



# Trustee Meeting

## Agenda

<b>Date:</b>	24 October 2023
<b>Time:</b>	9.00am
<b>Venue:</b>	(VC) VMR 8 – 0299 165 402 Guest PIN: 6905#

# Agenda

TSIRC **Trustee** Meeting – 24 October 2023

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Time	Agenda
9.00am	1. Welcome & Quorum Confirmation
9.05am	2. Opening Prayer
9.15am	3. Apologies
9.20am	4. Conflict of Interest (COI) - Declarable/Prescribed
9.25am	5. Confirmation of Previous Minutes (19 September 2023)
9.35am	6. Action Items from Previous Meetings
9.40am	7. CORPORATE SERVICES: Trustee Policy Review
9.45am	8. MOVE INTO CLOSED BUSINESS <i>Mayor to call for meeting to proceed into Closed Business</i>
	9. <b>(SAI*)</b> - CORPORATE SERVICES: DOGIT Update (verbal update) <i>[Reason for closed discussion: To allow the Trustee Council to discuss business for which public discussion would be likely to prejudice the interests of the Trustee Council or someone else]</i>
	10. MOVE OUT OF CLOSED BUSINESS <i>Mayor to call for meeting to move out of Closed Business</i>
10.10am	11. CONSIDERATION OF MATTERS DISCUSSED IN CLOSED BUSINESS
10.15am	12. BUSINESS ARISING
10.20am	13. Next Meeting: <b>16 November 2023 (Cairns)</b>
10.25am	14. Closing Remarks & Prayer

\* Standing Agenda Item (SAI)



In accordance with Section 169 of the *Local Government Act 2009* and Section 254 of the *Local Government Regulation 2012* the TSIRC Chief Executive Officer (Mr James William) conducted the declaration of office for **RANETTA ROBYN WOSOMO** to take office as TSIRC Councillor for Division 5 (Badu) immediately prior to the commencement of the September 2023 Trustee Council Meeting, to fill the vacancy arising due to the resignation of Cr Laurie Nona. Cr Wosomo will hold office until the results of the 2024 Queensland Local Government Elections on 16 March 2024 are formally declared.



# Draft Minutes

## TRUSTEE COUNCIL MEETING

### 19 September 2023

**PRESENT:**

**Mayor**

Division 1 - Boigu  
Division 2 – Dauan  
Division 3 – Saibai  
Division 5 – Badu  
Division 6 – Arkai  
Division 7 – Wug (St Pauls)  
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 Torengo Elisala  
Cr Conwell Tabuai  
Cr Ranetta Wosomo  
Cr Lama Trinkoon  
Cr John Levi  
Cr Getano Lui (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  
Executive Director Engineering Services  
Executive Director Financial Services  
Senior Legal Officer  
Executive Support Coordinator  
Executive Assistant to the Mayor  
Secretariat Officer

Mr James William  
Mr Wayne Green  
Mr Dawson Sailor  
Mr Martin Leech  
Mr David Baldwin  
Ms Hollie Faithfull  
Ms Julia Mauro  
Ms Sharon Russell  
Ms Trudi Lui  
Mr Darryl Brooks

*(telephone dial-in)*

**APOLOGIES:**

Division 4 – Mabuiag  
Division 8 – Kirirri (Hammond)

Cr Keith Fell  
Cr Seriako Dorante

### 1. Welcome & Quorum Confirmation

At 9.45am the Mayor completed a roll call of Councillors. A quorum for the September 2023 Trustee Council Meeting was noted and the Mayor formally opened the meeting by making 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 to Cr Conwell Tabuai and the Sabai Island community as hosts for the September 2023 Council Meeting;
- Acknowledgements of Traditional Owners throughout Zenadth Kes and the communities and constituents that Council serves;
- All Elders with us, past, present and emerging.

The Mayor also acknowledged those members of the community who are experiencing Sorry Business and extended to them the thoughts and prayers of Council at this time.

### 2. Opening Prayer

Cr John Levi delivered the opening prayer and a minute of silence was observed by those present for reflection and to honour those who have recently passed.

The Mayor formally welcomed Cr Ranetta Wosomo to the meeting and this welcome was seconded with applause by all Councillors present. The Deputy Mayor, Cr Getano Lui (Jnr) AM, especially welcomed Cr Wosomo as the TSIRC's second female Councillor and stated his personal support for more communities across the TSIRC footprint to encourage more women to nominate for election onto the Council.

Cr Wosomo thanked the Mayor, Deputy Mayor and Councillors for their warm welcome and congratulations and reiterated her commitment to fulfilling her role as the Councillor for Badu. Cr Wosomo also made special acknowledgement to the Saibai community and families and thanked them for their ongoing support.

The Mayor also welcomed Mr Martin Leech, Acting Executive Director Corporate Services, to his first face-to-face Council meeting.

### 3. Apologies

The following apologies were noted:

- Cr Keith Fell (Division 4 – Mabuiag) due to medical reasons; and
- Cr Seriako Dorante (Division 8 – Kirirri) due to cultural/family commitments.

#### **RESOLUTION**

*Moved: Cr John Levi*

*Second: Cr Francis Pearson*

**That the Trustee accepts the apology of Cr Keith Fell for the September 2023 Trustee Council Meeting.**

**CARRIED UNANIMOUSLY**

**RESOLUTION**

*Moved: Cr Torenzo Elisala*

*Second: Cr Kabay Tamu*

**That the Trustee accepts the apology of Cr Seriako Dorante for the September 2023 Trustee Council Meeting.**

**CARRIED UNANIMOUSLY**

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

Mayor Mosby requested that members make any relevant conflict of interest declarations and to also advise if they were currently involved in any legal proceedings which pertain to Trustee business to be considered at the meeting.

Cr Jimmy Gela advised that he has COI in relation to CEQ/IBIS matters because his brother is the General Manager of CEQ. Cr Gela advised that he will excuse himself from the meeting during discussion of Agenda Item 8.

No other declarations were made.

**5. Previous Minutes (30 August 2023)**

**RESOLUTION**

*Moved: Cr Lama Trinkoon*

*Second: Cr Conwell Tabuai*

**That the Trustee accepts the minutes of the Trustee Meeting held on 30 August 2023, with minor grammatical amendments, to be a true and accurate account of that meeting.**

**CARRIED UNANIMOUSLY**

**6. Action Items from Previous 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.

**ACTION:**

1. Chief Executive Officer to provide Councillors with a copy of the Notice of Intent published in the *Torres News* on 28 August 2023 regarding Iama.
2. Invite the Department of Resources and Minister for Resources to attend DOGIT discussions at the November 2023 Council Workshop.

**7. MOVE INTO CLOSED BUSINESS**

**RESOLUTION**

*Moved: Cr Francis Pearson*

*Second: Cr Rocky Stephen*

**That the Trustee resolve to close the meeting to the public pursuant to section 84 of the *Local Government Act 2009* to allow the Trustee Council to discuss contracts proposed to be made by the Trustee Council (CEQ leases), for which public discussion would be likely to prejudice the interests of the Trustee Council.**

**CARRIED UNANIMOUSLY**

**9. MOVE OUT OF CLOSED BUSINESS**

**RESOLUTION**

Moved: Cr Torenzo Elisala

Second: Cr Conwell Tabuai

That the Trustee resolve to move out of closed business and resume in open business.

**CARRIED UNANIMOUSLY**

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

- *Cr Jimmy Gela declared a conflict of interest in relation to the following agenda item (his brother is the General Manager of CEQ) and left the meeting at 10.15am prior to commencement of discussion.*

**8 CORPORATE SERVICES: CEQ Leases**

**RESOLUTION**

Moved: Cr Francis Pearson

Second: Cr Dimas Toby

That the Trustee decline the proposed amendments to the existing leases between Council and CEQ and the existing Conditional Agreements to Lease between Council and CEQ and authorise the Chief Executive Officer to continue negotiations with CEQ in alignment with Council policy.

**CARRIED UNANIMOUSLY**

**ACTION:**

Chief Executive Officer to consider inviting the CEQ Board to the November 2023 Council Workshop.

- *Cr Jimmy Gela rejoined the meeting at the conclusion of the above recommendation.*

**11. (SAI) - CORPORATE SERVICES: DOGIT Update**

The Chief Executive Officer advised the Trustee Council that the Standing Agenda Item (SAI) will be discussed as a verbal update within Closed Business at future meetings.

The Trustee Council noted the verbal update on DOGIT matters provided by the Chief Executive Officer.

- *At 11.00am the Mayor invited Councillors to take a short break for morning tea and to refresh. The meeting resumed at 11.15am.*



## 12. BUSINESS ARISING

### (a) Saibai Church

Cr Conwell Tabuai requested an update on the status of repairs in relation to the heritage-listed Saibai Church. The Mayor advised that he will discuss this matter at the Mayor's Information Session with the Saibai community on 21 September 2023.

#### **ACTION:**

1. Executive Director Financial Services to provide Councillors with a copy of all churches on TSIRC DOGIT land where there is no current registered church lease.
2. Executive Director Corporate Services to explore financial and other assistance options to assist in the maintenance and/or restoration of heritage-listed sites and buildings.
3. Executive Director Financial Services to provide Councillors with a copy of the TSIRC Policy on accessing DOGIT reserve funds.

## 13. Next Meeting: 24 October 2023 (VC)

Noted by Council.

## 14. Closing Remarks & Prayer

The Mayor formally closed the Trustee Council meeting at 11.35am.

