



AGENDA

TORRES STRAIT ISLAND REGIONAL COUNCIL

January 2023

TRUSTEE MEETING

Tuesday, 24th January 2023

Video Conference

TRUSTEE MEETING
Tuesday, 24th January 2023
Agenda Items

- | | | |
|----|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <u>9:00am - 9:10am</u> | <u>Opening Prayer and Welcome</u> |
| 2. | <u>9:10am – 9:15am</u> | <u>Apologies</u> |
| 3. | <u>9:15am - 9:20am</u> | <u>Declaration of Conflict of Interest (COI) Declarable and Prescribed</u> |
| 4. | <u>9:15am – 9:20am</u> | <u>Confirmation of Trustee Meeting Minutes</u> <ul style="list-style-type: none">• Trustee Meeting – 13th December 2022 |
| 5. | <u>9:20am – 9:30am</u> | <u>Trustee Outstanding Action Items</u> |
| 6. | <u>9:30am – 9:45am</u> | <u>Standing Agenda Item: (verbal update)</u> <ul style="list-style-type: none">• Undocumented commercial land occupation project – verbal update• DOGIT Transfers – Verbal Update |
| 7. | <u>9:45am – 10:00am</u> | <u>LEGAL – TR – Badu Council v Minister</u> |
| 8. | <u>10:00am – 10:00am</u> | <u>Next meeting – Tuesday, 21st February 2023 – Video Conference</u> |
| 9. | <u>10:00am – 10:05am</u> | <u>Closing Remarks</u> |

MORNING TEA – 10:05AM – 10:20AM



Draft Minutes

TORRES STRAIT ISLAND REGIONAL COUNCIL

December 2022

TRUSTEE MEETING

Tuesday, 13th December 2022

Division 1, Boigu

PRESENT:

Cr Phillemon Mosby, Mayor
Cr Dimas Toby, Division 1 – Boigu
Cr Conwell Tabuai, Division 3 – Saibai
Cr Keith Fell, Division 4 – Mabuiag
Cr John Levi, Division 7 – Wug (St Pauls), Mua Island
Cr Seriako Dorante, Division 8 – Kiriri (Hammond)
Cr Getano Lui Jnr, Deputy Mayor, Division 9 – Iama (Yam)
Cr Kabay Tamu, Division 10 – Warraber (Sue)
Cr Francis Pearson, Division 11 – Poruma (Coconut)
Cr Rocky Stephen, Division 13 – Ugar (Stephen)
Cr Aven Noah, Division 15 – Mer (Murray)

STAFF:

Mr David Baldwin, Acting Chief Executive Officer (A/CEO)
Ms Hollie Faithfull, Executive Director, Financial Services (EDFS)
Mr Wayne Green, Executive Director Building Services (EDBS)
Mr Dawson Sailor, Head of Community Services (HOCS)
Mr Jacob Matysek, Executive Officer (EO)
Ms Julie Marino, Executive Assistant to the CEO (EA)
Ms Trudy Lui, Executive Assistant to the Mayor (EA)
Ms May Mosby, Acting Secretariat Officer (A/SO)

APOLOGIES:

Mr James William, Chief Executive Officer – annual leave
Cr Torenzo Elisala, Division 2 – Dauan – sorry business
Cr Laurie Nona, Division 5 – Badu – personal family commitment
Cr Lama Trinkoon, Division 6 – Kubin (Arkai), Mua Island – COVID
Cr Hilda Mosby, Division 12 – Masig (Yorke) – medical reasons
Cr Jimmy Gela, Division 14 – Erub (Darnley) – personal family leave

TRUSTEE MEETING
Tuesday, 13th December 2022
Agenda Items

1. 9:20am - 9:22am Opening Prayer and Welcome

Mayor Phillemon Mosby opened the Trustee Meeting for December with a welcome and acknowledged:

- Our Heavenly Father for his awesome, wisdom, knowledge and understanding upon our lives, our family, our Organisation, our people and region
- Traditional Owners of this land we gather today
- Elders, leaders, past, present and emerging
- Councillors, Chief Executive Officer and Executive Staff

Mayor Mosby invited Cr John Levi to open the meeting in a word of prayer at 9:20am

A minute's silence is observed as a mark of respect to families in sorry business throughout the region and on the mainland.

2. 9:22am – 9:30am Apologies

Cr Lama Trinkoon, Division 6 – Kubin – contracted COVID

RESOLUTION:

Moved: Cr Conwell Tabuai; Second: Cr Aven Noah

That Council accepts the apology of Cr Lama Trinkoon for the December 2022 Trustee Meeting.

MOTION CARRIED UNANIMOUS

Cr Laurie Nona, Division 5 – Badu – Personal Family Commitment

RESOLUTION:

Moved: Cr John Levi; Second: Cr Francis Pearson

That Council accepts the apology of Cr Laurie Nona for the December 2022 Trustee Meeting.

MOTION CARRIED UNANIMOUS

Cr Torenzo Elisala, Division 2 – Dauan – Sorry business - cultural obligations

RESOLUTION:

Moved: Cr Seriako Dorante; Second: Cr Conwell Tabuai

That Council accepts the apology of Cr Torenzo Elisala for the December 2022 Trustee Meeting.

MOTION CARRIED UNANIMOUS

Cr Hilda Mosby, Division 12 – Masig – Medical reasons

RESOLUTION:

Moved: Cr Kabay Tamu; Second: Cr Aven Noah

That Council accepts the apology of Cr Hilda Mosby for the December 2022 Trustee Meeting.

MOTION CARRIED UNANIMOUS

3. 9:30am - 9:31am Declaration of Conflict of Interest (COI) Declarable and Prescribed

Mayor Mosby encouraged Councillors to make a declaration of a Conflict of Interest or any relevant legal proceedings at any time during the meeting. There are no relevant legal proceedings against any Councillor.

