not delegated

And that Council resolve not to delegate any of its powers under the following statutory instruments, as this legislation is not appropriate to delegate because land issues should be put to the trustee and council:

- (a) *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (NDDF)

### Executive Summary:

This report presents an annual delegations update to Council, including updated statutory powers for endorsement of Council delegations to the CEO. These updates were endorsed by the Governance and Leadership Standing Committee on 18 October 2023.

## **Background:**

### **Delegation of statutory power from Council to CEO**

1. The powers of Local Government are exercised through its officers, with the principal officer being the Chief Executive Officer. Instruments of Delegation allow certain Local Government powers to be exercised by appropriately qualified local government employees to ensure operational efficiency.
2. Council may only exercise those powers delegated to it by State legislation. The Chief Executive Officer may only exercise those powers given to him directly or delegated to him by Council. Local Government employees may only exercise those powers delegated to them by the Chief Executive Officer.
3. An update of Instruments of Delegations must occur regularly (at least annually) to ensure exercise of powers according to law.
4. As part of its retainer arrangement with MacDonnells Law, TSIRC has subscribed to a monthly delegations update service provided by MacDonnells Law. This service allows new and amended statutory powers to be presented to Council regularly for adoption, to ensure that TSIRC's delegations instruments are always up-to-date. Unfortunately, this service ended in August 2023.
5. The individual instruments of delegation are updated to reflect Council resolutions to date and are uploaded to Council's intranet for staff reference.
6. The sub-delegations register records sub-delegations from the CEO to an employee or contractor. The sub-delegations register requires updating, both to reflect legislative changes and to reflect changes to Council's corporate structure. Council adoption is not required for sub-delegations. Updated sub-delegations instruments are being prepared for review by the CEO.
7. Authorised Persons are appointed by the CEO under the *Local Government Act 2009* following training (undertaken annually by Environmental Health Workers).

## **Comment:**

### **Updates to existing delegations**

8. There is one statutory delegations instrument requiring Trustee review. The changes are as follows:

### ***Land Act 1994 (Qld) (LANA)***

9. The LANA was amended by the *Land and Other Legislation Amendment Bill 2022* (Qld). The changes to the LANA commenced on assent. The amendments seek to introduce a more efficient pathway to initiate lease conversion as well as simplify, streamline and clarify policy intent for certain matters, including decisions not to renew leases.
10. This law reform requires a new Instrument of Delegations.
11. Council previously delegated very few powers under the LANA to the CEO on 23 February 2021, and made each subject to consultation with the Mayor and Divisional Councillor. It is proposed to renew these few existing delegations and conditions, and not to delegate the new and amended powers. This means that any matter concerning leases would be decided by Council rather than the CEO, unless Council passes a resolution to delegate power in relation to a particular leasing matter. This reflects Council's current practice.

12. This Instrument of Delegations contains trustee powers and therefore requires both local government and Trustee endorsement.
13. The proposed updated Instrument of Delegation for the LANA is included as **Attachment 8**.

Review:

14. The proposed delegations have been reviewed by the Senior Legal Officer as per the usual practice:
  - a. Powers that Council previously declined to delegate have not been recommended for delegation.
  - b. Powers that MacDonnells Law recommends not be delegated have not been recommended for delegation.
  - c. Powers not recommended for delegation are marked "N/A" in the delegations document.
  - d. All conditions included in previous delegations have been carried over. Senior Legal Officer has consolidated the conditions into a single section that covers both Council's standard conditions and the conditions recommended by MacDonnells Law. This is to improve the readability of the Instruments of Delegations.
  - e. Conditions imposed on all delegations state that whilst exercising a power, the delegate must (not "may") take into account Ailan Kastom. Ailan Kastom is defined in section 6 of the *Torres Strait Islander Land Act 1991* (Qld). Section 9(3) of the *Local Government Act 2009* states "may take into account" and therefore makes this discretionary; however, since 2021 Council has instructed that the delegate must take Ailan Kastom into account.
15. For continued operational efficiency and statutory compliance in all Departments, the delegations updates should be approved by Council.
16. The new Instruments of Delegations are recommended for Council's endorsement.

**Annual confirmation of existing delegations**

17. Under section 257(5) of the *Local Government Act*, a delegation from Council to the chief executive officer must be reviewed annually by the local government.
18. In addition to the Instruments of Delegations covered above, the remaining existing Instruments of Delegations (which were approved by the Trustee in previous years) are recommended for re-endorsement by the Trustee.
19. The remaining Instruments of Delegations are as follows, and the current Instrument of Delegations is attached for reference:

ACT/REGULATION/STATUTORY INSTRUMENT	ATTACHMENT	COUNCIL RESOLUTION	TRUSTEE RESOLUTION
Land Title Act 1994 (LATA)	3	23 February 2021	8 December 2020
Mineral Resources Act 1989 (MIRA)	4	23 February 2021	8 December 2020

20. The only proposed change to these Instruments of Delegations is the consolidation of the conditions that apply to delegations. Senior Legal Officer has consolidated the conditions into a single section that covers both Council's standard conditions and the conditions

recommended by MacDonnells Law (see **Attachment 2**, compared to the conditions listed in Attachments 3 and 4). This is to improve the readability of the Instruments of Delegations.

## **Considerations**

### Risk Management

This is a significant risk of non-compliance if Council's delegations are not updated. This is because without up-to-date delegations, the CEO and Council staff are more likely to make decisions without the necessary delegated authority; those decisions are invalid and could be challenged.

For continued operational efficiency and statutory compliance in all Departments, the delegations update should be submitted to Council for adoption.

The MacDonnells Law delegations update subscription service ended in August 2023. Council will therefore revert to the free LGAQ-sponsored King & Co delegations update service, which is generally done on an annual basis.

The final advice from the MacDonnells Law team was a reminder about the importance of managing the delegations register:

#### **END OF SERVICE**

*We acknowledge that Council has unsubscribed from our service and this letter is the final monthly update to be provided.*

*Council is now responsible for ensuring the delegation of powers from Council to the Chief Executive Officer and the Chief Executive Officer to other operational officers of Council and the appointment of authorised persons, local government workers and other statutory created roles remains up to date and current so that Council is able to lawfully carry out its day to day functions and responsibilities. Council may suffer reputational or legal damage if legally correct delegations and appointments are not in place and kept current with relevant legislation. The same can be said for operational officers exercising powers under a mistaken belief that they have been formally appointed to specific roles or positions created by statute. It is important that Council establishes an accurate and compliant system of delegations, appointments and authorisations (including the assigning of powers to those appointed or authorised), to replace this service.*

### Council Finance

No finance implications.

### **Consultation:**

- MacDonnells Law
- Governance & Leadership Standing Committee (18 October 2023)

### **Links to Strategic Plans:**

TSIRC Corporate Plan 2020–2025

Delivery Pillar: People

Outcome 4: We are a transparent, open and engaging council.

Delivery Pillar: Sustainability

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

### **Statutory Requirements:**

*Local Government Act 2009*

*Local Government Regulation 2012*

*Torres Strait Islander Land Act 1991*

### **Meaning of “Ailan Kastom”/Island custom**

Ailan Kastom is defined in the *Torres Strait Islander Land Act*, section 6, which is pasted below.

## **Torres Strait Islander Land Act 1991**

### **Section 6**

## Meaning of Island custom

Island custom, known in the Torres Strait as Ailan Kastom, is the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

The Audit Committee previously raised a query: *What is the effect of Ailan Kastom on delegations?*

Ms Mauro advised as follows:

Each delegate is required to take into account Ailan Kastom when exercising statutory powers. Many delegates have a limited understanding of traditional island law and custom (sometimes limited to the cultural awareness training that is delivered as part of employee induction). In practice, I think the requirement is for delegates to be aware of the cultural context of their decision-making and to seek guidance when the proposed exercise of statutory power may relate to Ailan Kastom. For example, Council specifically queried delegations relating to controlling beach access. If the delegate proposed to close access to a beach (or for that matter take any action relating to control over land), taking into account Ailan Kastom would mean that the delegate would need to communicate (at minimum, in an emergency situation) or consult with the Councillor to ensure that the proposed exercise of statutory power takes into account Ailan Kastom.

## Conclusion:

It is recommended that under section 257 of the *Local Government Act 2009*, the Trustee:

1. Update the delegation to the Chief Executive Officer of powers under one statutory instrument (listed in resolution 1);
2. Renew the delegation to the Chief Executive Officer of powers under two statutory instruments (listed in resolution 2);
3. Decline to delegate to the Chief Executive Officer the exercise of powers under one statutory instrument (listed in resolution 3); and
4. Endorse the consolidated "Schedule 2 Standard Limitations to the Exercise of Power" contained in Attachment 2, applicable to all statutory delegations.