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

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



# TRUSTEE MEETING

## ACTION ITEMS

### Actions Arising from September 2023 Meeting

Agenda Item	Action	Action Area	Current Status
Sept 2023 Mtg  AI 6 Action Items from Previous Meetings	<ol style="list-style-type: none"> <li>Chief Executive Officer to provide Councillors with a copy of the Notice of Intent published in the Torres News on 28 August 2023 regarding Iama.</li> <li>Invite DOGIT Qld Govt. minister/department to November 2023 Council Workshop.</li> </ol>	Chief Executive Officer	<ol style="list-style-type: none"> <li>Completed. Emailed to Councillors 26 Sept 2023.</li> <li></li> </ol>
Sept 2023 Mtg  AI 8 (CB) CEQ Leases	Chief Executive Officer to consider inviting the CEQ Board to the November 2023 Council Workshop.	Chief Executive Officer	
Sept 2023 Mtg  AI 12 Business Arising	<p><b><u>Saibai Church</u></b></p> <ol style="list-style-type: none"> <li>Executive Director Financial Services to provide Councillors with a copy of all TSIRC-owned churches within the TSIRC footprint.</li> <li>Executive Director Corporate Services to explore financial and other assistance options to assist in the maintenance and/or restoration of heritage-listed sites and buildings.</li> <li>Executive Director Financial Services to provide Councillors with a copy of the TSIRC Policy on accessing Trust Fund Monies.</li> </ol>	<ol style="list-style-type: none"> <li>ED Financial Services</li> <li>ED Corporate Services</li> <li>ED Financial Services</li> </ol>	

<b>OUTSTANDING ACTIONS FROM PREVIOUS MEETINGS (updated at September 2023 Trustee Meeting)</b>			
Aug 2023 Mtg  AI 7 Action Items from Previous Meetings	<ol style="list-style-type: none"> <li>Trustee to consider sending a deputation 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.</li> <li>November 2023 Workshop to examine in detail the TSIRC's Trustee Policy, including particular focus on 'Power of Veto' policy.</li> </ol>	Councillors / Secretariat	In progress.
Aug 2023 Mtg  AI 11 Business Arising	<u>DOGIT/Land Matters</u>  Mayor Mosby to speak to Cr Torenzo Elisala out of session to clarify several issues in relation to divestment policy and other matters for feedback to community.	Mayor	In progress.
May 2023 AI 7B	<b>Power of Veto</b>  Acting Executive Director Corporate Services to prepare a briefing paper on Power of Veto matters for consideration at an upcoming meeting of the Culture, Arts, Land and Heritage Committee.	Acting Executive Director Corporate Services	In progress. No update at present. Power of Veto exists in two forms: <ul style="list-style-type: none"> <li>by Local Government as Trustee over DOGIT; and</li> <li>by Native Title holders</li> </ul> Very complicated processes. To be considered in detail at the November 2023 Council Workshop.
May 2023 AI 12	<b>Business Arising (Status of Ugar and Saibai re DOGIT)</b>  Further information to be provided to Minister Scott Stewart by Chief Executive Officer on TSIRC's stand on DOGIT and lessons learned.	Chief Executive Officer	In progress. The Department remains steadfast to maintaining the status quo. Letter to Premier to be prepared to urge the Department to stop the urgency and consider the unintended consequences impacting on the community.

			<p>Cr Rocky Stephen advised that this matter has been ongoing for far too long and requested that priority be given to putting concerns to the Minister in writing as soon as possible.</p> <p>The prime principle of importance is that TSIRC holds DOGIT in trust on behalf of the 'common' (the entire Community), whereas PBCs represent only native title holders (land holders).</p> <p>At this stage, it would appear that there can be no administrative solution without a political solution.</p>
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## TRUSTEE AGENDA REPORT

<b>ORDINARY MEETING:</b>	October 2023
<b>DATE:</b>	24 October 2023
<b>ITEM:</b>	Agenda Item for Resolution by Trustee
<b>SUBJECT:</b>	Trustee Policy Review
<b>AUTHOR:</b>	Julian Bodenmann, Preston Law Julia Maurus, Senior Legal Officer
<b>PRESENTER:</b>	Julian Bodenmann, Preston Law

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### Recommendation:

That the Trustee endorse the draft Trustee Policy, as presented, for community consultation, and delegate to the Chief Executive Officer the power to develop and carry out a community and stakeholder consultation process on the draft Trustee Policy considered at this meeting.

### Executive Summary:

Council, both at Trustee meetings and through its SARG Committee, has considered the need to develop a Trustee Policy to inform Trustee decision making, including in relation to how leases over Council Deed of Grant in Trust ("**DOGIT**") land are granted.

The purpose of this Report is to present a draft Policy to the Trustee and, if the Trustee is satisfied with this draft Policy as a consultation draft, delegate to the Chief Executive Officer ("**CEO**") the power to carry out community and stakeholder consultation on the draft.

### Background:

A review of the Trustee Policy has been on the Trustee's agenda for some time.

A draft Policy has now been developed, and this Report recommends that the Trustee endorse the Policy for community consultation.

The draft Policy shows a number of changes in mark up. Key changes are explained below.

#### Adopting a decision-making process for trustee leasing decisions

A key feature of this review was to consider the implications of the *Torres Strait Islander Land Act 1991* ("**TSILA**") and the *Aboriginal Land Act 1991* ("**ALA**"), and in particular the requirement on trustees under those Acts to adopt a "decision-making process" for trustee decisions (including decisions about leasing).

The relevant provision of the TSILA is extracted below. A corresponding provision that is substantially identical (but refers to Aboriginal tradition rather than Island custom) is contained in the ALA:

### **135 Decision-making by trustee**

*(1) This section applies if this Act provides that the trustee of Torres Strait Islander land is required to make a decision about the land, including, for example, a decision about any of the following—*

- (a) the way in which the trustee will consult about the making of a freehold instrument for the land;*
- (b) whether to grant an interest in the land;*
- (c) whether to consent to the creation of a mining interest in the land;*
- (d) whether to enter into an agreement about the land.*

*(2) The trustee must—*

*(a) have regard to—*

- (i) if the Torres Strait Islanders for whom the trustee holds the land have agreed on a decision-making process for decisions of that kind—the process; or*
- (ii) if subparagraph (i) does not apply—any Island custom, for decisions of that kind, of the Torres Strait Islanders for whom the trustee holds the land; or*

*(b) if there is no decision-making process mentioned in paragraph (a)(i) or relevant Island custom—make the decision under a process of decision-making agreed to and adopted by the trustee for the decision or for decisions of that kind.*

Key definitions for this section of the TSILA and ALA are:

- Torres Strait Islanders particularly concerned with land (section 3, TSILA):

#### **3 Torres Strait Islanders particularly concerned with land etc.**

*(1) For the purposes of this Act, a Torres Strait Islander is particularly concerned with land if the Torres Strait Islander—*

- (a) has a particular connection with the land under Island custom; or*
- (b) lives on or uses the land or neighbouring land.*

*(2) For the purposes of this Act, Torres Strait Islanders are particularly concerned with land if—*

- (a) they are members of a group that has a particular connection with the land under Island custom; or*
- (b) they live on or use the land or neighbouring land.*

- Torres Strait Islander (section 5, TSILA):

#### **5 Meaning of Torres Strait Islander**

*A Torres Strait Islander is a person who is a descendant of an indigenous inhabitant of the Torres Strait Islands.*

- Island custom (section 6, TSILA):

## **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.*

- Aboriginal people particularly concerned with land (section 3, ALA):

### **3 Aborigines particularly concerned with land etc.**

*(1) For the purposes of this Act, an Aborigine is particularly concerned with land if the Aborigine—*

*(a) has a particular connection with the land under Aboriginal tradition; or*

*(b) lives on or uses the land or neighbouring land.*

*(2) For the purposes of this Act, Aboriginal people are particularly concerned with land if—*

*(a) they are members of a group that has a particular connection with the land under Aboriginal tradition; or*

*(b) they live on or use the land or neighbouring land.*

- Aboriginal tradition (section 7, ALA):

### **7 Meaning of Aboriginal tradition**

*Aboriginal tradition is the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships.*

Following the Trustee's involvement in the Supreme Court and Court of Appeal proceedings brought by Alonza Ahwang, the need to create a considered, merits-based decision-making process that is consistent with section 135 of the TSILA (and the corresponding provision of the ALA) has been brought into focus for the Trustee.

The Policy is intended to contain the Trustee's process for decision-making, pursuant to section 135 of the TSILA.

However, at this stage, the Policy is silent about:

- whether any process has been agreed to by Torres Strait Islanders or Aboriginal people for whom the Trustee holds land, about leasing matters or other matters regarding the allocation of land;
- Island custom or Aboriginal tradition about leasing matters (or other matters regarding the allocation of land), of the Torres Strait Islanders or Aboriginal people for whom the Trustee holds land.

(**"Traditional Process"**).

Any Traditional Process that does exist should be reflected in this Policy.

In addition, any decision-making process adopted by the Trustee needs to be merits-based; that is, a decision needs to be made on the merits of each EOI, rather than in another way (for example, by

selecting competing EOIs at random following a community ballot, unless there is some evidence to support the proposition that such a process reflects a Traditional Process).

Subject to any Traditional Process that exists, the Policy sets out a clear process for how the Trustee:

- receives EOIs;
- deals with inconsistent interests – for example, EOIs over land where there are other incompatible registered or unregistered interests;
- carries out a preliminary assessment of EOIs to confirm whether the Trustee is prepared to progress them. Currently, the Trustee seeks guidance from the Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts (“**DATSIP**”) to prepare a Preliminary Assessment Report;
- carries out public consultation. It is proposed that at least a 3 week public consultation process is notified. In this section ,the Policy clarifies that:
  - unless the Trustee resolves to accept late comments, it will not consider comments received after this process. This is designed to provide applicants with greater certainty;
  - the Trustee can resolve to refuse comments that it considers are frivolous, vexatious or designed to frustrate the EOI process;
- deals with EOI disputes. However, this process will need to be informed by any Traditional Process that might exist and will need to be carefully worked through. The current policy drafting provides that the Trustee will notify all affected parties, and if the dispute is not resolved within 3 months, the Trustee, based on its own knowledge of land matters and customs, can either decide to progress one of the EOIs, or none of them;
- refuses EOIs;
- prepares formal documentation with EOI applicants;
- delegates decision-making to the CEO (although nothing in this Policy automatically delegates any decision-making function).

#### Trustee Rent Methodology

The Policy also contains amendments clarifying the Trustee’s rent methodology for particular land uses.

One of the issues that requires clarification is the Land Use categories. There are two sets of categories that require further definition in order to ensure there is no confusion:

- Residential/Community;
- Commercial/Government.

Other categories are clear and straightforward.

It is recommended that the Trustee clarifies in its Policy:

- What type of lease will be considered a “community” lease;
- What type of lease will be considered a “commercial” lease – for example:
  - Is there any possible risk of overlap with a “community” lease?



- For home businesses, what category of rental should be applied?