4. **9:31am – 9:33am** **Confirmation of Trustee Meeting Minutes**
- Trustee Meeting – 17th November 2022
- RESOLUTION:**
Moved: Cr Aven Noah; Second: Cr Kabay Tamu
That the Trustee accepts the minutes of the Trustee meeting held on 17th November 2022 as a true and accurate account of that meeting.
- MOTION CARRIED UNANIMOUS**
5. **9:33am – 9:45am** **Trustee Outstanding Action Items**
- Acting Chief Executive Officer, Mr David Baldwin provided the Trustee with an update on the action items on behalf of the Senior Legal Officer.
- Ms Jo Parisi from MacDonnell Law is available if required for any legal advice.
- Cr Aven Noah raised a concern of not having a legal representative present at Council meetings to address any legal matters and enquired on the progress of recruitment of the Manager Legal Services.
- 9:45am – 9:50am** **Standing Agenda Item: (verbal update)**
- A representative of Legal Services was not in attendance to provide a verbal update.
- Undocumented commercial land occupation project – verbal update
 - DOGIT Transfers – Verbal Update
- ACTION:**
Chief Executive Officer to ensure that a legal representative is present at all times at Council meetings.
- ACTION:**
That legal advice be provided to Council following the issue raised on Katter lease on the outcome of the Ahwang case.
- ACTION:**
That Culture, Arts Land and Heritage Committee look further regarding entry into Trustee area. What arrangements we have in place in terms of people entering Trustee communities and Local Government areas.
- ACTION:**
That Culture, Arts Land and Heritage Committee look further into the Ailan Custom provisions under legislation.
- Cr Keith Fell advised that Housing and Safe and Healthy Communities Committee would also look further into this matter.
- Cr Getano Lui also asked the standing committee to look further into the Ailan Custom provisions under legislation.
- Cr Dimas Toby recommended exploring the partnership between PBC and Council and how we can work together to resolve those inconsistencies of entries into communities.
6. **9:50am – 9:50am** **Next meeting – date to be advised**
7. **9:50am – 10:03am** **Apology**
- Cr Jimmy Gela, Division 14 – Erub – Personal family leave

RESOLUTION:

Moved: Cr Keith Fell; Second: Cr Seriako Dorante

That Council accepts the apology of Cr Jimmy Gela for the December 2022 Trustee Meeting.

MOTION CARRIED UNANIMOUS

8. **10:03am – 10:04am**

Closing Remarks

Mayor Phillemon Mosby thanked Councillors and Staff and declared the Trustee meeting closed to reconvene in Council Ordinary Meeting.

MEETING CLOSED – 10:04AM

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

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

STATÉGIC AND OPERATIONAL ACTIONS FROM COUNCIL TRUSTEE/ORDINARY MEETING								
Date	Month of Meeting	Year	Type of Meeting	Community	Agenda Report	Action	Lead Officer	Lead Officer Comments
13	December	2022	Trustee	Boigu	Trustee Standing Agenda Commercial land occupation and DOGIT Transfers	Chief Executive Officer to ensure that a legal representative is present at all times at Council meetings.	Chief Executive Officer	
13	December	2022	Trustee	Boigu	Trustee Standing Agenda Commercial land occupation and DOGIT Transfers	That legal advice be provided to Council following the issue raised on Katter lease on the outcome of the Ahwang case.	Legal Services	
13	December	2022	Trustee	Boigu	Trustee Standing Agenda Commercial land occupation and DOGIT Transfers	That Culture, Arts Land and Heritage Committee look further regarding entry into Trustee area. What arrangements we have in place in terms of people entering Trustee communities and Local Government areas.	Executive Director Corporate Services	
13	December	2022	Trustee	Boigu	Trustee Standing Agenda Commercial land occupation and DOGIT Transfers	That Culture, Arts Land and Heritage Committee look further into the Ailan Custom provisions under legislation.	Executive Director Corporate Services	

TORRES STRAIT ISLAND REGIONAL COUNCIL

TRUSTEE REPORT

TRUSTEE MEETING: January 20232

DATE: 24 January 2023

ITEM: Information Report for noting by Trustee

SUBJECT: *Badu Council v Minister*

AUTHOR: Julia Maurus, Senior Legal Officer

Recommendation:

The Trustee resolves to note the report.

Executive Summary:

This report addresses a November 2022 Trustee Meeting action item: Legal Services to prepare an information report on the *Badu Council v Minister* judicial review case for the December meeting, explaining the implications of DOGIT transfer (to which organisation can the DOGIT be transferred?).

Council also requested at the “DOGIT Trustee Matters” workshop on 16 November 2022 that the Senior Legal Officer recirculate the report on DOGIT entry to trust land.

Background:

With assistance from Moray & Agnew Lawyers, Dr Chris McLaughlin (Culturev8), Atherton Tablelands Law and Crown Law, the case in question has been located (File number: 11578/07) (**Attachment 1**).

In 2007, Badu Council (sic: Badu Island Council) and three Badu Islanders, represented by Bottoms English Lawyers, filed an originating application in the Queensland Supreme Court against the Minister for Natural Resources and Water (**Attachment 2**).

Orders were made by consent on 3 March 2008 (**Attachment 3**) requiring the Minister and Badu Island Council to take actions under (then) sections 25, 26 and 27 of the *Torres Strait Islander Land Act* (“the Act”) in relation to the potential transfer of the Badu Island Deed of Grant in Trust land.

The Court orders set out a timeline from 17 March 2008 to 4 August 2008 for the Minister to undertake community consultation and the Badu Island Council and Badu Islanders to recommend a proposed new trustee, what land should and should not be transferred and advise on all relevant aspects of Island custom. Final orders were made in 2009.

Badu Island Council was amalgamated with the other Island Councils to form Torres Strait Island Regional Council in 2008.

Up until 1 February 2014, land ownership on Badu Island was complicated. The Badulgal People held the Native Title under the 2004 Native Title Determination, and the land tenure was held by the Torres Strait Island Regional Council under the 1985 Deed of Grant in Trust (“DOGIT”) for and on behalf of the residents of Badu Island.

From 1 February 2014, the DOGIT was revoked (cancelled) and Torres Strait Islander Land in communal Freehold was granted by the State of Queensland to the Mura Badulgal (TSI) Corporation RNTBC, to be held by the RNTBC for and on behalf of the Badulgal People.