**Recommended:**

Gary Stevenson

A/Executive Director, Corporate Services



**Endorsed:**

James William

Chief Executive Officer



# **INSTRUMENT OF DELEGATION**

## **Torres Strait Island Regional Council** ***Land Title Act 1994 ("LATA")***

Under section 257 of the *Local Government Act 2009*, Torres Strait Island Regional Council resolves to delegate the exercise of the powers contained in Schedule 1 to the Chief Executive Officer.

These powers must be exercised subject to the limitations contained in Schedule 2.

All prior resolutions delegating the same powers to the Chief Executive Officer are repealed.

**Land Title Act 1994 ("LATA")****Part 4 – Registration of land****Division 3 – Plans of subdivision**

Entity power given to	Section of LATA	Description
Registered Owner	50(1)(b)(i)	Power to include a statement agreeing to the plan and dedicating the public use land.

**Division 3A – Dedication of road by notice**

Entity power given to	Section of LATA	Description
Registered Owner	54(1)	Power to sign and lodge for registration a dedication notice.

**Part 6 – Dealings directly affecting lots****Division 1 – Transfers**

Entity power given to	Section of LATA	Description
Local Government	60(1)	Power to sign and lodge for registration an instrument of transfer for a lot or interest.

**Division 2 – Leases**

Entity power given to	Section of LATA	Description
Local Government	64	Power to sign and lodge for registration an instrument of lease for a lot or part of a lot.
Local Government	67(1)	Power to sign and lodge an instrument of amendment of the lease.
Lessor	68(1)	Power to sign and lodge a request for the registrar to register the re-entry.
Lessor or Lessee	69(1)	Power to execute and lodge for registration an instrument of surrender.

**Division 4 – Easements**

Entity power given to	Section of LATA	Description
Local Government	82(1)	Power to sign and lodge for registration an instrument of easement.
Registered Owner / Lessee / Person entitled to land / Public Utility Provider	83(1)(b)	Power to sign an instrument of easement.
Local Government	83(2)(b)	In certain circumstances, power to approve a plan of survey.
Registered Owner	87(a)	Power to ask the registrar to extinguish the easement.

Local government	90(1)	Power to sign and lodge for registration an instrument of surrender of an easement.
Local Government	91(1)	Power to sign and lodge for registration an instrument of amendment of the easement.

#### **Division 4AA – High-density development easements**

<b>Entity power given to</b>	<b>Section of LATA</b>	<b>Description</b>
Owner of the benefitted lot	95(7)(c)	Power to give written consent to an owner of a burdened lot to remove, change or otherwise interfere with any support.
Owner of the benefitted lot	96A(5)	Power to provide written consent to an owner of a burdened lot to remove, change or otherwise interfere with any projection.
Owner of the benefitted lot	96C(6)	Power to provide written consent to an owner of a burdened lot to: (a) remove, change or otherwise interfere with the roof water drainage structure; or (b) obstruct or otherwise interfere with the flow of water through the structure.

#### **Division 4A – Covenants**

<b>Entity power given to</b>	<b>Section of LATA</b>	<b>Description</b>
Local Government	97A(1)	Power to sign and lodge for registration an instrument of covenant.
Local Government	97C(1)	Power to sign and lodge for registration an instrument of amendment of the covenant.
Local Government	97D(1)	Power to sign and lodge for registration an instrument releasing a covenant.

#### **Division 4B – Profits a prendre**

<b>Entity power given to</b>	<b>Section of LATA</b>	<b>Description</b>
Local Government	97E	Power to sign and lodge for registration an instrument of profit a prendre.
Local Government	97K(1)	Power to sign and lodge for registration an instrument of amendment of the profit a prendre.

#### **Division 4C – Carbon abatement interests**

##### ***Subdivision 2 – Creation and registration***

<b>Entity power given to</b>	<b>Section of LATA</b>	<b>Description</b>
Local Government	97O(1)(a)	Power to sign and lodge for registration an instrument of carbon abatement interest.
Holders of the registered interests in the land	97P(c)	Power to consent to the proposed grant of a carbon abatement interest.

### ***Subdivision 3 – Amendments and dealings***

<b>Entity power given to</b>	<b>Section of LATA</b>	<b>Description</b>
Local Government	97S(1)	Power to sign and lodge for registration an instrument of amendment of a carbon abatement interest.

### **Division 5 – Application by adverse possessor**

<b>Entity power given to</b>	<b>Section of LATA</b>	<b>Description</b>
Person who claims an interest in the lot	104	Power to sign and lodge a caveat.
Caveator	105(2)	Power to: (a) start a proceeding in the Supreme Court to recover the lot; and (b) give written notice to the registrar, in the way the registrar requires, that the proceeding has started.
Caveator	106	Power to seek leave of the Supreme Court to lodge a further caveat.
Caveator	107(2)	Power to start a proceeding in the Supreme Court to recover a lot.
Applicant	108A(2)	Power to sign a plan of subdivision.

## **Part 7 – Other dealings**

### **Division 1 – Writs of execution**

<b>Entity power given to</b>	<b>Section of LATA</b>	<b>Description</b>
Local Government	116	Power to sign and lodge a request to register a writ of execution.

### **Division 2 – Caveats**

<b>Entity power given to</b>	<b>Section of LATA</b>	<b>Description</b>
Caveator	121(1)	Power to sign a caveat.
A person mentioned in s. 122(1)	122(1)	Power to lodge for registration a caveat.
Caveator	124(2)(b)	Power to consent to the registration of an instrument.
Caveator	125	Power to sign and lodge for registration a request to withdraw a caveat.
Caveatee	126(2)	Power to serve a notice requiring the caveator to start a proceeding in a Court of competent jurisdiction to establish the interest claimed under the caveat.
Caveator	126(4)	Power to start a proceeding and notify the registrar in the way described in section 126(4).
Caveatee	127(1)	Power to apply to the Supreme Court for an order that a caveat be removed.
Caveator or Caveatee	128(1)	Power to sign and lodge for registration a request to cancel a caveat.

**Part 7A – Priority notices**

Entity power given to	Section of LATA	Description
Person	139(1)	Power to deposit a priority notice.
Person	139(2)	Power to sign a priority notice.
Person	141(1)	Power to deposit an extension request
Person	141(2)	Power to sign and extension request
Person	143(1)	Power to deposit a request to withdraw a priority notice.
Person	143(2)	Power to sign a request to withdraw a priority notice.
An affected person	144(1)	Power to apply to the Supreme Court for an order that a priority notice be removed.
Person	145(1)(a)	Power to deposit a request to cancel a priority notice.
Person	149(1)	Power to deposit a request to correct a priority notice.

**Part 8 – Instruments****Division 2 – Standard terms documents forming part of instruments**

Entity power given to	Section of LATA	Description
Local Government	169(1)	Power to lodge a standard terms document and lodge a further standard terms document amending the standard terms document.
Local Government	172(1)	Power to ask the registrar to withdraw a registered standard terms document.

## **LIMITATIONS TO THE EXERCISE OF POWER**

1. Where Council in its budget or by resolution allocates an amount for the expenditure of Council funds in relation to a particular matter, in exercising delegated power in relation to that matter, the delegate will only commit Council to reasonably foreseeable expenditure up to the amount allocated.
2. The delegate will not exercise any delegated power in relation to a matter which, to the delegate's knowledge, adversely affects, or is likely to adversely affect, Council's relations with the public at large.
3. The delegate will not exercise any delegated power contrary to a resolution or other decision of Council (including a policy decision relating to the matter).
4. The delegate will not exercise any delegated power in a manner, or which has the foreseeable effect, of being contrary to an adopted Council policy or procedure.
5. The delegate will only exercise a delegated power under this resolution in a manner which complies with the requirements of Council's Planning Scheme, and any exercise of power which involves a departure from or variation of those requirements will only be undertaken by Council.
6. The delegate will not exercise any delegated power which cannot lawfully be the subject of delegation by Council.

[2019 03 29 - LATA - Delegation Instrument]

### **Conditions imposed on all Delegations**

1. Delegated powers must be read in the context of other powers and subject to conditions stipulated therein;
2. Delegated powers must be exercised consistently with the provisions of Local Government Acts or Regulations, Council Policies and Procedure, Local Laws and Subordinate Local Laws;
3. Any decisions must be made within the financial delegation of the delegate;
4. The delegate shall not give Council opinions and if opinions are to be provided, may only provide personal opinions of the delegate, not in an official capacity as an employee of the Council;
5. Delegated powers only apply to the delegate to the extent that they relate to a delegate's scope of duties as particularised in the Position Description pertaining to that delegate, or as otherwise approved in writing by the CEO or by Council Policy;
6. A delegate may not sub-delegate a power provided for in this Register to a subordinate staff member without the express written consent of the Chief Executive Officer or under a Policy or Procedure adopted by Council;
7. Any power that is not delegable under a Local Government Act or Regulation, shall not be delegable under this instrument;

8. All delegations are subject to conditions imposed in the original delegation to CEO contained in the Instrument of Delegations of Local Government;
9. Whilst exercising a power, the delegate must take into account Ailan Kastom as defined in section 6 of the *Torres Strait Islander Land Act 1991* (Qld).; and
10. All Powers delegated to the Chief Executive Officer in this Instrument shall be subject to prior Council consultation where exercise of such Power in all reasonable likelihood shall:
  - 
  - a. impact on land and/or sea; and/or
  - b. involve payment of compensation regarding land; and/or
  - c. require a budget amendment.