### Other amendments

Other relevant amendments to the Trustee Policy include:

- Clarifying the circumstances in which the Trustee and Council apply revenue for commercial licensing (section 8);
- Clarifying a process for the resolution of Katter lease entitlements (section 9);
- Setting out house sale prices consistently with the methodology agreed with the State under the ALA and TSILA (section 9). This reflects figures updated to CPI in June 2022;
- Developing provisions around home ownership leasing consistently with the requirements of the ALA and TSILA (section 9);
- Setting out high level comments about the Trustee's policy position on land transfers (section 10). In this regard, the Policy has been developed to clarify the circumstances in which the Trustee might support a land transfer, and relevant considerations for the land transfer;
- Setting out a process for the Trustee to provide landowner consent to firearms licence applications (section 11).

### Next Steps

With a draft Policy now developed, it is recommended that the Trustee engages in community and stakeholder consultation in relation to this document, as a consultation draft. The recommended resolution contained within this Report proposes to delegate the power to develop and roll out the consultation process to the CEO.

It is expected that the consultation process will include:

- Direct engagement with each community to determine the existence of any Traditional Process.

This will obviously be a time-consuming process that will require in-person attendances in each community, potentially more than once. It is proposed that that be delivered throughout 2024.

The way in which this consultation will be carried out, including the financial implications of the proposal, are set out later in this Report, under the heading "Considerations".

- Engagement with Native Title Prescribed Bodies Corporate and the Native Title Representative Body, GBK, about whether there is any knowledge of any Traditional Process applicable to any community.
- Engagement with the Torres Strait Regional Authority, as an entity that has substantial corporate knowledge of the Torres Strait region generally, about whether there is any knowledge of any Traditional Process.
- Engagement with all of these entities about the Policy generally.
- Publication of advertisements in newspapers, bulletins, social media, websites and physically on notice boards to ensure the consultation exercise is notified as widely as possible.

## Considerations:

### Risk Management

Policies should be regularly reviewed to ensure statutory compliance and risk management, and to reflect Council's current operating model and best practice.

The Trustee Policy requires review as a result of the *Ahwang v TSIRC* court decisions.

Council must consult with each community to ensure the Trustee's decision-making process is not challenged again in the future. This policy review will avoid future invalid Trustee decisions.

### Council Finance

It is proposed to fund community consultation as follows:

1. Legal Services to write a CEO letter to the DATSIP and the Department of Housing ("DOH") to propose a working group (interdepartmental) consultation program to visit each TSIRC DOGIT community to deliver home-ownership information and confirm the community decision-making process for leases. This will:
  - (a) align with delivery of the Katter lease resolution project, which has been previously considered by the Trustee;
  - (b) align with delivery of Council's Operational Plan outcomes to create a working group for home-ownership options and develop community awareness of home-ownership programs, options, processes and mechanism
  - (c) align with the rollout of the Regional ILUA (Housing and Infrastructure Indigenous Land Use Agreement) home-ownership process in each community
  - (d) address the need to confirm the trustee's decision-making process following the *Ahwang v TSIRC* Supreme Court decision
2. Fund Council's representative from the Legal Services travel budget, with the Manager Legal Services or Legal Officer to facilitate each community consultation on the lease decision-making process.

Alternatively, Council could hire a consultant legal advisor to facilitate these community consultations on behalf of Council.

Once each community's decision-making process has been enshrined in the Trustee Policy, further community consultations (or community forum input) will be required to allow Council to decide the dozens of home-ownership applications and outstanding enterprise and commercial lease applications. This will involve further expense that would be costed to the Legal Services travel budget.

The DATSIP Home Ownership Team is available to assist with home-ownership leasing project work once Council's Trustee Policy is updated.

### - Freehold Policy

At its June 2023 Meeting, the Trustee also considered the development of a freehold policy, and resolved as follows:

### **RESOLUTION**

*Moved: Cr Rocky Stephen; Second: Cr John Levi*

*Council resolves to refer the pathway to residential freehold to SARG committee to prepare a policy addressing:*

- 1. The statutory and practical implications of residential freehold land on Torres Strait Island DOGIT.*
- 2. The comparative advantages and disadvantages of residential freehold as against 99-year home ownership leases.*
- 3. The Native Title Act considerations.*
- 4. What impact the transfer of the DOGIT to the PBC or other Land Trust would have on the residential freehold option.*
- 5. The interactions with Council Trustee lease policy, and 6. The role of security of tenure in self-governance.*

### **MOTION CARRIED UNANIMOUSLY**

Prior to the development of a policy, the Trustee may consider it is beneficial to engage in high-level consultation with communities (starting with one of the original pilot communities, Hammond Island, where a freeholding proposal received some level of community interest) to determine whether freehold is of interest before a considered policy position is developed.

If this is considered by the Trustee to be an appropriate approach having regard to its June 2023 resolution, then this engagement can take place at the same time as consultation on this Trustee Policy.

#### **- Alternatives**

An alternative would be to piggyback each community consultation after the on-island Council Ordinary Meetings. However, as on-island meetings are only half a dozen times a year, running the consultation this way would take years and would delay current lease applications further.

### **Consultation:**

Preston Law.

DSDSATSIP Home Ownership Team Manager.

#### **- Communications with existing EOI applicants**

Given the ongoing process of reviewing the Trustee Policy, it is proposed that the Trustee write to each existing EOI applicant to advise them of the progress of the review, and so that the applicant has some expectation as to when their EOI might be further considered by the Trustee.

A draft template letter has been developed for this communication, and is attached to this Report.

In particular specific cases, EOIs might be able to be progressed before the Trustee Policy review is completed. Those EOIs will be presented to the Trustee at a separate meeting. An example might be an EOI that has already been conditionally approved by the Trustee, and in circumstances where there is no active dispute (for example, a competing EOI) in relation to the EOI.

## **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

Strategic Pillar One - People

Sustainability - Our communities are consulted around liveable places, aligned to lifestyle and environmental sustainability

Pillar

7.1 Facilitate improvement to community housing awareness and information.

*Outcome: Work with key agencies to refresh and develop community awareness programs for home ownership options, processes and mechanisms.*

Operational Plan Objective 2021/22

*51. Create working group to develop collateral in collaboration with Torres Strait Regional Authority, Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships and NAB - for home ownership options.*

Operational Plan Objective 2022/23

*Carry over - 51. Create working group to develop collateral in collaboration with Torres Strait Regional Authority, Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships and NAB - for home ownership options.*

Success Measure 2022/23: *Working group established*

## **Statutory Requirements:**

*Torres Strait Islander Land Act 1991 (Qld)*

*Aboriginal Land Act 1991 (Qld)*

## **Conclusion:**

It is recommended that the Trustee endorse the draft Trustee Policy, as presented, for community consultation, and delegate to the Chief Executive Officer the power to develop and carry out a community and stakeholder consultation process on the draft Trustee Policy considered at this meeting.

## **Attachments:**

1. Draft Trustee Policy (tracked)
2. Draft Trustee Policy (clean)

3. Draft template letter to existing EOI applicants

*Julia Mauro*

**Author:**  
Julia Mauro  
Senior Legal Officer

*[Signature]*

**Approved:**  
James William  
Chief Executive Officer

*Mleech*

**Endorsed:**  
Martin Leech  
Acting Executive Director, Corporate Services



## TRUSTEE POLICY

PO 19

<b>Responsible Manager:</b>	Chief Executive Officer
<b>Head of Power:</b>	<i>Local Government Act 2009 (Qld)</i> <i>Local Government Regulation 2012 (Qld)</i> <i>Torres Strait Islander Land Act 1991 (Qld)</i> <i>Torres Strait Islander Cultural Heritage Act 2003 (Qld)</i> <i>Aboriginal Land Act 1991 (Qld)</i> <i>Aboriginal Cultural Heritage Act 2003 (Qld)</i> <i>Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984 (Qld)</i> <i>Aboriginal and Torres Strait Islander Land Holding Act 2013 (Qld)</i> <i>Native Title Act 1993 (Cth)</i> <i>Land Act 1994 (Qld)</i>
<b>Authorised by:</b>	Council resolution
<b>Authorised on:</b>	<del>15 November 2018; updated 25 June 2019</del> <u>INSERT DATE</u>
<b>Implemented from:</b>	15 November 2018
<b>Last Reviewed:</b>	2019; <u>2023</u>
<b>Review History:</b>	2019; <del>March 2022</del> <u>2023</u> <u>October 2023</u>
<b>Review Date:</b>	<del>30 June 2021</del> <u>2023</u> <u>2024</u> <u>31 January 2025</u>
<b>Corporate Plan:</b>	<i>Art, Culture, People</i>  Collective understanding of both Traditional and State Law ensuring a Safe Community  Provide a legal framework for Torres Strait Communities within the Torres Strait Island Regional Council municipality which addresses both State and Traditional Lore requirements  <i>Environment:</i>

Facilitate home ownership through active lobbying of State and Federal Government

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

Environmental and culturally significant landscapes are recorded, valued and protected

*Economic Participation:*

Full restoration of self-management and self-determination

## 1. POLICY STATEMENT

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

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

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

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

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

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

## 2. SCOPE

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

## 3. INTERPRETATION

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

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

**Ailan Kastom and Ailan Lore** (also known as Island custom) means, as defined in section 6 of the ~~*Torres Strait Islander Land Act 1991* (Qld)~~ TSILA, 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

[ALA means the \*Aboriginal Land Act 1991\* \(Qld\)](#)

[Applicant means a person who has made an EOI to the Trustee for a Lease](#)

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

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

[EOI means expressions of interest received by Applicants seeking the grant of a Lease over Land held by the Trustee](#)

[Formal Documentation means a Conditional Agreement to Lease, Lease or any other documents the Trustee considers to be appropriate to record the arrangement between the Trustee and an Applicant in respect of an accepted EOI.](#)

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

[Home Ownership Lease means a 99-year home ownership lease, granted under the ALA or the TSILA \(as the case may be\)](#)

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

[Land means any land held by the Trustee](#)

[Lease means any lease of Land, and includes a Home Ownership Lease](#)

[Leasing Decisions means any decision of the Trustee about leasing land under the ALA or the TSILA](#)

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

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

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

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

**Torres Strait Islander Freehold** means Torres Strait Islander Land, transferred under Part 4 of the [Torres Strait Islander Land Act 1991 \(Qld\)](#) **TSILA**

**Trustee** means Council in its capacity as trustee of land under the ALA or the TSILA (as the case may be)

**TSILA** means the [Torres Strait Islander Land Act 1991 \(Qld\)](#)

#### 4. NATIVE TITLE

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

#### 5. CULTURAL HERITAGE

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

#### 6. TRUSTEE DECISION-MAKING

##### [Introduction](#)

- (a) As Trustee, Council will fulfil its responsibilities in an informed and effective manner.