Therefore, from 1 February 2014, the Badulgal People hold both the native title and land tenure for Badu Island.

The land transfer occurred on Saturday 1 February 2014 by the State Government delivering a formal paper Land Title Deed to the Badulgal People at a ceremony held on Badu Island. Community Freehold title is the same interest in land as can be acquired in Cairns or other places in Queensland and Australia outside Indigenous communities, however instead of being owned by an individual(s), it is owned by a group of people (the Badulgal People), jointly. The Community Freehold title covers the whole of Badu Island. The Community Freehold title cannot be sold (unlike individual freehold title elsewhere in Australia). Only individual freehold can be sold. This may be an option in the coming years.

Comment:

At the time the 2008 Supreme Court orders were made in *Badu Council v Minister*, the Act was not restrictive as to who could be the new trustee of the land. The 2008 version of the Act is available here: <https://www.legislation.qld.gov.au/view/html/2008-03-15/act-1991-033#Act-1991-033>

The Act was amended in 2008, 2011, 2014 and 2019. Today, the relevant provisions for cancelling transferable DOGIT land and granting community freehold title Torres Strait Islander Land are in Part 4 of the Act, starting at section 34. Part 4 of the Act is included as **Attachment 4**.

Section 35 allows the Minister to appoint the RNTBC as the trustee of the land, with the land to be held for the native title holders of the land.

Alternatively, section 36 allows the Minister to appoint as the trustee of the land:

- a) a CATSI corporation that is qualified to hold the land [provided the CATSI corporation is the RNTBC for the land]; or
- b) a land trust.

It is the Minister's role to consult and consider the most appropriate grantee for the land, including considering the interests of Torres Strait Islanders particularly concerned with the land, and considering Island custom applicable to the land.

Section 38 requires the Minister to ensure that, before any land is granted as community freehold title Torres Strait Islander Land, that arrangements are in place to ensure that:

- Commonwealth and State services can continue to be provided;
- the local government can continue to provide local government services.

If the proposed new trustee is not the RNTBC, the Minister must also ensure that arrangements are in place to support use of the land by Torres Strait Islanders particularly concerned with it, and to ensure appropriate services (such as social housing, public works and community infrastructure) can be provided for communities on the land.

If there is land declared under regulation as "township land" under section 24 of the Act, then the Minister must also ensure that arrangements are in place to provide for the township land to continue to be used as township land and residents of the township land to continue to live on and access the land, and obtain tenure over the land under the Act. At present, there is no declared "township land" under the *Torres Strait Islander Land Regulation 2011*.

Andrew Kerr of Moray & Agnew Lawyers advised Council at the November Trustee Meeting that there is also the possibility of having the Minister declare that certain land in the community is non-transferable. Mr Kerr advised that this has been done in certain situations on the Cape, where it was considered impractical to transfer land in the town centre.

The relevant section is section 13 of the *Torres Strait Islander Land Act 1991*:

Section 13

Particular land may be declared to be not transferable land

(1) The Minister may, by gazette notice, make a declaration that relevant land is not transferable land if the Minister is satisfied that—

- (a) housing or essential or other infrastructure is situated on the land; or
- (b) the land is being used as a town site or part of a town site; or
- (c) the land is being used as if it were a road; or
- (d) having regard to the nature or use of the land, it is not appropriate or practicable in the

circumstances for the land to be granted in fee simple under this Act.

(2) In considering whether to make a declaration under subsection (1)(d), the Minister may have regard to matters relating to the nature or use of the relevant land the Minister considers appropriate, including, for example—

(a) whether the land is likely to be used as a town site or part of a town site; and

(b) whether the land is in a condition suitable to be granted under this Act.

(3) The Minister must not make a declaration under subsection (1)(d) before—

(a) if no appeal is made to the Land Court against the decision to make the declaration—the period for making an appeal ends; or

(b) if an appeal is made to the Land Court against the decision to make the declaration—the day the appeal is finally decided.

s 13 ins 2008 No. 29 s 78

amd 2011 No. 26 s 141

Finally, as requested, the November 2021 closed business report on DOGIT entry to trust land prepared by Peter Krebs, titled “Trustee Closed Business Report: Visitor entry onto DOGIT and COVID-19 protocols”, will be recirculated to Councillors separately with Closed Business materials.

The matter was recorded in the November 2021 Trustee Minutes as follows:

10. 11:40am – 11:48am LEGAL – CB – Visitor Entry onto DOGIT and COVID-19 Protocols

RESOLUTION:

Moved: Cr Francis Pearson; Second: Cr Seriako Dorante

- a. That Legal Services draft changes to SLL7 (ensuring consistency with and permissible under the ATSI(JLOM)A) to reflect the desired process (and formalise the current practice) where Divisional Councillor permission is required before entering community, except in emergency situations where waiting for permission is impractical. Consultation with Mer and Badu PBCs will be necessary to adopt these changes.
- b. That Legal Services draft the COVID-19 policy that we want to apply to our local government area in this public health emergency, including mandating vaccination (if permissible), and advocate with the State Government (via the Office of the Chief Health Officer) for the State to implement this policy as a public health directive / remote area declaration applicable to TSIRC’s local government area, with necessary statutory powers delegated to TSIRC.
- c. That Legal Services seek feedback from Manager Visitor Operations and Manager Environment & Health on the proposed changes, and present the draft changes to next SARG and OM for endorsement. (Note: last SARG meeting for the year is 30 November.)
- d. Responsible executive officer to provide a report on local law enforcement, as a standing agenda item on the monthly trustee meeting agenda.

MOTION CARRIED

RATIFIED Minutes – TRUSTEE – 15th November 2021

Considerations

Risk Management

This background information may assist the Trustee in deciding whether to seek a regulatory “township land” declaration, a Ministerial declaration of non-transferable land, or how otherwise to proceed in the context of the proposed Saibai, Ugar and lama land transfers.

Council Finance

Queensland Supreme Court file search fees applied to this query (a retrieval fee of \$27.25).

Consultation:

- November 2022 Trustee Meeting
- Crown Law
- Moray & Agnew Lawyers
- Atherton Tablelands Law

- Culturev8

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:

Saibai Land Transfer & Ugar Land Transfer: To facilitate the progression of transfer of Deeds of Grant in Trust from Council to community-based entity that has been fully endorsed by the community to be the trustee.