## DELEGABLE POWERS UNDER THE LAND TITLE ACT 1994 ("LATA")

### Part 4 – Registration of land

#### Division 3 – Plans of subdivision

Entity power given to	Section of LATA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Registered Owner	50(1)(b)(i)	Power to include a statement agreeing to the plan and dedicating the public use land.	Delegation of this power to be made on a case-by-case basis only.			

#### Division 3A – Dedication of road by notice

Entity power given to	Section of LATA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Registered Owner	54(1)	Power to sign and lodge for registration a dedication notice.	Delegation of this power to be made on a case-by-case basis only.			

### Part 6 – Dealings directly affecting lots

#### Division 1 – Transfers

Entity power given to	Section of LATA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Local Government	60(1)	Power to sign and lodge for registration an instrument of transfer for a lot or interest.	Delegation of this power to be made			For Torres Strait Islander Freehold and Deed of Grant



			on a case-by-case basis only.			in Trust land, a Trustee resolution is required. Where a development permit is required, a local government resolution is also required.
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## Division 2 – Leases

Entity power given to	Section of LATA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Local Government	64	Power to sign and lodge for registration an instrument of lease for a lot or part of a lot.	Delegation of this power to be made on a case-by-case basis only.			For Torres Strait Islander Freehold and Deed of Grant in Trust land, a Trustee resolution is required. Where a development permit is required, a local government resolution is also required.
Local Government	67(1)	Power to sign and lodge an instrument of amendment of the lease.	Delegation of this power to be made on a case-by-case basis only.			For Torres Strait Islander Freehold and Deed of Grant in Trust land, a Trustee resolution is required. Where a development permit is required, a local government resolution is also required.

Lessor	68(1)	Power to sign and lodge a request for the registrar to register the re-entry.	Delegation of this power to be made on a case-by-case basis only.			
Lessor or Lessee	69(1)	Power to execute and lodge for registration an instrument of surrender.	Delegation of this power to be made on a case-by-case basis only.			

#### Division 4 – Easements

Entity power given to	Section of LATA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Local Government	82(1)	Power to sign and lodge for registration an instrument of easement.	Delegation of this power to be made on a case-by-case basis only.			
Registered Owner / Lessee / Person entitled to land / Public Utility Provider	83(1)(b)	Power to sign an instrument of easement.	Delegation of this power to be made on a case-by-case basis only.			
Local Government	83(2)(b)	In certain circumstances, power to approve a plan of survey.	Delegation of this power to be made on a case-by-case basis only.			
Registered Owner	87(a)	Power to ask the registrar to extinguish the easement.	Delegation of this power to be made on a case-by-case basis only.			

Local government	90(1)	Power to sign and lodge for registration an instrument of surrender of an easement.	Delegation of this power to be made on a case-by-case basis only.			
Local Government	91(1)	Power to sign and lodge for registration an instrument of amendment of the easement.	Delegation of this power to be made on a case-by-case basis only.			

**Division 4AA – High-density development easements**

Entity power given to	Section of LATA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Owner of the benefitted lot	95(7)(c)	Power to give written consent to an owner of a burdened lot to remove, change or otherwise interfere with any support.	N/A			
Owner of the benefitted lot	96A(5)	Power to provide written consent to an owner of a burdened lot to remove, change or otherwise interfere with any projection.	N/A			
Owner of the benefitted lot	96C(6)	Power to provide written consent to an owner of a burdened lot to: (a) remove, change or otherwise interfere with the roof water drainage structure; or (b) obstruct or otherwise interfere with the flow of water through the structure.	N/A			

#### Division 4A – Covenants

Entity power given to	Section of LATA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Local Government	97A(1)	Power to sign and lodge for registration an instrument of covenant.	Delegation of this power to be made on a case-by-case basis only.			
Local Government	97C(1)	Power to sign and lodge for registration an instrument of amendment of the covenant.	Delegation of this power to be made on a case-by-case basis only.			
Local Government	97D(1)	Power to sign and lodge for registration an instrument releasing a covenant.	Delegation of this power to be made on a case-by-case basis only.			

#### Division 4B – Profits a prendre

Entity power given to	Section of LATA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Local Government	97E	Power to sign and lodge for registration an instrument of profit a prendre.	Delegation of this power to be made on a case-by-case basis only.			
Local Government	97K(1)	Power to sign and lodge for registration an instrument of amendment of the profit a prendre.	Delegation of this power to be made on a case-by-case basis only.			

## Division 4C – Carbon abatement interests

### *Subdivision 2 – Creation and registration*

Entity power given to	Section of LATA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Local Government	97O(1)(a)	Power to sign and lodge for registration an instrument of carbon abatement interest.	Delegation of this power to be made on a case-by-case basis only.			
Holders of the registered interests in the land	97P(c)	Power to consent to the proposed grant of a carbon abatement interest.	Delegation of this power to be made on a case-by-case basis only.			

### *Subdivision 3 – Amendments and dealings*

Entity power given to	Section of LATA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Local Government	97S(1)	Power to sign and lodge for registration an instrument of amendment of a carbon abatement interest.	Delegation of this power to be made on a case-by-case basis only.			

## Division 5 – Application by adverse possessor

Entity power given to	Section of LATA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Person who claims an interest in the lot	104	Power to sign and lodge a caveat.	Delegation of this power to be made on a case-by-case basis only.			

Caveator	105(2)	Power to: (a) start a proceeding in the Supreme Court to recover the lot; and (b) give written notice to the registrar, in the way the registrar requires, that the proceeding has started.	Delegation of this power to be made on a case-by-case basis only.			
Caveator	106	Power to seek leave of the Supreme Court to lodge a further caveat.	Delegation of this power to be made on a case-by-case basis only.			
Caveator	107(2)	Power to start a proceeding in the Supreme Court to recover a lot.	Delegation of this power to be made on a case-by-case basis only.			
Applicant	108A(2)	Power to sign a plan of subdivision.	Delegation of this power to be made on a case-by-case basis only.			

## Part 7 – Other dealings

### Division 1 – Writs of execution

Entity power given to	Section of LATA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Local Government	116	Power to sign and lodge a request to register a writ of execution.	Delegation of this power to be made on a case-by-case basis only.			

## Division 2 – Caveats

Entity power given to	Section of LATA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Caveator	121(1)	Power to sign a caveat.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor
A person mentioned in s. 122(1)	122(1)	Power to lodge for registration a caveat.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor
Caveator	124(2)(b)	Power to consent to the registration of an instrument.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor
Caveator	125	Power to sign and lodge for registration a request to withdraw a caveat.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor
Caveatee	126(2)	Power to serve a notice requiring the caveator to start a proceeding in a Court of competent jurisdiction to establish the interest claimed under the caveat.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor
Caveator	126(4)	Power to start a proceeding and notify the registrar in the way described in section 126(4).	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor
Caveatee	127(1)	Power to apply to the Supreme Court for an order that a caveat be removed.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor
Caveator or Caveatee	128(1)	Power to sign and lodge for registration a request to cancel a caveat.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor



**Part 7A – Priority notices**

Entity power given to	Section of LATA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Person	139(1)	Power to deposit a priority notice.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor
Person	139(2)	Power to sign a priority notice.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor
Person	141(1)	Power to deposit an extension request	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor
Person	141(2)	Power to sign and extension request	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor
Person	143(1)	Power to deposit a request to withdraw a priority notice.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor
Person	143(2)	Power to sign a request to withdraw a priority notice.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor
An affected person	144(1)	Power to apply to the Supreme Court for an order that a priority notice be removed.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor
Person	145(1)(a)	Power to deposit a request to cancel a priority notice.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor
Person	149(1)	Power to deposit a request to correct a priority notice.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with Mayor

**Part 8 – Instruments**

**Division 2 – Standard terms documents forming  
part of instruments**

Entity power given to	Section of LATA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Local Government	169(1)	Power to lodge a standard terms document and lodge a further standard terms document amending the standard terms document.	N/A			
Local Government	172(1)	Power to ask the registrar to withdraw a registered standard terms document.	N/A			

[2019 03 29 - LATA - Delegation Table]

# INSTRUMENT OF SUB-DELEGATION

**Torres Strait Island Regional Council**  
***Land Title Act 1994 ("LATA")***

Under section 259 of the *Local Government Act 2009*, I, **Bruce Ranga**, Chief Executive Officer of **Torres Strait Island Regional Council**, delegate to those positions which are specified in Schedule 1, the exercise of the powers contained in Schedule 2.