- (b) Each report to the Trustee Council proposing a land-related decision must include detailed information about the values of, and appropriate uses for, the DOGIT land, existing interests in the land, and community opinion about any proposed leases for that DOGIT.
- (c) A proposed Trustee decision that affects a specific DOGIT will not be tabled for Council's consideration unless it has the support of the Divisional Councillor. Where the Divisional Councillor has a conflict of interest or material personal interest, the matter can be referred to the Mayor or Deputy Mayor for advice. A Trustee resolution that affects a specific DOGIT may only be passed if the Divisional Councillor for that DOGIT is present and does not vote against the resolution. If the Divisional Councillor abstains from voting, the failure to vote is counted as a vote against the resolution. However, the Divisional Councillor's vote is not required if the Divisional Councillor has left the room due to a personal interest in the matter.
- (d) Development applications made to Council as local government may only be passed if the Trustee supports the proposed development. For DOGIT communities, this requires a Trustee resolution. For Torres Strait Islander Freehold and Aboriginal Freehold communities (non-DOGIT communities), this requires signed landowner consent to the proposed development.
- (e) This Policy is the Trustee's decision-making process, agreed to and adopted by the Trustee for Leasing Decisions, pursuant to section 135 of the TSILA and section 179 of the ALA, and so as to enable the Trustee to make properly informed, merit-based decisions in respect of those Leasing Decisions.
- (f) The Trustee has engaged in community consultation with communities in its local government area, and has formed the view that the processes set out in paragraphs xx of this Policy represent:
  - i. agreed decision-making processes of the Torres Strait Islanders for whom the Trustee holds the land, or Ailan Kastom for Leasing Decisions, for the purposes of section 135(2)(a) of the TSILA; and
  - ii. agreed decision-making processes of the Aboriginal people for whom the Trustee holds the land, or Aboriginal tradition for Leasing Decisions, for the purposes of section 179(2)(a) of the ALA.

**("Traditional Process")**

- (g) To the extent a Traditional Process is not described in this Policy, the Trustee has formed the view that:
  - i. the Aboriginal people for whom the Trustee holds the Land have not agreed upon any particular decision-making process for Leasing Decisions;

- ii. there is no Aboriginal tradition of Aboriginal people for whom the Trustee holds the Land in respect of Leasing Decisions;
  - iii. the Torres Strait Islanders for whom the Trustee holds the Land have not agreed upon any particular decision-making process for Leasing Decisions;
  - iv. there is no Ailan Kastom of Torres Strait Islanders for whom the Trustee holds the Land in respect of Leasing Decisions.
- (h) The view set out in the preceding paragraph has been developed:
- i. based on the Trustee's own views and the views of its Councillors, some of whom are traditional owners for the relevant land;
  - ii. following community consultation carried out in the following way:
    - A. [describe];
  - iii. following consultation with the Native Title Representative Body, Gur A Baradharaw Kod Sea and Land Council Torres Strait Islander Corporation ("GBK")
- (i) In developing this Policy, the Trustee has had regard to resources published by the Queensland Government for trustees, including the documents "Leasing Aboriginal Deed of Grant in Trust land – A manual for trustees" (Version 1.5 May 2020) and "Leasing Torres Strait Islander Deed of Grant in Trust land – A manual for trustees" (Version 1.5 May 2020), linked below:
- [https://www.resources.qld.gov.au/\\_data/assets/pdf\\_file/0016/107017/leasing-aboriginal-deed-grant-trust-land.pdf](https://www.resources.qld.gov.au/_data/assets/pdf_file/0016/107017/leasing-aboriginal-deed-grant-trust-land.pdf)
- [https://www.resources.qld.gov.au/\\_data/assets/pdf\\_file/0017/107018/leasing-torres-strait-deed-grant-trust-land.pdf](https://www.resources.qld.gov.au/_data/assets/pdf_file/0017/107018/leasing-torres-strait-deed-grant-trust-land.pdf)

#### **Traditional Process**

- (i) The decision-making process for each DOGIT held in trust by Council is as follows:
- i. Boigu Island
    - A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
    - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
    - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].

ii. Dauan Island

- A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
- B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
- C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].

iii. Saibai Island

- A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
- B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
- C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].

iv. Mabuiag Island

- A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
- B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
- C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].

v. Arkai/Kubin Community, Moa Island

- A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
- B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
- C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].

vi. Wug/St Pauls Community, Moa Island

- A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- vii. Kiriri (Hammond Island)
  - A. [confirm whether the relevant Islander inhabitants have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Aboriginal and/or Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- viii. Iama (Yam) Island
  - A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- ix. Warraber (Sue) Island
  - A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- x. Poruma (Coconut) Island

- A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- xi. Masig (Yorke) Island
  - A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- xii. Ugar (Stephens) Island
  - A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- xiii. Erub (Darnley) Island
  - A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].

### Trustee's Decision Making Process

**(a) Receiving Expressions of Interest**

- i. The Trustee is prepared to receive and consider EOIs made by Applicants who are interested in taking a Lease of Land from the Trustee.
- ii. The Trustee may approve a form in which EOIs are to be made.
- iii. If the Trustee has approved a form in which EOIs are to be made, the Trustee may reject any EOI that is not made in the approved form.
- iv. The CEO may, in their discretion, accept as an EOI material provided by an Applicant that is not in the approved form.
- v. When submitting an EOI, Applicants acknowledge that the Trustee may disclose their name and other particulars in their EOI to the public, including for the purposes of carrying out consultation or making other enquiries in accordance with this Policy.
- vi. At any point when considering the EOI, the Trustee may request further information from the Applicant that the Trustee believes is appropriate in order to enable the Trustee to consider the EOI. This includes information that may not necessarily be prompted by an approved form.

**(b) Inconsistent interests**

- i. The Trustee must refuse any EOI where the EOI concerns Land over which there is an existing registered or unregistered interest that is not compatible with the EOI. This includes any other EOI that has already been the subject of executed Formal Documentation.
- ii. For the avoidance of doubt, the preceding subclause does not require the Trustee to reject an EOI where there is a registered social housing lease over the Land, ~~and even if~~ the Applicant is ~~not~~ the social housing tenant.

**(c) Initial review at Trustee meeting**

- i. The Trustee will generally carry out an initial review of EOIs at a Trustee meeting, as soon as practicable after an EOI has been made in the approved form (or in such other form accepted by the CEO pursuant to Clause ~~xx~~).
- ii. The initial review will be informed by a report presented to the Trustee, that contains a preliminary assessment of information that is potentially relevant to the Trustee's consideration of the EOI. This preliminary assessment might include planning and environmental feasibility information and information about any inconsistent interests.
- iii. The purpose of the initial review described in the preceding subclause is:
  - A. to consider the matters set out in subclause (i) of this Policy;
  - B. to consider the application of any Traditional Process to the Leasing Decision;



C. to consider any other matters that the Trustee believes, acting reasonably, are issues that may cause the Trustee to decide to refuse the EOI pursuant to Clause xx of this Policy, without further consideration of the EOI.

**(d) Public Consultation**

- i. The Trustee recognises that it is important for the community to be consulted about the grant of any Leases over Land in the Torres Strait. In recognition of that, the Trustee will undertake public consultation on each EOI received in accordance with this clause of this Policy.
- ii. If the Trustee carries out an initial review of EOIs at a Trustee meeting (including pursuant to subclause (j) of this Policy), public consultation will generally follow that initial review.
- iii. The public consultation process must contain the following features:
  - A. the Trustee will prepare a notice disclosing the name of the Applicant and the address of the land proposed to be leased, and will invite submissions from the community about the EOI ("**Consultation Notice**");
  - B. the Consultation Notice will be published on Council's physical community noticeboard on the DOGIT where the Land the subject of the EOI is located, on social media, and on Council's website. The Trustee may also decide to publish the notice more widely.
- iv. The Trustee will allow a notice period of not less than 3 weeks for interested parties to make submissions on the EOI.
- v. If the Trustee receives submissions that do not support the grant of the Lease, then the Trustee will consider and deal with those submissions consistently with subclause (l) of this Policy.
- vi. Submissions received as part of subclause (k)(v) of this Policy will not be considered by the Trustee if the Trustee resolves that, in the Trustee's reasonable opinion, the submission is frivolous, vexatious or directed towards frustrating a bona fide EOI.
- vii. If a submission disputes the EOI because it is claimed that a person other than the Applicant should be entitled to a Lease rather than the Applicant, then the submission will only be considered by the Trustee if the submission specifies the name of the person who the submitter claims should be entitled to the Lease.
- viii. The Trustee considers that the public consultation process set out in this Policy is intended to provide all community members with a fair and reasonable

opportunity to be heard in relation to EOIs. Any dispute about an EOI that is made after a public consultation process has closed will not be considered by the Trustee, unless the Trustee resolves that it considers there is a reasonable basis for the dispute being raised at a late stage.

- ix. The policy position expressed in the previous subclause has been developed so that a transparent way of disputing EOIs is provided to the community, but, at the same time, Applicants have the benefit of certainty about how their EOIs will be considered.
- x. For the avoidance of doubt, the public consultation process will be taken to have been completed or closed after the end of the notice period advertised for comments in the public consultation notices.