Statutory Requirements:

Torres Strait Islander Land Act 1991 (Qld)

Conclusion:

This background information may assist the Trustee in deciding whether to seek a regulatory “township land” declaration, a Ministerial declaration of non-transferable land, or how otherwise to proceed in the context of the proposed Saibai, Ugar and Iama land transfers.

**Recommended:**

Noeleen Selke

Executive Director Corporate Services

**Endorsed:**

James William

Chief Executive Officer

Attachments:

1. File summary: *11578/07 BADU COUNCIL & others -V- MINISTER FOR NATURAL RESOURCES AND WATER AND MINISTER ASSISTING THE PREMIER IN NORTH QUEENSLAND*
2. Originating application
3. 2008 Supreme Court orders
4. Part 4 of the *Torres Strait Islander Land Act 1991* (current)



File summary

Supreme and District Court - Search civil files

Electronic records commenced in different centres at different times. Please check the [available files](#) to ensure your search is effective. If you are a party to this matter and believe a correction should be made to an eFile entry, please email ccu@justice.qld.gov.au

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11578/07 BADU COUNCIL & others -V- MINISTER FOR NATURAL RESOURCES AND WATER AND MINISTER ASSISTING THE PREMIER IN NORTH QUEENSLAND

Originated in	Currently in	Proceeding type	Date filed	Next listing	Supreme
Brisbane	Brisbane	Originating Application-Judicial Review	17/12/2007		

Related files

There are no Related files on this file

Parties

Last/Company name	First name	ACN	Party role	Representative
BADU COUNCIL			Applicant	BOTTOMS ENGLISH Lawyers
BOWIE	RICHARD		Applicant	BOTTOMS ENGLISH Lawyers
MINISTER FOR NATURAL RESOURCES AND WATER AND MINISTER ASSISTING THE PREMIER IN NORTH QUEENSLAND			Respondent	CROWN SOLICITOR
NOMOA	MANUEL		Applicant	BOTTOMS ENGLISH Lawyers
TAMOY	CHARLOTTE		Applicant	BOTTOMS ENGLISH Lawyers

Events

Date	Event type	Diary Type	Resource	Result
1/02/2008	Application - Review	Applications (Judge)	Dutney J	Adjourned After Commencement
3/03/2008	Application - Review	Applications (Judge)	Fryberg J	Order
13/06/2008	Application for Consent Order	Registry	Registrar Applications	Refused

Documents

Doc no	Date filed	Document type	Document description	Filed on behalf of	Pages
1	17/12/2007	Application (Originating)		Applicant	
2	17/12/2007	Affidavit	P GADSBY	Applicant	
3	17/12/2007	Affidavit	R BOWIE	Applicant	
4	2/01/2008	Notice of Address for Service	OF RESPONDENT	Respondent	
5	17/01/2008	Affidavit	OF M NUMOA	Applicant	
6	17/01/2008	Affidavit	OF C TAMOY	Applicant	
7	1/02/2008	Draft Order	DUTNEY J on 01/02/08	Respondent	
8	3/03/2008	Draft Order	FRYBERG J on 3/3/08	Applicant	
9	19/03/2008	Final Order	DE JERSEY CJ, 3/03/2008	Registrar	
10	12/06/2008	Affidavit	of J BOTTOMS + EXHIBITS "JRB1" - "JRB2"	Applicant	
11	13/06/2008	Order	REGISTRAR 13 JUNE 2008	Applicant	
12	29/01/2009	Order	DAUBNEY J, 1/2/08	Respondent	

SUPREME COURT
OF QUEENSLAND

17 DEC 2007

FILED
BRISBANE

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: 11578 of 2007

First Applicants: **THE BADU COUNCIL**

AND

Second Applicants: **RICHARD BOWIE**
CHARLOTTE TAMOY
MANUEL NOMOA

AND

Respondent: **THE MINISTER FOR NATURAL RESOURCES AND
WATER AND MINISTER ASSISTING THE PREMIER
IN NORTH QUEENSLAND**

COPY



APPLICATION FOR REVIEW

FEE:	938
INIT:	<i>[Signature]</i>
REC:	2825204
ENT:	<i>[Signature]</i>

The applicants claim:

1. A prerogative order requiring the respondent to carry out his/her duty, as required by s.27 of the *Torres Strait Islander Land Act 1991* ("TSIL Act") to direct the Registrar of Titles to prepare Deeds of Grant in Fee Simple ("DOGFS") for the lands presently the subject of those Deeds of Grant in Trust under the *Land Act 1994* of which the first applicants were respectively the trustees.
2. A prerogative order requiring the respondent to carry out his/her duty in accordance with s.26 of the TSIL Act in the selection and appointment of the Grantee for the DOGFS.
3. Such other order including any order as to costs as may be seem appropriate.

Application

Filed on behalf of the First Applicants and Second Applicants
Form 5 R26

Hemming + Hart Lawyers
Level 2, 307 Queen Street
BRISBANE QLD 4870
Phone: (07) 3002 8700
Ref: JPM:SXF:271756

Fax: (07) 3221 3068

As town agents for:
Bottoms English Lawyers
10 Grafton Street
CAIRNS QLD 4870
Phone: (07) 4051 5388
Ref: 17316

Fax: (07) 4051 5206



The grounds of the claim are set out in the accompanying affidavit.

TO THE RESPONDENT

A directions hearing in this application (and any claim by the applicant for an interlocutory order) will be heard by the Court at the time, date and place specified below. If there is no attendance before the Court by you or by your counsel or solicitor, the application may be dealt with and judgment may be given or an order made in your absence. Before any attendance at that time, you may file and serve notice of address for service.