These powers must be exercised subject to the limitations contained in Schedule 3.

This Instrument of Sub-Delegation repeals all prior Instruments sub-delegating to the positions specified in Schedule 1 the exercise of the powers contained in Schedule 2.

My authority to make these sub-delegations is conferred by the *Local Government Act 2009* and the resolution of **Torres Strait Island Regional Council** made on **Insert date** to delegate those powers to the Chief Executive Officer.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

**Bruce Ranga**  
Chief Executive Officer  
**Torres Strait Island Regional Council**

**Position:** Insert Position  
**Position Code:** Insert Position Code

## POWERS SUB-DELEGATED

### *Land Title Act 1994 ("LATA")*

#### Part 4 – Registration of land

##### Division 3 – Plans of subdivision

Entity power given to	Section of LATA	Description
Registered Owner	50(1)(b)(i)	Power to include a statement agreeing to the plan and dedicating the public use land.

##### Division 3A – Dedication of road by notice

Entity power given to	Section of LATA	Description
Registered Owner	54(1)	Power to sign and lodge for registration a dedication notice.

#### Part 6 – Dealings directly affecting lots

##### Division 1 – Transfers

Entity power given to	Section of LATA	Description
Local Government	60(1)	Power to sign and lodge for registration an instrument of transfer for a lot or interest.

##### Division 2 – Leases

Entity power given to	Section of LATA	Description
Local Government	64	Power to sign and lodge for registration an instrument of lease for a lot or part of a lot.
Local Government	67(1)	Power to sign and lodge an instrument of amendment of the lease.
Lessor	68(1)	Power to sign and lodge a request for the registrar to register the re-entry.
Lessor or Lessee	69(1)	Power to execute and lodge for registration an instrument of surrender.

##### Division 4 – Easements

Entity power given to	Section of LATA	Description
Local Government	82(1)	Power to sign and lodge for registration an instrument of easement.
Registered Owner / Lessee / Person entitled to land / Public Utility Provider	83(1)(b)	Power to sign an instrument of easement.

Local Government	83(2)(b)	In certain circumstances, power to approve a plan of survey.
Registered Owner	87(a)	Power to ask the registrar to extinguish the easement.
Local government	90(1)	Power to sign and lodge for registration an instrument of surrender of an easement.
Local Government	91(1)	Power to sign and lodge for registration an instrument of amendment of the easement.

#### **Division 4AA – High-density development easements**

<b>Entity power given to</b>	<b>Section of LATA</b>	<b>Description</b>
Owner of the benefitted lot	95(7)(c)	Power to give written consent to an owner of a burdened lot to remove, change or otherwise interfere with any support.
Owner of the benefitted lot	96A(5)	Power to provide written consent to an owner of a burdened lot to remove, change or otherwise interfere with any projection.
Owner of the benefitted lot	96C(6)	Power to provide written consent to an owner of a burdened lot to: (a) remove, change or otherwise interfere with the roof water drainage structure; or (b) obstruct or otherwise interfere with the flow of water through the structure.

#### **Division 4A – Covenants**

<b>Entity power given to</b>	<b>Section of LATA</b>	<b>Description</b>
Local Government	97A(1)	Power to sign and lodge for registration an instrument of covenant.
Local Government	97C(1)	Power to sign and lodge for registration an instrument of amendment of the covenant.
Local Government	97D(1)	Power to sign and lodge for registration an instrument releasing a covenant.

#### **Division 4B – Profits a prendre**

<b>Entity power given to</b>	<b>Section of LATA</b>	<b>Description</b>
Local Government	97E	Power to sign and lodge for registration an instrument of profit a prendre.
Local Government	97K(1)	Power to sign and lodge for registration an instrument of amendment of the profit a prendre.

#### **Division 4C – Carbon abatement interests**

##### ***Subdivision 2 – Creation and registration***

<b>Entity power given to</b>	<b>Section of LATA</b>	<b>Description</b>
Local Government	97O(1)(a)	Power to sign and lodge for registration an instrument of carbon abatement interest.
Holders of the registered interests in the land	97P(c)	Power to consent to the proposed grant of a carbon abatement interest.

### ***Subdivision 3 – Amendments and dealings***

<b>Entity power given to</b>	<b>Section of LATA</b>	<b>Description</b>
Local Government	97S(1)	Power to sign and lodge for registration an instrument of amendment of a carbon abatement interest.

### **Division 5 – Application by adverse possessor**

<b>Entity power given to</b>	<b>Section of LATA</b>	<b>Description</b>
Person who claims an interest in the lot	104	Power to sign and lodge a caveat.
Caveator	105(2)	Power to: (a) start a proceeding in the Supreme Court to recover the lot; and (b) give written notice to the registrar, in the way the registrar requires, that the proceeding has started.
Caveator	106	Power to seek leave of the Supreme Court to lodge a further caveat.
Caveator	107(2)	Power to start a proceeding in the Supreme Court to recover a lot.
Applicant	108A(2)	Power to sign a plan of subdivision.

## **Part 7 – Other dealings**

### **Division 1 – Writs of execution**

<b>Entity power given to</b>	<b>Section of LATA</b>	<b>Description</b>
Local Government	116	Power to sign and lodge a request to register a writ of execution.

### **Division 2 – Caveats**

<b>Entity power given to</b>	<b>Section of LATA</b>	<b>Description</b>
Caveator	121(1)	Power to sign a caveat.
A person mentioned in s. 122(1)	122(1)	Power to lodge for registration a caveat.
Caveator	124(2)(b)	Power to consent to the registration of an instrument.
Caveator	125	Power to sign and lodge for registration a request to withdraw a caveat.
Caveatee	126(2)	Power to serve a notice requiring the caveator to start a proceeding in a Court of competent jurisdiction to establish the interest claimed under the caveat.
Caveator	126(4)	Power to start a proceeding and notify the registrar in the way described in section 126(4).
Caveatee	127(1)	Power to apply to the Supreme Court for an order that a caveat be removed.
Caveator or Caveatee	128(1)	Power to sign and lodge for registration a request to cancel a caveat.

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**Part 7A – Priority notices**

Entity power given to	Section of LATA	Description
Person	139(1)	Power to deposit a priority notice.
Person	139(2)	Power to sign a priority notice.
Person	141(1)	Power to deposit an extension request
Person	141(2)	Power to sign and extension request
Person	143(1)	Power to deposit a request to withdraw a priority notice.
Person	143(2)	Power to sign a request to withdraw a priority notice.
An affected person	144(1)	Power to apply to the Supreme Court for an order that a priority notice be removed.
Person	145(1)(a)	Power to deposit a request to cancel a priority notice.
Person	149(1)	Power to deposit a request to correct a priority notice.

**Part 8 – Instruments****Division 2 – Standard terms documents forming part of instruments**

Entity power given to	Section of LATA	Description
Local Government	169(1)	Power to lodge a standard terms document and lodge a further standard terms document amending the standard terms document.
Local Government	172(1)	Power to ask the registrar to withdraw a registered standard terms document.



## **LIMITATIONS TO THE EXERCISE OF POWER**

7. Where Council in its budget or by resolution allocates an amount for the expenditure of Council funds in relation to a particular matter, in exercising delegated power in relation to that matter, the delegate will only commit Council to reasonably foreseeable expenditure up to the amount allocated.
8. The delegate will not exercise any delegated power in relation to a matter which, to the delegate's knowledge, adversely affects, or is likely to adversely affect, Council's relations with the public at large.
9. The delegate will not exercise any delegated power contrary to a resolution or other decision of Council (including a policy decision relating to the matter).
10. The delegate will not exercise any delegated power in a manner, or which has the foreseeable effect, of being contrary to an adopted Council policy or procedure.
11. The delegate will only exercise a delegated power under this resolution in a manner which complies with the requirements of Council's Planning Scheme, and any exercise of power which involves a departure from or variation of those requirements will only be undertaken by Council.
12. The delegate will not exercise any delegated power which cannot lawfully be the subject of delegation by Council.

[2019 03 29 - LATA - Sub-Delegation Instrument]

### **Conditions imposed on all Delegations**

11. Delegated powers must be read in the context of other powers and subject to conditions stipulated therein;
12. Delegated powers must be exercised consistently with the provisions of Local Government Acts or Regulations, Council Policies and Procedure, Local Laws and Subordinate Local Laws;
13. Any decisions must be made within the financial delegation of the delegate;
14. The delegate shall not give Council opinions and if opinions are to be provided, may only provide personal opinions of the delegate, not in an official capacity as an employee of the Council;
15. Delegated powers only apply to the delegate to the extent that they relate to a delegate's scope of duties as particularised in the Position Description pertaining to that delegate, or as otherwise approved in writing by the CEO or by Council Policy;
16. A delegate may not sub-delegate a power provided for in this Register to a subordinate staff member without the express written consent of the Chief Executive Officer or under a Policy or Procedure adopted by Council;
17. Any power that is not delegable under a Local Government Act or Regulation, shall not be delegable under this instrument;
18. All delegations are subject to conditions imposed in the original delegation to CEO contained in the Instrument of Delegations of Local Government;

- 19.** Whilst exercising a power, the delegate must take into account Ailan Kastom as defined in section 6 of the *Torres Strait Islander Land Act 1991* (Qld); and
- 20.** All Powers delegated to the Chief Executive Officer in this Instrument shall be subject to prior Council consultation where exercise of such Power in all reasonable likelihood shall:
- - a. impact on land and/or sea; and/or
  - b. involve payment of compensation regarding land; and/or
  - c. require a budget amendment.