#### (e) EOI Disputes

- i. This part of the Policy deals with how the Trustee makes decisions where:
  - A. an EOI has been made over Land ("the First EOI") and, before the public consultationPublic Consultation process for the First EOI has been completed in accordance with this Policy, a second EOI is made over all or part of the same area as the First EOI; or
  - B. a dispute is raisednotified to Council by a person about an EOI, at a point in time before Formal Documentation has been executed by the parties, including during the course of community consultationPublic Consultation, and the Trustee considers that the dispute is not frivolous, vexatious or directed at frustrating a bona fide EOI;
- ("EOI Dispute").
- ii. In the event of an EOI Dispute, the Trustee:
  - A. will defer further consideration of any EOIs directly affected by the EOI Dispute;
  - B. disclose the existence of the dispute to all affected EOI Applicants, along with particulars about the dispute (including, if appropriate, the name of any person who is claimed to be entitled to a Lease, if the submission is of the nature described in subclause (i)(A)).
- iii. After notifying the Applicant of the existence of a dispute pursuant to subclause (ii)(B) of this Policy, then the Trustee will only consider the EOIs affected by the EOI Dispute further:
  - A. if the Trustee is satisfied, based on information received from the Applicant and any third parties, that the EOI Dispute has been resolved; or

- ### (f) Refusing EOIs

- ii. If the Trustee rejects an EOI, Council shall notify the Applicant that their EOI has been rejected and shall provide a brief description of why the EOI is rejected.

**(g) Formal Documentation**

- i. The Trustee will prepare all Formal Documentation for Applicants to review and sign prior to grant of a Lease.
- ii. The Trustee may seek the assistance of external parties, including the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, to give effect to any aspect of the formal process or to implement any obligations set out in Formal Documentation.
- iii. Once Formal Documentation has been entered into, the legal provisions of that Formal Documentation ~~applies~~ apply and this Policy will no longer continue to apply, unless expressly provided for otherwise in the Formal Documentation.
- iv. The Formal Documentation will deal with matters such as:
  - A. Conditions that must be satisfied before a Lease can be executed and registered, such as survey and development approval, native title future act validation, and payment of a land price and payment of a house price;
  - B. Rental; and
  - C. payment of a Rates Component by the Applicant to Council, consistently with any ~~Rates Component Policy~~ Revenue Statement and Revenue Policy adopted by Council;
  - D. other terms and conditions of the Lease.
- v. For the avoidance of doubt, the Trustee will not consult with the public about the contents of the Formal Documentation. Negotiation of the Formal Documentation is a commercial matter between the Trustee and the Applicant (but the parties will be bound by any requirements applying to the Formal Documentation under the ALA or TSILA, or under the terms of this Policy or any other policy of the Trustee).

**(h) Delegation**

- i. The Trustee may delegate any Leasing Decision to the CEO. If the Trustee delegates a Leasing Decision to the CEO, then the CEO may make the Leasing Decision consistently with:
  - A. this Policy; and
  - B. any limitations and conditions of the delegation.
- ii. Nothing in this Policy prevents the CEO from sub-delegating a Leasing Decision delegated to the CEO, pursuant to section 259 of the LG Act.

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

## **6-7. LEASING GENERALLY**

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

### Trustee rent methodology

<u>Land Use</u>	<u>Rent</u>	<u>Source</u>
<u>Residential<sup>1</sup>/</u> <u>Community</u>	<u>\$4 per square metre per annum</u> <u>subject to annual CPI increase</u>	<u>Council resolution 15 May</u> <u>2018</u>
<u>Commercial/</u> <u>Government</u>	<u>\$13.20* per square metre per annum</u> <u>(GST inclusive) as at 1 July 2023.</u> <u>subject to annual CPI increase</u> <u><del>\$10.80* per square metre per annum</del></u> <u><del>subject to annual CPI increase</del></u> <u>*Minimum starting rent of \$6,000p/a</u> <u>per lease shall apply.</u>	<u>Council resolution 15 May</u> <u>2018</u>
<u>State school</u> <u>(Department of</u> <u>Education) campus</u>	<u>\$4.60 per square metre per annum</u> <u>(GST inclusive) as at 1 July 2023.</u> <u>subject to annual CPI increase</u> <u><del>\$4 per</del></u> <u><del>square metre per annum subject to</del></u> <u><del>annual CPI increase</del></u>	<u>Council resolution June 2019</u>
<u>State school</u> <u>(Department of</u> <u>Education)</u> <u>accommodation</u>	<u>\$13.20* per square metre per annum</u> <u>(GST inclusive) as at 1 July 2023.</u> <u>subject to annual CPI increase</u> <u><del>\$10.80* per square metre per annum</del></u> <u><del>subject to annual CPI increase</del></u> <u>*Minimum starting rent of \$6,000p/a</u> <u>per lease shall apply.</u>	<u>Council resolution June 2019</u>

<sup>1</sup> Note: under the ALA and TSILA, 99 year home ownership leases may only contain a rental amount of \$1.00 per annum. Therefore, this category excludes any residential lease that is a 99 year home ownership lease.

<u>Private school campus and accommodation</u>	<u>\$4.60 per square metre per annum (GST inclusive) as at 1 July 2023, subject to annual CPI increases\$4 per square metre per annum subject to annual CPI increase</u>	<u>Council resolution June 2019</u>
<u>Supermarket</u>	<u>\$13.20* per square metre per annum (GST inclusive) as at 1 July 2023, subject to annual CPI increase\$10.80* per square metre per annum subject to annual CPI increase</u>  <u>*Minimum starting rent of \$6,000p/a per lease shall apply.</u>	<u>Council resolution June 2019</u>
<u>Religious</u>	<u>\$1 per annum, payable on demand</u>	<u>CEO decision 17 October 2018, under Council delegation</u>
<u>Home-ownership lease</u>	<u>\$1 per annum, payable on demand plus up-front land price</u>	<u>Torres Strait Islander Land Act 1991</u>  <u>Aboriginal Land Act 1991</u>

#### 7.8. COMMERCIAL LEASING

- (a) Council, as owner of most of the buildings and houses in each community and as Trustee of DOGIT land, understands that long-term leases:
- provide a suitable arrangement with the different organisations and businesses providing services within the communities;
  - provide a revenue stream for Council; and
  - provide certainty to Council and to the Lessee.

(b) Council is committed to effective, equitable and efficient management of Council's assets and land which ensures appropriate returns and protects Council's interest while recognising the rights of organisations and businesses occupying these assets and land.

(c) Commercial licensing: Council receives commercial licence revenue for the following:

- i. Part of a TSIRC building (asset) e.g. room/office only
- ii. Whole of a TSIRC building (asset) e.g. BRACS building, old CDEP building
- iii. Land only used by an agency for IBC (airport land)
- iv. Land only used for agency-owned donga or storage container (DOGIT land)

(d) Categories 1, 2 and 3 above are received as local government (not trustee) revenue.

(e) Fees for category 4 above should be generating DOGIT revenue, calculated based on the land area used and Council's trustee rent methodology. From 1 July 2019, this DOGIT revenue will be deducted from the licence fees that TSIRC receives for each category 4 licence site (that is, no additional fees will be charged to the licensee).

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## 8.9. HOME OWNERSHIP

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

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

(a) Land Holding Act ("Katter") leases

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

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

- i. DSDSATSIP consultation regarding home ownership responsibilities. Entitlement holder/beneficiary signs a letter confirming understanding of home ownership. (For either vacant land or house)
- ii. If the entitlement holder/beneficiary is not the current tenant of the house, it may be necessary to wait for the tenant to be relocated to another social house.
- iii. If there are no obstacles, ~~DNRME~~ the Department of Resources will grant the lease to the entitlement holder, or beneficiary/beneficiaries. When the lease commences, TSIRC removes the house from its asset database and the general tenancy agreement terminates.
- iv. If the entitlement holder/beneficiary is the tenant of the LHA house, ~~DHPWDCHDE~~ will inspect the house, identifying any maintenance required.

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- v. Maintenance work undertaken by DHPWDCHDE.
- vi. The entitlement holder/beneficiary signs a form confirming maintenance has been completed.
- vii. Agreement to Transfer Dwelling is executed or gazette notice is published (depending on the type of entitlement).
- ~~(b)~~viii. The house now belongs to the entitlement holder/beneficiary.
- ~~(e)~~(e) Trustee decisions about *Land Holding Act* matters are to be made as follows:

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

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

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

#### 99-year home-ownership leases

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

- i. Expression of Interest (Form 1) submitted to Trustee – form on DNRME website
- ii. Trustee assesses EOI – approved/not approved
- iii. Development application and survey required – DSDSATSIP completes
- iv. Applicant submits loan application, requires preapproval – TSRA

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- v. DHPW-DCHDE inspects the house and provides the sale price and list of maintenance
- vi. Trustee offers the applicant an Agreement to Lease
- vii. Applicant accepts and signs the Agreement to Lease
- viii. Agreement to Lease conditions must be met (includes native title compliance)
- ix. DHPWDCHDE delivers maintenance on the house
- x. Lease signed and money paid to Trustee
- xi. Lease registered with Land Titles Office
- xii. Registered lessee is now a home-owner

#### Ordinary freehold option

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

#### House sale price

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

<u>House type</u>	<u>New condition</u>	<u>Good condition</u>	<u>Fair condition</u>
<u>1-bedroom detached</u>	<u>\$55,000</u>	<u>\$40,000</u>	<u>\$30,000</u>
<u>2-bedroom detached</u>	<u>\$65,000</u>	<u>\$50,000</u>	<u>\$35,000</u>
<u>3-bedroom detached</u>	<u>\$75,000</u>	<u>\$60,000</u>	<u>\$45,000</u>
<u>4-bedroom detached</u>	<u>\$90,000</u>	<u>\$75,000</u>	<u>\$60,000</u>
<u>5-bedroom detached</u>	<u>\$100,000</u>	<u>\$85,000</u>	<u>\$67,000</u>
<u>6-bedroom detached</u>	<u>\$110,000</u>	<u>\$95,000</u>	<u>\$75,000</u>
<u>7-bedroom detached</u>	<u>\$120,000</u>	<u>\$100,000</u>	<u>\$80,000</u>
<u>8-bedroom detached</u>	<u>\$130,000</u>	<u>\$110,000</u>	<u>\$90,000</u>
<u>2-bedroom duplex</u>	<u>\$50,000</u>	<u>\$40,000</u>	<u>\$25,000</u>
<u>3-bedroom duplex</u>	<u>\$55,000</u>	<u>\$45,000</u>	<u>\$35,000</u>
<u>House type</u>	<u>New condition</u>	<u>Good condition</u>	<u>Fair condition</u>
<u>1-bedroom detached</u>	<u>\$ 61,000.00</u>	<u>\$ 44,000.00</u>	<u>\$ 33,000.00</u>
<u>2-bedroom detached</u>	<u>\$ 72,000.00</u>	<u>\$ 55,000.00</u>	<u>\$ 38,000.00</u>
<u>3-bedroom detached</u>	<u>\$ 83,000.00</u>	<u>\$ 66,000.00</u>	<u>\$ 50,000.00</u>
<u>4-bedroom detached</u>	<u>\$ 100,000.00</u>	<u>\$ 83,000.00</u>	<u>\$ 66,000.00</u>
<u>5-bedroom detached</u>	<u>\$ 111,000.00</u>	<u>\$ 94,000.00</u>	<u>\$ 74,000.00</u>
<u>6-bedroom detached</u>	<u>\$ 122,000.00</u>	<u>\$ 105,000.00</u>	<u>\$ 83,000.00</u>
<u>7-bedroom detached</u>	<u>\$ 133,000.00</u>	<u>\$ 111,000.00</u>	<u>\$ 89,000.00</u>