APPOINTMENT FOR DIRECTIONS HEARING

Time and date: 1/2/08 AT 10:00 AM

Place: Supreme Court House George Street Brisbane

Signed:



REGISTRAR

Dated:

17/12/07

PARTICULARS OF THE FIRST APPLICANT:

Name: Badu Island Council

Business Address: Nona Street, Badu Island, Torres Strait Qld 4875

First Applicant's solicitor: Jonathan Peter Meadmore

And firm name: Hemming + Hart Lawyers

Solicitor's Business address: Level 2, 307 Queen Street, Brisbane Qld 4000

Address for service: GPO Box 142, Brisbane Qld 4000

DX (if any)

Telephone: (07) 3002 8700

Fax: (07) 3221 3068

E-mail address: jonm@hemhart.com.au

As town agents for:

First Applicant's solicitor: John Bottoms

And firm name: Bottoms English Lawyers

Solicitor's Business address: 10 Grafton Street, Cairns Qld 4870

Address for service: 10 Grafton Street, Cairns Qld 4870

DX (if any)

Telephone: (07) 4051 5388

Fax: (07) 4051 5206

E-mail address: JohnBottoms@belaw.com.au



PARTICULARS OF THE SECOND APPLICANTS:

Name: Richard Bowie

Residential Address: Badu Island, Torres Strait

Name: Charlotte Tamoy

Residential Address: Badu Island, Torres Strait

Name: Manuel Nomoa

Residential Address: Badu Island, Torres Strait

Second Applicants' solicitor: Jonathan Peter Meadmore

And firm name: Hemming + Hart Lawyers

Solicitor's Business address: Level 2, 307 Queen Street, Brisbane Qld 4000

Address for service: GPO Box 142, Brisbane Qld 4000

DX (if any)

Telephone: (07) 3002 8700

Fax: (07) 3221 3068

E-mail address: jonm@hemhart.com.au

As town agents for:

Second Applicants' solicitor: John Bottoms

And firm name: Bottoms English Lawyers

Solicitor's Business address: 10 Grafton Street, Cairns Qld 4870

Address for service: 10 Grafton Street, Cairns Qld 4870

DX (if any)

Telephone: (07) 4051 5388

Fax: (07) 4051 5206

E-mail address: JohnBottoms@belaw.com.au

Signed:

Description: Hemming + Hart Lawyers

Dated: 17 December 2007

This application is to be served on:

The Minister for Natural Resources and
Water and Minister Assisting the
Premier in North Queensland
Mineral House
Level 13, 41 George Street
BRISBANE QLD 4000



29 JAN 2008

REGISTRY: Brisbane
NUMBER: BS11578/07

FILED
BRISBANE

First Applicant

THE BADU COUNCIL

AND

Second Applicants

RICHARD BOWIE, CHARLOTTE TAMOY,
MANUEL NOMOA

AND

Respondent

THE MINISTER FOR NATURAL RESOURCES
AND WATER AND MINISTER ASSISTING THE
PREMIER IN NORTH QUEENSLAND

ORDER

Before: Dutney J


Date: 1 February 2008



Initiating document: Application for a Statutory Order of Review filed 17 December 2007

1. The application be adjourned to 3 March 2008.
2. The respondent file and serve any material upon which he intends to rely in the application on or before 4 pm on 28 February 2008.
3. Liberty to apply upon the parties giving two (2) business days notice in writing to the other.
4. Costs of and incidental to the application to be reserved.

Signed:


REGISTRAR

Order

Filed on behalf of the respondent

Form 59 R. 661
Per Phil Boustead
PL3/LAN044/3301/BOP
VF Ref: 102113

CW Lohe
CROWN SOLICITOR
11th Floor, State Law Building
50 Ann Street
Brisbane Qld 4000

Telephone 07 3239 6796
Facsimile 07 3239 3456

SUPREME COURT OF QUEENSLAND
SUPREME COURT
OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS11578/07

19 MAR 2008

First Applicants
FILED
BRISBANE

THE BADU COUNCIL

AND

Second Applicants

RICHARD BOWIE, CHARLOTTE TAMOY,
MANUEL NOMOA

AND

Respondent

THE MINISTER FOR NATURAL RESOURCES
AND WATER AND MINISTER ASSISTING THE
PREMIER IN NORTH QUEENSLAND

FINAL ORDER

Before:



Date:

3 March 2008

Initiating document: Application for a Statutory Order of Review filed 17 December 2007

THE ORDER OF THE COURT IS THAT:

Without in any way limiting the discretions of the Respondent inherent in ss. 25 and 26 of the
Torres Strait Islander Land Act 1991 ("the Act").

ORDER

Form 59 Rule 661

Bottoms English
Lawyers
10 Grafton Street
CAIRNS QLD 4870

Ph: 4051 5388
Fax: 4051 5206

COPY



By consent it is ordered:

1. Pursuant to s.27 of the Act that the Respondent give all necessary directions pursuant to s.25 of the Act in respect of the Deed of Grant in Trust Volume N1296 Folio 126 ("the directions");
2. By way of process for compliance with s.26 of the Act:
 - (a) On or before 17 March 2008 the Applicants:
 - (i) notify the Respondent of such land which it believes should not be the subject of the directions;
 - (ii) provide to the Respondent details of any proposed grantee or grantees as referred to in s.26(1) of the Act;
 - (iii) notify the Respondent of any Torres Strait Islanders who might be particularly concerned with the land;
 - (iv) inform the Respondent of all aspects of any process of consultation conducted by it to date with respect to the issue of a Deed of Grant for the land contained in Deed of Grant in Trust Volume N1296 Folio 126;
 - (b) On or before 31 March 2008 the Respondent shall notify the Applicants of any land which it believes should be the subject of the directions;
 - (c) On or before 31 March 2008 the Applicants provide to the Respondent all aspects of Island custom (as defined in the Act) which might be relevant to the making of the directions;
 - (d) On or before 14 April 2008 the Applicants are to provide to the Respondent any other submissions they consider relevant to the directions;
 - (e) On or before 12 May 2008 the Respondent shall advertise and/or call such meetings as it may deem necessary for the proper consultations as required by s.26 of the Act including notification of all matters referred to in paragraphs 2(a) to (d) above;
 - (f) All such advertised meetings shall be held on or before 2 June 2008;



- (g) On or before 23 June 2008 or within such longer period as the Applicants may allow the Respondent shall complete all other consultations it may deem necessary with respect to the directions;
 - (h) On or before 4 August 2008 or such later date as is 6 weeks from any extended time allowed pursuant to (g) above, but at least 21 days before giving the directions, the Respondent shall notify the Applicants of the directions he/she proposes to give in compliance with order 1 above;
- 3. Each party shall have liberty to apply upon giving 3 business days written notice to the other;
 - 4. The directions order made 1 February 2008 requiring the Respondent to serve material on or before 28 February 2008 be vacated.
 - 5. Costs reserved.