# **INSTRUMENT OF DELEGATION**

## **Torres Strait Island Regional Council** ***Mineral Resources Act 1989 ("MIRA")***

Under section 257 of the *Local Government Act 2009*, Torres Strait Island Regional Council resolves to delegate the exercise of the powers contained in Schedule 1 to the Chief Executive Officer.

These powers must be exercised subject to the limitations contained in Schedule 2.

All prior resolutions delegating the same powers to the Chief Executive Officer are repealed.

**Mineral Resources Act 1989 ("MIRA")****CHAPTER 2 – PROSPECTING PERMITS****Part 1 – Prospecting Permit Categories and Entitlements**

Entity power given to	Section of MIRA	Description
Owner of a Reserve	19(1)	In the specified circumstances, the power to give written consent to a parcel prospecting permit holder entering the surface of a reserve for prospecting purposes.
Owner of Occupied Land	19(2)	In the specified circumstances, the power to give written consent to a district prospecting permit holder entering the surface of occupied land.
Owner of Occupied Land	19(3)	In the specified circumstances, the power to give written consent to a prospecting permit holder entering occupied land for hand mining only.
Occupier of Land	20(3)	In the specified circumstances, the power to give a prospecting permit holder consent to enter land.
Owner or Occupier of Land	20(6)	In the specified circumstances, the power to, by written notice given to a prospecting permit holder and the mining registrar, amend or withdraw a consent given for land.

**Part 2 – Other Provisions About Prospecting Permits**

Entity power given to	Section of MIRA	Description
Owner of any Land	26(3)	Power to apply in writing to the mining registrar to rectify damage referred to in section 26(1) of the <i>Mineral Resources Act 1989</i> that has been caused by an activity allegedly authorised under a prospecting permit in respect of the land.
Owner of Occupied Land	26(9)(a)(i)	In the specified circumstances, the power to give the mining registrar written approval to refund the security.
Owner of Land	32(2)	Power to accept a shorter time period within which notice must be given by a parcel prospecting permit holder before entry to the land.
Owner of Land	34(1)	In the specified circumstances, the power to report to the chief executive.
Owner of Land or Agent	46(1)(b)	In the specified circumstances, the power to ask that a person purporting to enter or be upon land under the authority of a prospecting permit, produce the prospecting permit.
Owner of Occupied Land	47(1)	In the specified circumstances, the power to give written consent to a person, entitled to enter occupied land under a district prospecting permit, entering the land at night.
Owner of Occupied Land	47(2)	In the specified circumstances, the power to give written consent to a person, entitled to enter occupied land under a parcel prospecting permit, entering the land at night.
Occupier of Land	47(4)	In the specified circumstances, the power to give consent.

## CHAPTER 3 – MINING CLAIMS

Entity power given to	Section of MIRA	Description
Owner of Restricted Land	51(2)(a)	In the specified circumstances, the power to give written consent to an application for a mining claim over the surface of restricted land being lodged.
Owner of Reserve	54(a)	In the specified circumstances, the power to give consent to the granting of a mining claim over a reserve.
Owner of Land	65(1)(a)	In the specified circumstances, the power to give the chief executive a written request for a conference.
Relevant Local Government	71(1)	Lodge a written objection in the approved form to an application for a mining claim.
Owner of Land	71(2)	In the specified circumstances and within the specified time periods, the power to lodge an objection to an application for a mining claim.
Objector	71A(1)	To withdraw an objection to an application for a mining claim by giving written notice of the withdrawal.
Owner of Land	85(1)(a)	In the specified circumstances, the power to agree with the applicant for a mining claim on an amount of compensation.
Interested Party	85(4)	In the specified circumstances, the power to apply in writing to the Land Court.
Owner of Land	125(9)(a)(i)	In the specified circumstances, the power to give written consent to an application under section 125 of the <i>Mineral Resources Act 1989</i> being lodged.
Owner of Land	125(10)	In the specified circumstances, the power to agree with a mining claim holder on compensation payable in respect of the proposed use of the land as access in respect of the mining claim.

## CHAPTER 4 – EXPLORATION PERMITS

### Part 1 – Preliminary

Entity power given to	Section of MIRA	Description
Owner of Restricted Land	129(3)(a)	In the specified circumstances, the power to give written consent to a person entering the surface of the restricted land.
Owner of Reserve	129(6)	In the specified circumstances, the power to withdraw consent given under section 129(1)(a)(ii) of the <i>Mineral Resources Act 1989</i> by giving written notice to the chief executive.

### Part 4 – Other Provisions About Exploration Permit

Owner of Land or Agent	167(1)(b)	In the specified circumstances, the power to ask that a person purporting to enter or be on land under the authority of an exploration permit to produce the exploration permit or a copy of the exploration permit.
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## CHAPTER 5 – MINERAL DEVELOPMENT LICENCES

### Part 1 – Mineral Development Licences Generally

Entity power given to	Section of MIRA	Description
Owner of Land	190(7)	In the specified circumstances, the power to lodge a claim for rectification of actual damage to land caused under the authority, or purported authority, of a mineral development licence.
Owner of Land	190(8)(a)	In the specified circumstances, the power to certify that there is no actual damage to land that should be rectified.
Owner of Land or Agent	216(1)(b)	In the specified circumstances, the power to ask that a person purporting to enter or be on land under the authority of a mineral development licence to produce the mineral development licence or a copy of the mineral development licence.

## CHAPTER 6 – MINING LEASES

### Part 1 – Mining Leases Generally

Entity power given to	Section of MIRA	Description
Owner of Land	237(2)(d)(i)	In the specified circumstances, the power to consent to an application to conduct drilling and other activities on land not included in the surface area covered under a mining lease.
Owner of Land	237(2)(d)(ii)	In the specified circumstances, the power to agree with the mining lease holder about the compensation payable for the activities.
Owner of Restricted Land	238(1)(a)	Power to give written consent to a mining lease application.
Affected Person	260(1)	Power to lodge an objection in writing in an approved form before the objection date for the application of a mining lease.
Objector	260(4)	Power to serve a copy of the objection lodged by the objector in respect of an application for a grant of a mining lease.
Owner of Land	261(1)	In the specified circumstances, the power to withdraw an objection to an application for a grant of a mining lease.
Owner of Restricted Land	275A(2)(a)	In the specified circumstances, the power to consent in writing to an application to include the surface of restricted land for the mining lease in the mining lease.
Owner of Land	279(1)(a)	In the specified circumstances, the power to agree with a mining lease holder on compensation.
Owner of Land	280(1)	In the specified circumstances, the power to agree with the holder of a mining lease as to compensation for any damage caused to the surface of the land.
Person who could be party to an agreement under section 279 or 280	281(1)	In the specified circumstances, the power to apply in writing to the Land Court to have the Land Court determine compensation.
Owner of Land	283A(2)	In the specified circumstances, the power to agree to amend the original compensation (the <b>amended agreement</b> ).



Owner of Land	317(10)	In the specified circumstances, the power to agree with the holder of a mining lease on compensation payable in respect of the proposed use of the land as access in respect of a mining lease.
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## CHAPTER 12A – PROVISIONS ABOUT WATER FOR MINERAL DEVELOPMENT LICENCES AND MINING LEASES

### Part 4 – Water monitoring bores

#### Division 1 – Transfer of water monitoring bores

Entity power given to	Section of MIRA	Description
Owner of a Water Monitoring Bore	334ZZO(1)	Power to transfer the bore to a landowner in the specified circumstances.
Land Owner	334ZZO(2)(b)	Power to consent to the transfer.
Owner of a Water Monitoring Bore	334ZZP(1)	In the specified circumstances, the power to transfer the bore to the State.
Owner of a Water Monitoring Bore	334ZZQ(1)	In the specified circumstances, the power to transfer the bore to a holder of a mineral development licence, mining lease or water monitoring authority.