<u>8-bedroom detached</u>	<u>\$ 144,000.00</u>	<u>\$ 122,000.00</u>	<u>\$ 100,000.00</u>
<u>2-bedroom duplex</u>	<u>\$ 55,000.00</u>	<u>\$ 44,000.00</u>	<u>\$ 27,000.00</u>
<u>3-bedroom duplex</u>	<u>\$ 61,000.00</u>	<u>\$ 50,000.00</u>	<u>\$ 38,000.00</u>

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

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

#### Land price

- (k) For 99-year home-ownership leases, the price methodology is made up of a house price component and a (nominal) land price component. This is confirmed in section 91 of the Torres Strait Islander Land Act 1991 (Qld). There is no statutory land price payable to obtain ordinary freehold.
- (l) The land price prescribed by the chief executive of the Department of Resources for – year home-ownership lease land is \$4,000 per 2,000 square metres of land, plus \$100 for each additional 100 square metres of land.
- (m) The land price is not payable if the lessee is the recipient of a hardship certificate under the 2013 Land Holding Act and the certificate has not previously been used to obtain a land price exemption, whether or not the land identified in the certificate is the same as the lease land.
- (n) Lessees with a traditional connection to the land under Ailan Kastom and Ailan Lore are eligible for a rebate of 100% of the land price. Traditional connection must be:
- i. substantiated by way of written confirmation from the RNTBC for the relevant community, and/or the St Pauls Elders Group (for leases of St Pauls DOGIT land), and/or the Hammond Island native title claim group (for leases of Hammond DOGIT land); and
  - ii. ratified by Trustee resolution.

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#### 9.10. LAND TRANSFERS

- (a) Council is committed to supporting the full restoration of self-management and self-determination in the Torres Strait Island Regional Council local government area.
- (b) Council envisions the transfer of land currently held by Council under Deed of Grant in Trust to Torres Strait Islander Freehold or Aboriginal Freehold (as the case may be), on a community-by-community basis, when the time is right for each community.
- ~~(b)~~(c) The transfer of land recognises the spiritual, social, historical, cultural and economic importance of land to Torres Strait Islanders.

(d) Under the *Torres Strait Islander Land Act 1991 (Qld)* and *Aboriginal Land Act 1991 (Qld)*, land can be transferred to following entities:

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

(e) However, the Trustee's primary consideration in relation to any land transfer proposal is community benefit. The Trustee will only support a land transfer following adequate consultation by the State Government, and in circumstances where the Trustee can be assured that the ~~Each~~ land transfer ~~must ensure~~ results in the continuation of vital services to the community and must secure government interests in essential services, community infrastructure and social housing, and no reduction to the level and quality of service to the community.

(f) The Trustee will also have regard to the impact of any land transfer on Trustee or Council infrastructure when considering whether to support a land transfer.

(g) The land transfer process is run by Queensland's Department of Resources. Council will ~~assist the Department to progress~~ Land transfers will be achieved through collaboration between Council, ~~by participating~~ participate, in land transfer consultations with the State, communities, Registered Native Title Bodies Corporate and other stakeholder bodies, ~~to ensure that government interests in essential services, community infrastructure and social housing are secured and to ensure the continuation of vital services to each community.~~

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## **11. FIREARMS (LANDOWNER CONSENT) APPLICATIONS**

(a) ~~(Insert process)~~ Applications for firearms landowner consent must be made in writing to Council.

(b) The application will be presented to the Trustee.

(c) The application may only be approved by the Trustee if the Divisional Councillor for the DOGIT in question votes in favour of the resolution.

(d) Council shall maintain a register of all landowner consent applications approved by the Trustee.

8. **11:27am – 11:43am** **LEGAL – Firearms Licence – Landowner consent**

Cr Jimmy Gela declared a Declarable Conflict of Interest in Trustee Meeting Agenda Item 8 LEGAL – Firearms Licence – Landowner consent as Richard Gela is his nephew and therefore are related parties under s150EP. Mr Richard Gela is the applicant in this matter and Cr Jimmy Gela declared an interest under s150EQ(4).

Cr Jimmy Gela proposed to leave and stay away from the place where the meeting is being held while this matter is discussed and voted on.

11:29am – Cr Jimmy Gela left the meeting due to his Declarable Conflict of Interest.

Mr Peter Krebs, Manager Legal Services spoke to this report. The purpose of the report is to provide options in giving landowners consent on the DOGIT regarding applications for firearms licences.

**RESOLUTION:**

*Moved: Cr Aven Noah; Second: Cr Seriako Dorante*

**That the Trustee resolves that landowner consent for firearms licence application under the Weapons Act 1990 be approved by the Trustee by:**

- Referring all landowner consent to Trustee meeting of council for approval with the Divisional Councillor having the right of veto.

RATIFIED Trustee Minutes – 22<sup>nd</sup> March 2022

- Maintaining a register of all landowner consent applications approved.
- Amending Council's Trustee Policy to incorporate the changes above.
- Granting landowner consent for Richard Gela.

**MOTION CARRIED**

**AGAINST – Cr Lama Trinkoon, Cr Getano Lui, Cr John Levi, Cr Hilda Mosby and Cr Rocky Stephen**

11:43am – Cr Hilda Mosby left the meeting due to her Declarable Conflict of Interest.

11:43am – Cr Jimmy Gela left the meeting due to his Declarable Conflict of Interest.

**10-12. PROCEDURE**

This Policy shall be achieved with reference to the following:

- Queensland Government *Leasing Torres Strait Islander DOGIT Land: Manual for Trustees* and *-Leasing Aboriginal DOGIT Land: Manual for Trustees*
- ~~PO19~~ [PO1920-PR1 Native Title and Cultural Heritage Procedure](#)
- ~~PO19-PR2 Leasing Procedure~~ [PO1920-PR2 Leasing Procedure](#)
- PO 18 Reserve Policy
- PR-PO4-15 General Reserve Procedure

- Statement of Principles for Private Structures (Schedule A)
- PO2-PR1 Code of Conduct
- ~~TSIRC Meeting Handbook~~ [Meeting Procedure Policy](#)
- [Standing Orders Policy](#)

## AUTHORISATION

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

\_\_\_\_\_  
Date:

Cr ~~Fred Gela~~ [Phillemon Mosby](#)

**Mayor**

## SCHEDULE A

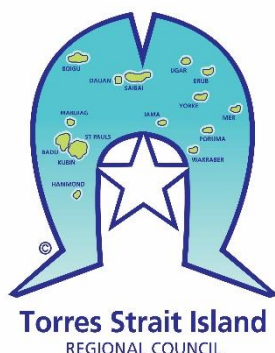
### STATEMENT OF PRINCIPLES FOR PRIVATE STRUCTURES (HOUSES, SHEDS AND ZAR-ZARS)

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

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

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

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



## TRUSTEE POLICY

PO 19

<b>Responsible Manager:</b>	Chief Executive Officer
<b>Head of Power:</b>	<i>Local Government Act 2009 (Qld)</i> <i>Local Government Regulation 2012 (Qld)</i> <i>Torres Strait Islander Land Act 1991 (Qld)</i> <i>Torres Strait Islander Cultural Heritage Act 2003 (Qld)</i> <i>Aboriginal Land Act 1991 (Qld)</i> <i>Aboriginal Cultural Heritage Act 2003 (Qld)</i> <i>Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984 (Qld)</i> <i>Aboriginal and Torres Strait Islander Land Holding Act 2013 (Qld)</i> <i>Native Title Act 1993 (Cth)</i> <i>Land Act 1994 (Qld)</i>
<b>Authorised by:</b>	Council resolution
<b>Authorised on:</b>	INSERT DATE
<b>Implemented from:</b>	15 November 2018
<b>Last Reviewed:</b>	2019; 2023
<b>Review History:</b>	2019; October 2023
<b>Review Date:</b>	31 January 2025
<b>Corporate Plan:</b>	<i>Art, Culture, People</i>  Collective understanding of both Traditional and State Law ensuring a Safe Community  Provide a legal framework for Torres Strait Communities within the Torres Strait Island Regional Council municipality which addresses both State and Traditional Lore requirements  <i>Environment:</i>



Facilitate home ownership through active lobbying of State and Federal Government

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

Environmental and culturally significant landscapes are recorded, valued and protected

*Economic Participation:*

Full restoration of self-management and self-determination

## 1. POLICY STATEMENT

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

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

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

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

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

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

## 2. SCOPE

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

## 3. INTERPRETATION

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

**Aboriginal Freehold** means Aboriginal Land, transferred under Part 4 of the ALA

**Ailan Kastom and Ailan Lore** (also known as Island custom) means, as defined in section 6 of the TSILA, 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

**ALA** means the *Aboriginal Land Act 1991* (Qld)

**Applicant** means a person who has made an EOI to the Trustee for a Lease

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

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

**EOI** means expressions of interest received by Applicants seeking the grant of a Lease over Land held by the Trustee

**Formal Documentation** means a Conditional Agreement to Lease, Lease or any other documents the Trustee considers to be appropriate to record the arrangement between the Trustee and an Applicant in respect of an accepted EOI.