Signed:



Deputy Registrar



Minister: Treasurer and Minister for Trade and Investment

Agency: Queensland Treasury

Minister: Minister for Resources

Agency: Department of Resources

Minister: Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence

Agency: Department of Justice and Attorney-General

Torres Strait Islander Land Act 1991

Reprint current from 18 June 2021 to date (accessed 11 January 2023 at 10:45)

Part 4

Part 4 Grant of transferable land as Torres Strait Islander land

Division 1 Grant of land

34 Deeds of grant to be prepared

- (1) The chief executive must prepare such deeds of grant in fee simple as the Minister considers necessary and directs over transferable lands.
- (2) Transferable land need not be surveyed but may be described in a deed of grant in such manner as the Minister directs.
- (3) The deed of grant must show that the land is held by the grantee—
 - (a) if the grantee is a registered native title body corporate appointed as the grantee under [section 35](#)—for the native title holders of the land; or
 - (b) otherwise—for the benefit of Torres Strait Islanders particularly concerned with the land and their ancestors and descendants.
- (4) If the grantee is a registered native title body corporate appointed under [section 35](#), the deed of grant also must include information to identify the native title holders of the land.
- (5) Subsections (2), (3) and (4) have effect despite any other Act or any rule of law or practice.

s 34 prev s 34 om [2011 No. 26](#) s 161

pres s 34 amd [2008 No. 29](#) s 79; [2010 No. 39](#) s 321; [2011 No. 26](#) s 151

35 Appointment of registered native title body corporate as grantee to hold land for native title holders

- (1) This section applies to transferable land if—

- (a) under the Commonwealth Native Title Act, a determination has been made 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.
- (2) The Minister may, with the consent of the registered native title body corporate, appoint the body corporate to be the grantee of the land under a deed of grant prepared under section 34.
- (3) If the Minister appoints the registered native title body corporate to be the grantee of the land under this section, the body corporate holds the land for the native title holders of the land the subject of the determination mentioned in subsection (1)(a).
- (4) In considering whether to appoint a registered native title body corporate under this section, the Minister may have regard to any matter the Minister considers relevant to the proposed appointment, including, for example—
- (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.

s 35 ins 2008 No. 29 s 80

amd 2010 No. 39 s 322; 2011 No. 26 s 152

36 Appointment of grantee to hold land for benefit of Torres Strait Islanders

- (1) This section applies if the Minister does not appoint, under section 35, a registered native title body corporate as the grantee of land.
- (2) The Minister may appoint as grantee of the land—
 - (a) a CATSI corporation that is qualified to hold the land; or
 - (b) a land trust.
- (3) However, the Minister may appoint a CATSI corporation that is a registered native title body corporate as the grantee of the land under subsection (2) only if—
 - (a) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land and the CATSI corporation is the registered native title body corporate for the determination; or
 - (b) a determination has not been made under the Commonwealth Native Title Act that native title exists in relation to all or a part of the land, but the Minister is satisfied it is appropriate in all the circumstances to appoint the CATSI corporation as the grantee of the land.

Examples of when it is appropriate to appoint the CATSI corporation as the grantee of the land—

- 1 The appointment of the CATSI corporation is supported by consultation with Torres Strait Islanders particularly concerned with the land.
 - 2 The land is within the external boundaries of an area of land the subject of a native title determination and the CATSI corporation is the registered native title body corporate for the determination.
 - 3 An ILUA has been entered into for the land and the CATSI corporation is nominated in the ILUA as the proposed grantee for the land under this Act.
 - 4 Anthropological research supports the CATSI corporation as being the appropriate grantee.
- (4) Before making the appointment, the Minister must consult with, and consider the views of, Torres Strait Islanders particularly concerned with the land.
 - (5) Subsection (4) does not apply if an ILUA has been entered into for the land and the entity is nominated in the ILUA as the proposed grantee for the land under this Act.
 - (6) However, in considering whether to appoint an entity nominated in an ILUA as the proposed grantee for the land, the Minister may have regard to any matter the Minister considers relevant to the proposed appointment, including, for example—
 - (a) whether any Torres Strait Islanders particularly concerned with the land may be adversely affected by the appointment; and
 - (b) if the Minister is satisfied any Torres Strait Islanders particularly concerned with the land will be adversely affected by the appointment—any action the entity intends to take to address the concerns of the Torres Strait Islanders.
 - (7) Also, in considering whether to appoint a registered native title body corporate as the proposed grantee for the land, the Minister may have regard to any matter the Minister considers relevant to the proposed appointment, including, for example, the matters mentioned in section 35(4)(b) and (c).
 - (8) In appointing a grantee of land under this section, the Minister must have regard to any Island custom applicable to the land.

s 36 amd 1991 No. 76 s 46; 1993 No. 85 s 168L (amd 1994 No. 61 s 2 sch 2); 2008 No. 29 s 81; 2010 No. 39 s 323

sub 2011 No. 26 s 153

amd 2019 No. 7 s 303

37 Procedure for appointing particular grantee

- (1) Before appointing a grantee of land under this part, other than an entity nominated in an ILUA as the proposed grantee for the land, the Minister must—
 - (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 representations made to the Minister under subsection (4).