## CHAPTER 13 – ADMINISTRATION AND JUDICIAL FUNCTIONS




**Part 4 – Remediation of abandoned mine sites and rehabilitation of final rehabilitation sites**

Entity power given to	Section of MIRA	Description
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**Division 2 – Authorisation to carry out remediation activities or rehabilitation activities**

Owner or Occupier	344G(4)	Power to give consent to the authorised person to enter the land and to sign an acknowledgement of consent
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**Division 3 – Compensation**

Owner of Land	345(1)(a)	In the specified circumstances, the power to enter into a compensation agreement with the holder of an environmental authority who is authorised under section 344A(3) to enter land.
Owner of Land	345(3)	Power to apply in writing to the Chief Executive to have the Land Court decide the amount of compensation and the terms, conditions and times of its payment payable under section 345(1)(a)

**CHAPTER 14 – MISCELLANEOUS**

Entity power given to	Section of MIRA	Description
Owner of Land	403(1)(e)	In the specified circumstances, the power to authorise a person to enter, be upon, use, occupy, or erect any building or structure on or make any other improvement to land.

**SCHEDULE 1 – CONDITIONS OF CARRYING OUT ACTIVITY FOR BOUNDARY DEFINITION PURPOSES**

Entity power given to	Section of MIRA	Description
Owner of Occupier of Restricted Land	2(1)(a)	Power to give written consent to enter restricted land.
Owner of Land	3(1)(a)	Power to give written consent for a person to enter occupied land.
Occupier of Occupied Land	3(3)	In certain circumstances, power to give consent to a person to enter occupied land.
Owner of Reserve	4(1)(b)	Power to impose reasonable and relevant conditions on entry by a person under section 386V to the surface of a reserve.

## **LIMITATIONS TO THE EXERCISE OF POWER**

1. Where Council in its budget or by resolution allocates an amount for the expenditure of Council funds in relation to a particular matter, in exercising delegated power in relation to that matter, the delegate will only commit Council to reasonably foreseeable expenditure up to the amount allocated.
2. The delegate will not exercise any delegated power in relation to a matter which, to the delegate's knowledge, adversely affects, or is likely to adversely affect, Council's relations with the public at large.
3. The delegate will not exercise any delegated power contrary to a resolution or other decision of Council (including a policy decision relating to the matter).
4. The delegate will not exercise any delegated power in a manner, or which has the foreseeable effect, of being contrary to an adopted Council policy or procedure.
5. The delegate will only exercise a delegated power under this resolution in a manner which complies with the requirements of Council's Planning Scheme, and any exercise of power which involves a departure from or variation of those requirements will only be undertaken by Council.
6. The delegate will not exercise any delegated power which cannot lawfully be the subject of delegation by Council.

[2020 07 01 - MIRA - Delegation Instrument]

### **Conditions imposed on all Delegations**

1. Delegated powers must be read in the context of other powers and subject to conditions stipulated therein;
2. Delegated powers must be exercised consistently with the provisions of Local Government Acts or Regulations, Council Policies and Procedure, Local Laws and Subordinate Local Laws;
3. Any decisions must be made within the financial delegation of the delegate;
4. The delegate shall not give Council opinions and if opinions are to be provided, may only provide personal opinions of the delegate, not in an official capacity as an employee of the Council;
5. Delegated powers only apply to the delegate to the extent that they relate to a delegate's scope of duties as particularised in the Position Description pertaining to that delegate, or as otherwise approved in writing by the CEO or by Council Policy;
6. A delegate may not sub-delegate a power provided for in this Register to a subordinate staff member without the express written consent of the Chief Executive Officer or under a Policy or Procedure adopted by Council;
7. Any power that is not delegable under a Local Government Act or Regulation, shall not be delegable under this instrument;
8. All delegations are subject to conditions imposed in the original delegation to CEO contained in the Instrument of Delegations of Local Government;

9. Whilst exercising a power, the delegate must take into account Ailan Kastom as defined in section 6 of the *Torres Strait Islander Land Act 1991* (Qld); and
10. All Powers delegated to the Chief Executive Officer in this Instrument shall be subject to prior Council consultation where exercise of such Power in all reasonable likelihood shall:
  - 
  - a. impact on land and/or sea; and/or
  - b. involve payment of compensation regarding land; and/or
  - c. require a budget amendment.

# DELEGABLE POWERS UNDER THE MINERAL RESOURCES ACT 1989 ("MIRA")

## CHAPTER 2 – PROSPECTING PERMITS

### Part 1 – Prospecting Permit Categories and Entitlements

Entity power given to	Section of MIRA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Owner of a Reserve	19(1)	In the specified circumstances, the power to give written consent to a parcel prospecting permit holder entering the surface of a reserve for prospecting purposes.	N/A			
Owner of Occupied Land	19(2)	In the specified circumstances, the power to give written consent to a district prospecting permit holder entering the surface of occupied land.	N/A			
Owner of Occupied Land	19(3)	In the specified circumstances, the power to give written consent to a prospecting permit holder entering occupied land for hand mining only.	Delegation of this power to be made on a case-by-case basis only.			
Occupier of Land	20(3)	In the specified circumstances, the power to give a prospecting permit holder consent to enter land.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
Owner or Occupier of Land	20(6)	In the specified circumstances, the power to, by written notice given to a prospecting permit holder and the mining registrar, amend or withdraw a consent given for land.	Delegation of this power to be made on a case-by-case basis only.			



## Part 2 – Other Provisions About Prospecting Permits

Entity power given to	Section of MIRA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Owner of any Land	26(3)	Power to apply in writing to the mining registrar to rectify damage referred to in section 26(1) of the <i>Mineral Resources Act 1989</i> that has been caused by an activity allegedly authorised under a prospecting permit in respect of the land.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
Owner of Occupied Land	26(9)(a)(i)	In the specified circumstances, the power to give the mining registrar written approval to refund the security.	Delegation of this power to be made on a case-by-case basis only.			
Owner of Land	32(2)	Power to accept a shorter time period within which notice must be given by a parcel prospecting permit holder before entry to the land.	Delegation of this power to be made on a case-by-case basis only.			
Owner of Land	34(1)	In the specified circumstances, the power to report to the chief executive.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
Owner of Land or Agent	46(1)(b)	In the specified circumstances, the power to ask that a person purporting to enter or be upon land under the authority of a prospecting permit, produce the prospecting permit.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
Owner of Occupied Land	47(1)	In the specified circumstances, the power to give written consent to a person, entitled to enter occupied land under a district prospecting permit, entering the land at night.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
Owner of Occupied Land	47(2)	In the specified circumstances, the power to give written consent to a person, entitled to enter occupied land under a parcel	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and

		prospecting permit, entering the land at night.				Divisional Councillor
Occupier of Land	47(4)	In the specified circumstances, the power to give consent.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor

### CHAPTER 3 – MINING CLAIMS

Entity power given to	Section of MIRA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Owner of Restricted Land	51(2)(a)	In the specified circumstances, the power to give written consent to an application for a mining claim over the surface of restricted land being lodged.	N/A			
Owner of Reserve	54(a)	In the specified circumstances, the power to give consent to the granting of a mining claim over a reserve.	N/A			
Owner of Land	65(1)(a)	In the specified circumstances, the power to give the chief executive a written request for a conference.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
Relevant Local Government	71(1)	Lodge a written objection in the approved form to an application for a mining claim.	N/A			
Owner of Land	71(2)	In the specified circumstances and within the specified time periods, the power to lodge an objection to an application for a mining claim.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor

Objector	71A(1)	To withdraw an objection to an application for a mining claim by giving written notice of the withdrawal.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
Owner of Land	85(1)(a)	In the specified circumstances, the power to agree with the applicant for a mining claim on an amount of compensation.	N/A			
Interested Party	85(4)	In the specified circumstances, the power to apply in writing to the Land Court.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
Owner of Land	125(9)(a)(i)	In the specified circumstances, the power to give written consent to an application under section 125 of the <i>Mineral Resources Act 1989</i> being lodged.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
Owner of Land	125(10)	In the specified circumstances, the power to agree with a mining claim holder on compensation payable in respect of the proposed use of the land as access in respect of the mining claim.	N/A			

## CHAPTER 4 – EXPLORATION PERMITS

### Part 1 – Preliminary

Entity power given to	Section of MIRA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Owner of Restricted Land	129(3)(a)	In the specified circumstances, the power to give written consent to a person entering the surface of the restricted land.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor

Owner of Reserve	129(6)	In the specified circumstances, the power to withdraw consent given under section 129(1)(a)(ii) of the <i>Mineral Resources Act 1989</i> by giving written notice to the chief executive.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
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#### **Part 4 – Other Provisions About Exploration Permit**

Owner of Land or Agent	167(1)(b)	In the specified circumstances, the power to ask that a person purporting to enter or be on land under the authority of an exploration permit to produce the exploration permit or a copy of the exploration permit.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
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### **CHAPTER 5 – MINERAL DEVELOPMENT LICENCES**