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

**Home Ownership Lease** means a 99-year home ownership lease, granted under the ALA or the TSILA (as the case may be)

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

**Land** means any land held by the Trustee

**Lease** means any lease of Land, and includes a Home Ownership Lease

**Leasing Decisions** means any decision of the Trustee about leasing land under the ALA or the TSILA

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

**Ordinary Freehold** means the freehold option referred to in Part 2A of the TSILA and the ALA

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

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

**Torres Strait Islander Freehold** means Torres Strait Islander Land, transferred under Part 4 of the TSILA

**Trustee** means Council in its capacity as trustee of land under the ALA or the TSILA (as the case may be)

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

#### 4. NATIVE TITLE

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

#### 5. CULTURAL HERITAGE

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

#### 6. TRUSTEE DECISION-MAKING

##### Introduction

- (a) As Trustee, Council will fulfil its responsibilities in an informed and effective manner.

- (b) Each report to the Trustee Council proposing a land-related decision must include detailed information about the values of, and appropriate uses for, the DOGIT land, existing interests in the land, and community opinion about any proposed leases for that DOGIT.
- (c) A proposed Trustee decision that affects a specific DOGIT will not be tabled for Council's consideration unless it has the support of the Divisional Councillor. Where the Divisional Councillor has a conflict of interest or material personal interest, the matter can be referred to the Mayor or Deputy Mayor for advice. A Trustee resolution that affects a specific DOGIT may only be passed if the Divisional Councillor for that DOGIT is present and does not vote against the resolution. If the Divisional Councillor abstains from voting, the failure to vote is counted as a vote against the resolution. However, the Divisional Councillor's vote is not required if the Divisional Councillor has left the room due to a personal interest in the matter.
- (d) Development applications made to Council as local government may only be passed if the Trustee supports the proposed development. For DOGIT communities, this requires a Trustee resolution. For Torres Strait Islander Freehold and Aboriginal Freehold communities (non-DOGIT communities), this requires signed landowner consent to the proposed development.
- (e) This Policy is the Trustee's decision-making process, agreed to and adopted by the Trustee for Leasing Decisions, pursuant to section 135 of the TSILA and section 179 of the ALA, and so as to enable the Trustee to make properly informed, merit-based decisions in respect of those Leasing Decisions.
- (f) The Trustee has engaged in community consultation with communities in its local government area, and has formed the view that the processes set out in paragraphs xx of this Policy represent:
  - i. agreed decision-making processes of the Torres Strait Islanders for whom the Trustee holds the land, or Ailan Kastom for Leasing Decisions, for the purposes of section 135(2)(a) of the TSILA; and
  - ii. agreed decision-making processes of the Aboriginal people for whom the Trustee holds the land, or Aboriginal tradition for Leasing Decisions, for the purposes of section 179(2)(a) of the ALA.

**("Traditional Process").**

- (g) To the extent a Traditional Process is not described in this Policy, the Trustee has formed the view that:
  - i. the Aboriginal people for whom the Trustee holds the Land have not agreed upon any particular decision-making process for Leasing Decisions;

- ii. there is no Aboriginal tradition of Aboriginal people for whom the Trustee holds the Land in respect of Leasing Decisions;
- iii. the Torres Strait Islanders for whom the Trustee holds the Land have not agreed upon any particular decision-making process for Leasing Decisions;
- iv. there is no Ailan Kastom of Torres Strait Islanders for whom the Trustee holds the Land in respect of Leasing Decisions.

(h) The view set out in the preceding paragraph has been developed:

- i. based on the Trustee's own views and the views of its Councillors, some of whom are traditional owners for the relevant land;
- ii. following community consultation carried out in the following way:

A. [describe];

- iii. following consultation with the Native Title Representative Body, Gur A Baradharaw Kod Sea and Land Council Torres Strait Islander Corporation ("GBK")

(i) In developing this Policy, the Trustee has had regard to resources published by the Queensland Government for trustees, including the documents "Leasing Aboriginal Deed of Grant in Trust land – A manual for trustees" (Version 1.5 May 2020) and "Leasing Torres Strait Islander Deed of Grant in Trust land – A manual for trustees" (Version 1.5 May 2020), linked below:

[https://www.resources.qld.gov.au/\\_data/assets/pdf\\_file/0016/107017/leasing-aboriginal-deed-grant-trust-land.pdf](https://www.resources.qld.gov.au/_data/assets/pdf_file/0016/107017/leasing-aboriginal-deed-grant-trust-land.pdf)

[https://www.resources.qld.gov.au/\\_data/assets/pdf\\_file/0017/107018/leasing-torres-strait-deed-grant-trust-land.pdf](https://www.resources.qld.gov.au/_data/assets/pdf_file/0017/107018/leasing-torres-strait-deed-grant-trust-land.pdf)

### **Traditional Process**

(j) The decision-making process for each DOGIT held in trust by Council is as follows:

- i. Boigu Island
  - A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- ii. Dauan Island

- A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- iii. Saibai Island
  - A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- iv. Mabuiag Island
  - A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- v. Arkai/Kubin Community, Moa Island
  - A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- vi. Wug/St Pauls Community, Moa Island

- A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- vii. Kirriri (Hammond Island)
  - A. [confirm whether the relevant Islander inhabitants have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Aboriginal and/or Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- viii. Iama (Yam) Island
  - A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- ix. Warraber (Sue) Island
  - A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- x. Poruma (Coconut) Island



- A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- xi. Masig (Yorke) Island
- A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- xii. Ugar (Stephens) Island
- A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].
- xiii. Erub (Darnley) Island
- A. [confirm whether the relevant Torres Strait Islanders have a specific decision-making process for land-related decisions including proposed leases]
  - B. [confirm whether there is relevant Ailan Kastom for land-related decisions including proposed leases]
  - C. [otherwise, confirm the Trustee's adopted decision-making process for land-related decisions including proposed leases, which may include establishing and appointing a community forum].

## Trustee's Decision Making Process

**(a) Receiving Expressions of Interest**

- i. The Trustee is prepared to receive and consider EOIs made by Applicants who are interested in taking a Lease of Land from the Trustee.
- ii. The Trustee may approve a form in which EOIs are to be made.
- iii. If the Trustee has approved a form in which EOIs are to be made, the Trustee may reject any EOI that is not made in the approved form.
- iv. The CEO may, in their discretion, accept as an EOI material provided by an Applicant that is not in the approved form.
- v. When submitting an EOI, Applicants acknowledge that the Trustee may disclose their name and other particulars in their EOI to the public, including for the purposes of carrying out consultation or making other enquiries in accordance with this Policy.
- vi. At any point when considering the EOI, the Trustee may request further information from the Applicant that the Trustee believes is appropriate in order to enable the Trustee to consider the EOI. This includes information that may not necessarily be prompted by an approved form.

**(b) Inconsistent interests**

- i. The Trustee must refuse any EOI where the EOI concerns Land over which there is an existing registered or unregistered interest that is not compatible with the EOI. This includes any other EOI that has already been the subject of executed Formal Documentation.
- ii. For the avoidance of doubt, the preceding subclause does not require the Trustee to reject an EOI where there is a registered social housing lease over the Land, even if the Applicant is not the social housing tenant.

**(c) Initial review at Trustee meeting**

- i. The Trustee will generally carry out an initial review of EOIs at a Trustee meeting, as soon as practicable after an EOI has been made in the approved form (or in such other form accepted by the CEO pursuant to Clause **xx**).
- ii. The initial review will be informed by a report presented to the Trustee, that contains a preliminary assessment of information that is potentially relevant to the Trustee's consideration of the EOI. This preliminary assessment might include planning and environmental feasibility information and information about any inconsistent interests.
- iii. The purpose of the initial review described in the preceding subclause is:
  - A. to consider the matters set out in subclause (i) of this Policy;
  - B. to consider the application of any Traditional Process to the Leasing Decision;

- C. to consider any other matters that the Trustee believes, acting reasonably, are issues that may cause the Trustee to decide to refuse the EOI pursuant to Clause **xx** of this Policy, without further consideration of the EOI.

**(d) Public Consultation**

- i. The Trustee recognises that it is important for the community to be consulted about the grant of any Leases over Land in the Torres Strait. In recognition of that, the Trustee will undertake public consultation on each EOI received in accordance with this clause of this Policy.
- ii. If the Trustee carries out an initial review of EOIs at a Trustee meeting (including pursuant to subclause (j) of this Policy), public consultation will generally follow that initial review.
- iii. The public consultation process must contain the following features:
  - A. the Trustee will prepare a notice disclosing the name of the Applicant and the address of the land proposed to be leased, and will invite submissions from the community about the EOI ("**Consultation Notice**");
  - B. the Consultation Notice will be published on Council's physical community noticeboard on the DOGIT where the Land the subject of the EOI is located, on social media, and on Council's website. The Trustee may also decide to publish the notice more widely.
- iv. The Trustee will allow a notice period of not less than 3 weeks for interested parties to make submissions on the EOI.
- v. If the Trustee receives submissions that do not support the grant of the Lease, then the Trustee will consider and deal with those submissions consistently with subclause (l) of this Policy.
- vi. Submissions received as part of subclause (k)(v) of this Policy will not be considered by the Trustee if the Trustee resolves that, in the Trustee's reasonable opinion, the submission is frivolous, vexatious or directed towards frustrating a bona fide EOI.
- vii. If a submission disputes the EOI because it is claimed that a person other than the Applicant should be entitled to a Lease rather than the Applicant, then the submission will only be considered by the Trustee if the submission specifies the name of the person who the submitter claims should be entitled to the Lease.
- viii. The Trustee considers that the public consultation process set out in this Policy is intended to provide all community members with a fair and reasonable

opportunity to be heard in relation to EOIs. Any dispute about an EOI that is made after a public consultation process has closed will not be considered by the Trustee, unless the Trustee resolves that it considers there is a reasonable basis for the dispute being raised at a late stage.

- ix. The policy position expressed in the previous subclause has been developed so that a transparent way of disputing EOIs is provided to the community, but, at the same time, Applicants have the benefit of certainty about how their EOIs will be considered.
- x. For the avoidance of doubt, the public consultation process will be taken to have been completed or closed after the end of the notice period advertised for comments in the public consultation notices.