- (2) The notice must—
- (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.
- (3) The stated period must end at least 28 days after the notice is published.
- (4) A Torres Strait Islander particularly concerned with the land may make written representations about the proposed appointment to the Minister within the stated period.

s 37 ins 2011 No. 26 s 153

37A [Repealed]

s 37A ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37B [Repealed]

s 37B ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37C [Repealed]

s 37C ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37D [Repealed]

s 37D ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37E [Repealed]

s 37E ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37F [Repealed]

s 37F ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37G [Repealed]

s 37G ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37H [Repealed]

s **37H** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37I [Repealed]

s **37I** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37J [Repealed]

s **37J** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37K [Repealed]

s **37K** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37L [Repealed]

s **37L** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37M [Repealed]

s **37M** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37N [Repealed]

s **37N** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37O [Repealed]

s **37O** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37P [Repealed]

s **37P** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37Q [Repealed]

s **37Q** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37R [Repealed]

s **37R** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37S [Repealed]

s **37S** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37T [Repealed]

s **37T** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37U [Repealed]

s **37U** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37V [Repealed]

s **37V** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37W [Repealed]

s **37W** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37X [Repealed]

s **37X** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37Y [Repealed]

s **37Y** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37Z [Repealed]

s **37Z** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37ZA [Repealed]

s **37ZA** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37ZB [Repealed]

s **37ZB** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37ZC [Repealed]

s **37ZC** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

37ZD [Repealed]

s **37ZD** ins 2008 No. 29 s 85

om 2011 No. 26 s 163

38 Minister to act as soon as possible

- (1) The Minister must, as soon as practicable after the commencement of sections 34 and 36, give all necessary directions under section 34, and make all necessary appointments under section 35 or 36, in relation to land that is transferable land on the enactment day.
- (2) If, under section 9(1)(c) or 11, land becomes transferable land after the enactment day, the Minister must, as soon as practicable after the land becomes transferable land, give all necessary directions under section 34, and make all necessary appointments under section 35 or 36, in relation to the land.
- (3) However, the Minister need not act as mentioned in subsections (1) and (2) in relation to land until the Minister is reasonably satisfied—
 - (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

- (4) In this section—

local government services includes any services a local government might ordinarily provide for the community in its local government area.

s 38 amd 1993 No. 85 s 168M (amd 1994 No. 61 s 2 sch 2); 2008 No. 29 s 83; 2011 No. 26 s 155

39 Authority to grant fee simple in transferable land

The Governor in Council may, under this Act and the Land Act, grant transferable land in fee simple.

s 39 amd 2008 No. 29 s 73 sch

40 Deed of grant takes effect on delivery

- (1) A deed of grant prepared under this division takes effect on the delivery of the deed to the grantee.
- (2) On delivery of the deed of grant to the grantee, the land the subject of the deed becomes Torres Strait Islander land that is transferred land.
- (3) Subsection (1) has effect despite any other Act or any rule of law or practice.

s 40 amd 2011 No. 26 s 157

41 Existing interests

- (1) If transferable land was, immediately before becoming Torres Strait Islander land under this division, subject to an interest or benefited by an easement, the interest continues in force or the land continues to be benefited by the easement.
- (2) Without limiting subsection (1), if transferable land was, immediately before becoming Torres Strait Islander land under this division, the subject of—
 - (a) a 1985 Act granted lease or a new Act granted lease under the new Land Holding Act; or
 - (b) a lease under the Land Act; or
 - (c) a trustee (Torres Strait Islander) lease;

the trustee of the land is, by operation of this section, substituted for the lessor as a party to the lease.
- (3) The terms of a lease mentioned in subsection (2) are not affected by the operation of this section or any other provision of this Act and, for the purposes of those terms, the Land Act continues to apply to a lease under that Act, with all necessary modifications and such modifications as are prescribed, as if the lease continued to be such a lease and the trustee of the land were the lessor.
- (4) However, subsections (5) to (5B) apply if, under an available State land agreement—
 - (a) an interest in transferable land (the *previous interest*) ends on the grant of the land under this part; and
 - (b) a new interest granted by the trustee of the land is to have effect in substitution for the previous interest on the grant of the land.
- (5) Despite subsections (1) to (3), the previous interest ends on the grant of the land.
- (5A) However, if the previous interest was a lease under the Land Act (the *previous lease*) and the interest that is to have effect in substitution for the previous lease is a lease under the Land Title Act (the *new lease*)—

- (a) despite section 20(3) and the available State land agreement, the previous lease does not end until the new lease is registered in the freehold land register; and
 - (b) the lessee of the new lease must lodge the new lease for registration in the freehold land register immediately after the grant of the land; and
 - (c) if a sublease was in force under the previous lease immediately before the grant of the land, on the grant of the land the sublease continues under the new lease; and
 - (d) subject to paragraph (e) and subsection (5B), the new lease must be registered in the freehold land register subject to the same encumbrances to which the previous lease was subject, and in the same priorities, as recorded in the appropriate register immediately before the grant of the land; and
 - (e) any particulars recorded in the appropriate register for the previous lease immediately before the grant of the land must be recorded in the freehold land register for the land, to the extent the particulars are relevant to the land.
- (5B) If an easement that burdened the previous lease was in existence immediately before the grant of the land, on the grant of the land the easement—
- (a) continues in existence, despite the Land Act, section 372; and
 - (b) burdens the land the subject of the new lease; and
 - (c) is taken to have been registered under the Land Title Act, part 6, division 4.
- (6) Subsection (5) applies despite any other Act.
- (7) In this section—
- interest* includes—
- (a) native title; and
 - (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.

s 41 amd 1991 No. 76 s 47; 1993 No. 85 s 169; 1994 No. 81 s 527 sch 5; 2008 No. 29 s 73 sch; 2010 No. 39 s 324; 2011 No. 26 s 158; 2013 No. 2 ss 152, 155; 2019 No. 17 s 92; 2021 No. 11 s 29

41A Existing interests held by local government

- (1) This section applies if a local government has an existing interest under section 41 to access, occupy, use or maintain a facility on Torres Strait Islander land.
- (2) 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.
- (3) If subsection (2) does not apply, 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.

s **41A** ins 2013 No. 2 s 153

amd 2013 No. 23 s 352 sch 1 pt 1

42 [Repealed]

s **42** amd 1992 No. 64 s 3 sch 1; 1993 No. 85 s 169A (amd 1994 No. 61 s 2 sch 2); 2008 No. 29 s 73 sch; 2011 No. 26 s 159

om 2019 No. 17 s 93

43 Cancellation of deed of grant in trust

(1) This section applies if a deed of grant (the *new deed*) over the whole or a part of the land comprised in a deed of grant in trust takes effect under section 40.