#### **Part 1 – Mineral Development Licences Generally**

Entity power given to	Section of MIRA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Owner of Land	190(7)	In the specified circumstances, the power to lodge a claim for rectification of actual damage to land caused under the authority, or purported authority, of a mineral development licence.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
Owner of Land	190(8)(a)	In the specified circumstances, the power to certify that there is no actual damage to land that should be rectified.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
Owner of Land or Agent	216(1)(b)	In the specified circumstances, the power to ask that a person purporting to enter or be on land under the authority of a mineral development licence to produce the mineral development licence or a copy of the mineral development licence.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor

## CHAPTER 6 – MINING LEASES

### Part 1 – Mining Leases Generally

Entity power given to	Section of MIRA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Owner of Land	237(2)(d)(i)	In the specified circumstances, the power to consent to an application to conduct drilling and other activities on land not included in the surface area covered under a mining lease.	N/A			
Owner of Land	237(2)(d)(ii)	In the specified circumstances, the power to agree with the mining lease holder about the compensation payable for the activities.	N/A			
Owner of Restricted Land	238(1)(a)	Power to give written consent to a mining lease application.	N/A			
Affected Person	260(1)	Power to lodge an objection in writing in an approved form before the objection date for the application of a mining lease.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
Objector	260(4)	Power to serve a copy of the objection lodged by the objector in respect of an application for a grant of a mining lease.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
Owner of Land	261(1)	In the specified circumstances, the power to withdraw an objection to an application for a grant of a mining lease.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor



Owner of Restricted Land	275A(2)(a)	In the specified circumstances, the power to consent in writing to an application to include the surface of restricted land for the mining lease in the mining lease.	N/A			
Owner of Land	279(1)(a)	In the specified circumstances, the power to agree with a mining lease holder on compensation.	N/A			
Owner of Land	280(1)	In the specified circumstances, the power to agree with the holder of a mining lease as to compensation for any damage caused to the surface of the land.	N/A			
Person who could be party to an agreement under section 279 or 280	281(1)	In the specified circumstances, the power to apply in writing to the Land Court to have the Land Court determine compensation.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
Owner of Land	283A(2)	In the specified circumstances, the power to agree to amend the original compensation (the <b><i>amended agreement</i></b> ).	N/A			
Owner of Land	317(10)	In the specified circumstances, the power to agree with the holder of a mining lease on compensation payable in respect of the proposed use of the land as access in respect of a mining lease.	N/A			

## CHAPTER 12A – PROVISIONS ABOUT WATER FOR MINERAL DEVELOPMENT LICENCES AND MINING LEASES

### Part 4 – Water monitoring bores

#### Division 1 – Transfer of water monitoring bores

Entity power given to	Section of MIRA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Owner of a Water Monitoring Bore	334ZZO(1)	Power to transfer the bore to a landowner in the specified circumstances.	N/A			
Land Owner	334ZZO(2)(b)	Power to consent to the transfer.	N/A			
Owner of a Water Monitoring Bore	334ZZP(1)	In the specified circumstances, the power to transfer the bore to the State.	N/A			
Owner of a Water Monitoring Bore	334ZZQ(1)	In the specified circumstances, the power to transfer the bore to a holder of a mineral development licence, mining lease or water monitoring authority.	N/A			

## CHAPTER 13 – ADMINISTRATION AND JUDICIAL FUNCTIONS




**Part 4 – Remediation of abandoned mine sites and rehabilitation of final rehabilitation sites**

Entity power given to	Section of MIRA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
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**Division 2 – Authorisation to carry out remediation activities or rehabilitation activities**

Owner or Occupier	344G(4)	Power to give consent to the authorised person to enter the land and to sign an acknowledgement of consent	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
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**Division 3 – Compensation**

Owner of Land	345(1)(a)	In the specified circumstances, the power to enter into a compensation agreement with the holder of an environmental authority who is authorised under section 344A(3) to enter land.	N/A			
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Owner of Land	345(3)	Power to apply in writing to the Chief Executive to have the Land Court decide the amount of compensation and the terms, conditions and times of its payment payable under section 345(1)(a)	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
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## CHAPTER 14 – MISCELLANEOUS

Entity power given to	Section of MIRA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Owner of Land	403(1)(e)	In the specified circumstances, the power to authorise a person to enter, be upon, use, occupy, or erect any building or structure on or make any other improvement to land.	N/A			

## SCHEDULE 1 – CONDITIONS OF CARRYING OUT ACTIVITY FOR BOUNDARY DEFINITION PURPOSES

Entity power given to	Section of MIRA	Description	Delegation to the CEO / Date of Resolution	Sub-Delegation to Officers	Date of Sub-Delegation	Limitations and Conditions
Owner of Occupier of Restricted Land	2(1)(a)	Power to give written consent to enter restricted land.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
Owner of Land	3(1)(a)	Power to give written consent for a person to enter occupied land.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor
Occupier of Occupied Land	3(3)	In certain circumstances, power to give consent to a person to enter occupied land.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and

						Divisional Councillor
Owner of Reserve	4(1)(b)	Power to impose reasonable and relevant conditions on entry by a person under section 386V to the surface of a reserve.	23 February 2021; Trustee resolution 8 December 2020			Subject to consultation with the Mayor and Divisional Councillor

[2020 07 01 - MIRA - Delegation Table]

## INSTRUMENT OF SUB-DELEGATION

**Torres Strait Island Regional Council**  
*Mineral Resources Act 1989 ("MIRA")*

Under section 259 of the *Local Government Act 2009*, I, **Bruce Ranga**, Chief Executive Officer of **Torres Strait Island Regional Council**, delegate to those positions which are specified in Schedule 1, the exercise of the powers contained in Schedule 2.

These powers must be exercised subject to the limitations contained in Schedule 3.

This Instrument of Sub-Delegation repeals all prior Instruments sub-delegating to the positions specified in Schedule 1 the exercise of the powers contained in Schedule 2.

My authority to make these sub-delegations is conferred by the *Local Government Act 2009* and the resolution of **Torres Strait Island Regional Council** made on **Insert date** to delegate those powers to the Chief Executive Officer.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

**Bruce Ranga**  
Chief Executive Officer  
**Torres Strait Island Regional Council**



**Position:** Insert Position  
**Position Code:** Insert Position Code

## POWERS SUB-DELEGATED

### *Mineral Resources Act 1989 ("MIRA")*

#### CHAPTER 2 – PROSPECTING PERMITS

##### Part 1 – Prospecting Permit Categories and Entitlements

Entity power given to	Section of MIRA	Description
Owner of a Reserve	19(1)	In the specified circumstances, the power to give written consent to a parcel prospecting permit holder entering the surface of a reserve for prospecting purposes.
Owner of Occupied Land	19(2)	In the specified circumstances, the power to give written consent to a district prospecting permit holder entering the surface of occupied land.
Owner of Occupied Land	19(3)	In the specified circumstances, the power to give written consent to a prospecting permit holder entering occupied land for hand mining only.
Occupier of Land	20(3)	In the specified circumstances, the power to give a prospecting permit holder consent to enter land.
Owner or Occupier of Land	20(6)	In the specified circumstances, the power to, by written notice given to a prospecting permit holder and the mining registrar, amend or withdraw a consent given for land.

##### Part 2 – Other Provisions About Prospecting Permits

Entity power given to	Section of MIRA	Description
Owner of any Land	26(3)	Power to apply in writing to the mining registrar to rectify damage referred to in section 26(1) of the <i>Mineral Resources Act 1989</i> that has been caused by an activity allegedly authorised under a prospecting permit in respect of the land.
Owner of Occupied Land	26(9)(a)(i)	In the specified circumstances, the power to give the mining registrar written approval to refund the security.
Owner of Land	32(2)	Power to accept a shorter time period within which notice must be given by a parcel prospecting permit holder before entry to the land.
Owner of Land	34(1)	In the specified circumstances, the power to report to the chief executive.
Owner of Land or Agent	46(1)(b)	In the specified circumstances, the power to ask that a person purporting to enter or be upon land under the authority of a prospecting permit, produce the prospecting permit.
Owner of Occupied Land	47(1)	In the specified circumstances, the power to give written consent to a person, entitled to enter occupied land under a district prospecting permit, entering the land at night.
Owner of Occupied Land	47(2)	In the specified circumstances, the power to give written consent to a person, entitled to enter occupied land under a parcel prospecting permit, entering the land at night.
Occupier of Land	47(4)	In the specified circumstances, the power to give consent.

## CHAPTER 3 – MINING CLAIMS

Entity power given to	Section of MIRA	Description
Owner of Restricted Land	51(2)(a)	In the specified circumstances, the power to give written consent to an application for a mining claim over the surface of restricted land being lodged.
Owner of Reserve	54(a)	In the specified circumstances, the power to give consent to the granting of a mining claim over a reserve.
Owner of Land	65(1)(a)	In the specified circumstances, the power to give the chief executive a written request for a conference.
Relevant Local Government	71(1)	Lodge a written objection in the approved form to an application for a mining claim.
Owner of Land	71(2)	In the specified circumstances and within the specified time periods, the power to lodge an objection to an application for a mining claim.
Objector	71A(1)	To withdraw an objection to an application for a mining claim by giving written notice of the withdrawal.
Owner of Land	85(1)(a)	In the specified circumstances, the power to agree with the applicant for a mining claim on an amount of compensation.
Interested Party	85(4)	In the specified circumstances, the power to apply in writing to the Land Court.
Owner of Land	125(9)(a)(i)	In the specified circumstances, the power to give written consent to an application under section 125 of the <i>Mineral Resources Act 1989</i> being lodged.
Owner of Land	125(10)	In the specified circumstances, the power to agree with a mining claim holder on compensation payable in respect of the proposed use of the land as access in respect of the mining claim.

## CHAPTER 4 – EXPLORATION PERMITS

### Part 1 – Preliminary

Entity power given to	Section of MIRA	Description
Owner of Restricted Land	129(3)(a)	In the specified circumstances, the power to give written consent to a person entering the surface of the restricted land.
Owner of Reserve	129(6)	In the specified circumstances, the power to withdraw consent given under section 129(1)(a)(ii) of the <i>Mineral Resources Act 1989</i> by giving written notice to the chief executive.

### Part 4 – Other Provisions About Exploration Permit

Owner of Land or Agent	167(1)(b)	In the specified circumstances, the power to ask that a person purporting to enter or be on land under the authority of an exploration permit to produce the exploration permit or a copy of the exploration permit.
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## CHAPTER 5 – MINERAL DEVELOPMENT LICENCES

### Part 1 – Mineral Development Licences Generally

Entity power given to	Section of MIRA	Description
Owner of Land	190(7)	In the specified circumstances, the power to lodge a claim for rectification of actual damage to land caused under the authority, or purported authority, of a mineral development licence.
Owner of Land	190(8)(a)	In the specified circumstances, the power to certify that there is no actual damage to land that should be rectified.
Owner of Land or Agent	216(1)(b)	In the specified circumstances, the power to ask that a person purporting to enter or be on land under the authority of a mineral development licence to produce the mineral development licence or a copy of the mineral development licence.

## CHAPTER 6 – MINING LEASES

### Part 1 – Mining Leases Generally

Entity power given to	Section of MIRA	Description
Owner of Land	237(2)(d)(i)	In the specified circumstances, the power to consent to an application to conduct drilling and other activities on land not included in the surface area covered under a mining lease.
Owner of Land	237(2)(d)(ii)	In the specified circumstances, the power to agree with the mining lease holder about the compensation payable for the activities.
Owner of Restricted Land	238(1)(a)	Power to give written consent to a mining lease application.
Affected Person	260(1)	Power to lodge an objection in writing in an approved form before the objection date for the application of a mining lease.
Objector	260(4)	Power to serve a copy of the objection lodged by the objector in respect of an application for a grant of a mining lease.
Owner of Land	261(1)	In the specified circumstances, the power to withdraw an objection to an application for a grant of a mining lease.
Owner of Restricted Land	275A(2)(a)	In the specified circumstances, the power to consent in writing to an application to include the surface of restricted land for the mining lease in the mining lease.
Owner of Land	279(1)(a)	In the specified circumstances, the power to agree with a mining lease holder on compensation.
Owner of Land	280(1)	In the specified circumstances, the power to agree with the holder of a mining lease as to compensation for any damage caused to the surface of the land.
Person who could be party to an agreement under section 279 or 280	281(1)	In the specified circumstances, the power to apply in writing to the Land Court to have the Land Court determine compensation.
Owner of Land	283A(2)	In the specified circumstances, the power to agree to amend the original compensation (the <b>amended agreement</b> ).

Owner of Land	317(10)	In the specified circumstances, the power to agree with the holder of a mining lease on compensation payable in respect of the proposed use of the land as access in respect of a mining lease.
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## CHAPTER 12A – PROVISIONS ABOUT WATER FOR MINERAL DEVELOPMENT LICENCES AND MINING LEASES

### Part 4 – Water monitoring bores

#### Division 1 – Transfer of water monitoring bores

Entity power given to	Section of MIRA	Description
Owner of a Water Monitoring Bore	334ZZO(1)	Power to transfer the bore to a landowner in the specified circumstances.
Land Owner	334ZZO(2)(b)	Power to consent to the transfer.
Owner of a Water Monitoring Bore	334ZZP(1)	In the specified circumstances, the power to transfer the bore to the State.
Owner of a Water Monitoring Bore	334ZZQ(1)	In the specified circumstances, the power to transfer the bore to a holder of a mineral development licence, mining lease or water monitoring authority.

## CHAPTER 13 – ADMINISTRATION AND JUDICIAL FUNCTIONS




**Part 4 – Remediation of abandoned mine sites and rehabilitation of final rehabilitation sites**

Entity power given to	Section of MIRA	Description
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**Division 2 – Authorisation to carry out remediation activities or rehabilitation activities**

Owner or Occupier	344G(4)	Power to give consent to the authorised person to enter the land and to sign an acknowledgement of consent
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**Division 3 – Compensation**

Owner of Land	345(1)(a)	In the specified circumstances, the power to enter into a compensation agreement with the holder of an environmental authority who is authorised under section 344A(3) to enter land.
Owner of Land	345(3)	Power to apply in writing to the Chief Executive to have the Land Court decide the amount of compensation and the terms, conditions and times of its payment payable under section 345(1)(a)

**CHAPTER 14 – MISCELLANEOUS**

Entity power given to	Section of MIRA	Description
Owner of Land	403(1)(e)	In the specified circumstances, the power to authorise a person to enter, be upon, use, occupy, or erect any building or structure on or make any other improvement to land.

**SCHEDULE 1 – CONDITIONS OF CARRYING OUT ACTIVITY FOR BOUNDARY DEFINITION PURPOSES**

Entity power given to	Section of MIRA	Description
Owner of Occupier of Restricted Land	2(1)(a)	Power to give written consent to enter restricted land.
Owner of Land	3(1)(a)	Power to give written consent for a person to enter occupied land.
Occupier of Occupied Land	3(3)	In certain circumstances, power to give consent to a person to enter occupied land.
Owner of Reserve	4(1)(b)	Power to impose reasonable and relevant conditions on entry by a person under section 386V to the surface of a reserve.



## **LIMITATIONS TO THE EXERCISE OF POWER**

1. Where Council in its budget or by resolution allocates an amount for the expenditure of Council funds in relation to a particular matter, in exercising delegated power in relation to that matter, the delegate will only commit Council to reasonably foreseeable expenditure up to the amount allocated.
2. The delegate will not exercise any delegated power in relation to a matter which, to the delegate's knowledge, adversely affects, or is likely to adversely affect, Council's relations with the public at large.
3. The delegate will not exercise any delegated power contrary to a resolution or other decision of Council (including a policy decision relating to the matter).
4. The delegate will not exercise any delegated power in a manner, or which has the foreseeable effect, of being contrary to an adopted Council policy or procedure.
5. The delegate will only exercise a delegated power under this resolution in a manner which complies with the requirements of Council's Planning Scheme, and any exercise of power which involves a departure from or variation of those requirements will only be undertaken by Council.
6. The delegate will not exercise any delegated power which cannot lawfully be the subject of delegation by Council.

[2020 07 01 - MIRA - Sub-Delegation Instrument]

### **Conditions imposed on all Delegations**

1. Delegated powers must be read in the context of other powers and subject to conditions stipulated therein;
2. Delegated powers must be exercised consistently with the provisions of Local Government Acts or Regulations, Council Policies and Procedure, Local Laws and Subordinate Local Laws;
3. Any decisions must be made within the financial delegation of the delegate;
4. The delegate shall not give Council opinions and if opinions are to be provided, may only provide personal opinions of the delegate, not in an official capacity as an employee of the Council;
5. Delegated powers only apply to the delegate to the extent that they relate to a delegate's scope of duties as particularised in the Position Description pertaining to that delegate, or as otherwise approved in writing by the CEO or by Council Policy;
6. A delegate may not sub-delegate a power provided for in this Register to a subordinate staff member without the express written consent of the Chief Executive Officer or under a Policy or Procedure adopted by Council;
7. Any power that is not delegable under a Local Government Act or Regulation, shall not be delegable under this instrument;
8. All delegations are subject to conditions imposed in the original delegation to CEO contained in the Instrument of Delegations of Local Government;

9. Whilst exercising a power, the delegate must take into account Ailan Kastom as defined in section 6 of the *Torres Strait Islander Land Act 1991* (Qld); and
10. All Powers delegated to the Chief Executive Officer in this Instrument shall be subject to prior Council consultation where exercise of such Power in all reasonable likelihood shall:
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  - a. impact on land and/or sea; and/or
  - b. involve payment of compensation regarding land; and/or
  - c. require a budget amendment.