(2) The deed of grant in trust is cancelled to the extent of the new deed.

s **43** amd 2008 No. 29 s 73 sch; 2011 No. 26 s 160

sub 2013 No. 23 s 209

44 Land Court may resolve difficulties

(1) If a difficulty arises in—

(a) the application of this division to a particular matter; or

(b) the application, to a particular matter, of a provision of another Act because of the operation of this division;

the Land Court may, on the application of the chief executive or an interested person, make such order as it considers proper to resolve the difficulty.

(2) An order made under subsection (1) has effect despite anything contained in this division or in an Act in force immediately before the commencement of this section.

s **44** amd 2011 No. 26 s 162

Division 2 Approvals to change how land is held

pt 4 div 2 hdg sub 2011 No. 26 s 163

pt 4 div 2 sdiv 1 hdg ins 2008 No. 29 s 85

om 2011 No. 26 s 163

pt 4 div 2 sdiv 2 hdg ins 2008 No. 29 s 85

om 2011 No. 26 s 163

pt 4 div 2 sdiv 3 hdg ins 2008 No. 29 s 85

om 2011 No. 26 s 163

pt 4 div 2 sdiv 4 hdg ins 2008 No. 29 s 85

om 2011 No. 26 s 163

pt 4 div 2 sdiv 5 hdg ins 2008 No. 29 s 85

om 2011 No. 26 s 163

pt 4 div 2 sdiv 6 hdg ins 2008 No. 29 s 85

om 2011 No. 26 s 163

pt 4 div 2 sdiv 7 hdg ins 2008 No. 29 s 85

om 2011 No. 26 s 163

45 Application to hold Torres Strait Islander land for native title holders

- (1) This section applies if—
 - (a) a CATSI corporation that is the trustee of Torres Strait Islander land becomes a registered native title body corporate after it became the trustee of the land; and
 - (b) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land; and
 - (c) the registered native title body corporate is registered on the National Native Title Register for the determination.
- (2) The registered native title body corporate may apply to the Minister in the approved form for an approval to hold the land under this Act for the native title holders of the land.

s 45 amd 2002 No. 74 s 90 sch

sub 2008 No. 29 s 85; 2011 No. 26 s 163

46 Decision on application

- (1) The Minister must consider an application made under section 45 and decide—
 - (a) to give the approval; or
 - (b) to refuse the application.
- (2) In considering the application, the Minister must have regard to—
 - (a) whether any Torres Strait Islanders particularly concerned with the land, other than native title holders of the land, may be adversely affected by the approval; and
 - (b) if the Minister is satisfied Torres Strait Islanders particularly concerned with the land will be adversely affected by the approval—any action the registered native title body corporate intends to take to address the concerns of the Torres Strait Islanders.
- (3) The Minister may give the approval only if, having regard to the matters mentioned in subsection (2), the Minister is satisfied it is appropriate in the circumstances to give the approval.

s 46 sub 2008 No. 29 s 85; 2011 No. 26 s 163

47 Notices about decision

- (1) The Minister must give the registered native title body corporate notice of the Minister's decision under section 46.
- (2) If the Minister gives the approval, the chief executive must notify the approval by gazette notice.
- (3) The gazette notice must—

- (a) state the name of the registered native title body corporate; and
 - (b) include a description of the Torres Strait Islander land held by it that relates to the approval.
- (4) As soon as practicable after the gazette notice is published, the chief executive must give the registrar notice of the approval.
- (5) The notice must include a description of the Torres Strait Islander land held by the registered native title body corporate for the native title holders of the land.
- (6) On receiving the notice, the registrar must record in the freehold land register that the land is held under this Act by the registered native title body corporate for the native title holders of the land.
- (7) In this section—
- description*, in relation to land, means the description of the land as shown in the freehold land register.

s 47 amd 2008 No. 29 s 86

sub 2011 No. 26 s 163

amd 2010 No. 31 s 575 sch 2 pt 4 (amdt could not be given effect); 2013 No. 23 s 352 sch 1 pt 1; 2021 No. 12 s 148 sch 3

48 Effect of gazette notice

On publication of the gazette notice, the registered native title body corporate is taken to hold the land under this Act for the native title holders of the land.

s 48 ins 2011 No. 26 s 163

Division 3 Reservations

49 Resource reservations under other Acts

A deed of grant of transferred land must contain the reservations to the State taken to be contained in the grant under the following—

- the *Geothermal Energy Act 2010*, section 29
- the *Greenhouse Gas Storage Act 2009*, section 28
- the *Mineral Resources Act 1989*, section 8
- the *Petroleum Act 1923*, section 10
- the *Petroleum and Gas (Production and Safety) Act 2004*, section 27.

s 49 sub 2010 No. 31 s 576

50 Reservations of forest products and quarry material etc.

- (1) A deed of grant of transferred land may contain a reservation to the State of forest products or quarry material above, on or below the surface of the land only if the Minister declares that—
- (a) the forest products or quarry material is of vital State interest; and

- (b) the rights in the forest products or quarry material is reserved to the State.
- (2) If a deed of grant of transferred land does not contain a reservation of particular forest products or quarry material above, on or below the land, the Minister may declare that—
 - (a) the forest products or quarry material are of vital State interest; and
 - (b) rights in the forest products or quarry material are acquired by the State.
- (3) If the Minister makes a declaration under subsection (1) or (2), the trustee of the land is entitled to be paid by the State such reasonable compensation because of the reservation or acquisition as is agreed between the State and the trustee or, failing agreement, as is determined by the Land Court.
- (4) Despite subsection (1), a permit, lease, licence, agreement or contract granted or made under the *Forestry Act 1959*, before the day on which land became transferred land, in relation to the getting and selling of forest products or quarry material above, on or below the surface of the land, continues in force as if this section had not been enacted.

s 50 amd 1991 No. 76 s 48; 1993 No. 85 s 169B (amd 1994 No. 61 s 2 sch 2); 2011 No. 26 s 164; 2019 No. 17 s 94