**(e) EOI Disputes**

- i. This part of the Policy deals with how the Trustee makes decisions where:
  - A. an EOI has been made over Land (**“the First EOI”**) and, before the ~~public consultation~~Public Consultation process for the First EOI has been completed in accordance with this Policy, a second EOI is made over all or part of the same area as the First EOI; or
  - B. a dispute is ~~raised~~notified to Council by a person about an EOI, at a point in time before Formal Documentation has been executed by the parties, including during the course of ~~community consultation~~Public Consultation, and the Trustee considers that the dispute is not frivolous, vexatious or directed at frustrating a bona fide EOI; (**“EOI Dispute”**).
- ii. In the event of an EOI Dispute, the Trustee:
  - A. will defer further consideration of any EOIs directly affected by the EOI Dispute;
  - B. disclose the existence of the dispute to all affected EOI Applicants, along with particulars about the dispute (including, if appropriate, the name of any person who is claimed to be entitled to a Lease, if the submission is of the nature described in subclause (i)(A)).
- iii. After notifying the Applicant of the existence of a dispute pursuant to subclause (ii)(B) of this Policy, then the Trustee will only consider the EOIs affected by the EOI Dispute further:
  - A. if the Trustee is satisfied, based on information received from the Applicant and any third parties, that the EOI Dispute has been resolved; or

- B. after a period of no less than 3 months has passed since the Applicant was notified of the dispute.
- iv. At any point in time, if the Trustee considers it appropriate to do so in order for the Trustee to make a properly informed, merit-based decision, the Trustee may make its own enquiries to inform itself about the EOI Dispute, including by contacting traditional owners, the Registered Native Title Body Corporate, the Native Title Representative Body, or any other parties that the Trustee considers may be able to provide information to the Trustee or other assistance that might help in resolving the EOI Dispute.
- v. If the EOI Dispute has not been resolved, but if more than 3 months has passed since any affected Applicants were notified of the EOI Dispute, then the Trustee may:
  - A. decide to proceed to consider an EOI affected by an EOI Dispute, if the Trustee considers, having made any enquiries it considers are appropriate pursuant to the preceding subparagraph, that it can make a decision about the EOI Dispute; or
  - B. decide not to consider any EOIs affected by an EOI Dispute.
- vi. If the Trustee decides to make a decision pursuant to the preceding subclause, then it is acknowledged that a decision made by a majority of trustee councillors is evidence that the EOI Dispute was resolved consistently with the Act, because any such decision will be informed by:
  - A. the trustee councillors' own knowledge and understanding of Aboriginal tradition, Ailan Kastom land matters and customs in respect of the Land; and
  - B. the trustee councillors' role as traditional owners and custodians in and for the Torres Strait Island local government area.
- vii. However, if a Traditional Process applies to the EOI Dispute, then the Trustee must apply that Traditional Process when resolving the EOI Dispute.

**(f) Refusing EOIs**

- i. The Trustee reserves the right to accept or reject any EOI, having regard to:
  - A. the existing uses of the Land;
  - B. the purpose for which the Land has been dedicated;
  - C. the outcome of public consultation;
  - D. the requirements of the Department of Housing;
  - E. any other matter that the Trustee, acting reasonably, considers is relevant to the Trustee's consideration about the grant of a Lease over the area described in the EOI.

- ii. If the Trustee rejects an EOI, Council shall notify the Applicant that their EOI has been rejected and shall provide a brief description of why the EOI is rejected.

**(g) Formal Documentation**

- i. The Trustee will prepare all Formal Documentation for Applicants to review and sign prior to grant of a Lease.
- ii. The Trustee may seek the assistance of external parties, including the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, to give effect to any aspect of the formal process or to implement any obligations set out in Formal Documentation.
- iii. Once Formal Documentation has been entered into, the legal provisions of that Formal Documentation ~~apply~~ apply and this Policy will no longer continue to apply, unless expressly provided for otherwise in the Formal Documentation.
- iv. The Formal Documentation will deal with matters such as:
  - A. Conditions that must be satisfied before a Lease can be executed and registered, such as survey and development approval, native title future act validation, and payment of a land price and payment of a house price;
  - B. Rental; and
  - C. payment of a Rates Component by the Applicant to Council, consistently with any ~~Rates Component Policy~~ Revenue Statement and Revenue Policy adopted by Council;
  - D. other terms and conditions of the Lease.
- v. For the avoidance of doubt, the Trustee will not consult with the public about the contents of the Formal Documentation. Negotiation of the Formal Documentation is a commercial matter between the Trustee and the Applicant (but the parties will be bound by any requirements applying to the Formal Documentation under the ALA or TSILA, or under the terms of this Policy or any other policy of the Trustee).

**(h) Delegation**

- i. The Trustee may delegate any Leasing Decision to the CEO. If the Trustee delegates a Leasing Decision to the CEO, then the CEO may make the Leasing Decision consistently with:
  - A. this Policy; and
  - B. any limitations and conditions of the delegation.
- ii. Nothing in this Policy prevents the CEO from sub-delegating a Leasing Decision delegated to the CEO, pursuant to section 259 of the LG Act.

## 7. LEASING GENERALLY

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

### Trustee rent methodology

Land Use	Rent	Source
<b>Residential<sup>1</sup>/ Community</b>	\$4 per square metre per annum	Council resolution 15 May 2018
<b>Commercial/ Government</b>	\$13.20* per square metre per annum (GST inclusive) as at 1 July 2023, subject to annual CPI increase  *Minimum starting rent of \$6,000p/a per lease shall apply.	Council resolution 15 May 2018
<b>State school (Department of Education) campus</b>	\$4.60 per square metre per annum (GST inclusive) as at 1 July 2023, subject to annual CPI increase	Council resolution June 2019

<sup>1</sup> Note: under the ALA and TSILA, 99 year home ownership leases may only contain a rental amount of \$1.00 per annum. Therefore, this category excludes any residential lease that is a 99 year home ownership lease.

<b>State school (Department of Education) accommodation</b>	\$13.20* per square metre per annum (GST inclusive) as at 1 July 2023, subject to annual CPI increase  *Minimum starting rent of \$6,000p/a per lease shall apply.	Council resolution June 2019
<b>Private school campus and accommodation</b>	\$4.60 per square metre per annum (GST inclusive) as at 1 July 2023, subject to annual CPI increase	Council resolution June 2019
<b>Supermarket</b>	\$13.20* per square metre per annum (GST inclusive) as at 1 July 2023, subject to annual CPI increase*Minimum starting rent of \$6,000p/a per lease shall apply.	Council resolution June 2019
<b>Religious</b>	\$1 per annum, payable on demand	CEO decision 17 October 2018, under Council delegation
<b>Home-ownership lease</b>	\$1 per annum, payable on demand  plus up-front land price	<i>Torres Strait Islander Land Act 1991</i>  <i>Aboriginal Land Act 1991</i>

## 8. COMMERCIAL LEASING

(a) Council, as owner of most of the buildings and houses in each community and as Trustee of DOGIT land, understands that long-term leases:

- i. provide a suitable arrangement with the different organisations and businesses providing services within the communities;
- ii. provide a revenue stream for Council; and



- iii. provide certainty to Council and to the Lessee.
- (b) Council is committed to effective, equitable and efficient management of Council's assets and land which ensures appropriate returns and protects Council's interest while recognising the rights of organisations and businesses occupying these assets and land.
- (c) Commercial licensing: Council receives commercial licence revenue for the following:
  - i. Part of a TSIRC building (asset) e.g. room/office only
  - ii. Whole of a TSIRC building (asset) e.g. BRACS building, old CDEP building
  - iii. Land only used by an agency for IBC (airport land)
  - iv. Land only used for agency-owned donga or storage container (DOGIT land)
- (d) Categories 1, 2 and 3 above are received as local government (not trustee) revenue.
- (e) Fees for category 4 above should be generating DOGIT revenue, calculated based on the land area used and Council's trustee rent methodology. From 1 July 2019, this DOGIT revenue will be deducted from the licence fees that TSIRC receives for each category 4 licence site (that is, no additional fees will be charged to the licensee).

## 9. HOME OWNERSHIP

- (a) Council is committed to facilitating private home-ownership within the Torres Strait Island Regional Council municipality.
- (b) Council will work with stakeholders to facilitate home-ownership leases.

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

- (c) Council will work with the Department of Housing (DCHDE), the Department of Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP) and the Department of Resources to facilitate private home-ownership and the resolution of *Land Holding Act* ("Katter") perpetual lease interests in the region.
- (d) The steps required for the resolution of a Katter lease entitlement are:
  - i. DSDSATSIP consultation regarding home ownership responsibilities. Entitlement holder/beneficiary signs a letter confirming understanding of home ownership. (For either vacant land or house)
  - ii. If the entitlement holder/beneficiary is not the current tenant of the house, it may be necessary to wait for the tenant to be relocated to another social house.
  - iii. If there are no obstacles, the Department of Resources will grant the lease to the entitlement holder, or beneficiary/beneficiaries. When the lease commences, TSIRC removes the house from its asset database and the general tenancy agreement terminates.

- iv. If the entitlement holder/beneficiary is the tenant of the LHA house, DCHDE will inspect the house, identifying any maintenance required.
- v. Maintenance work undertaken by DCHDE.
- vi. The entitlement holder/beneficiary signs a form confirming maintenance has been completed.
- vii. Agreement to Transfer Dwelling is executed or gazette notice is published (depending on the type of entitlement).
- viii. The house now belongs to the entitlement holder/beneficiary.

(e) Trustee decisions about *Land Holding Act* matters are to be made as follows:

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

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

### 99-year home-ownership leases

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

- i. Expression of Interest (Form 1) submitted to Trustee – form on DNRME website
- ii. Trustee assesses EOI – approved/not approved
- iii. Development application and survey required – DSDSATSIP completes
- iv. Applicant submits loan application, requires preapproval – TSRA

- v. DCHDE inspects the house and provides the sale price and list of maintenance
- vi. Trustee offers the applicant an Agreement to Lease
- vii. Applicant accepts and signs the Agreement to Lease
- viii. Agreement to Lease conditions must be met (includes native title compliance)
- ix. DCHDE delivers maintenance on the house
- x. Lease signed and money paid to Trustee
- xi. Lease registered with Land Titles Office
- xii. Registered lessee is now a home-owner

### Ordinary freehold option

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

### House sale price

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

House type	New condition	Good condition	Fair condition
1-bedroom detached	\$ 61,000.00	\$ 44,000.00	\$ 33,000.00
2-bedroom detached	\$ 72,000.00	\$ 55,000.00	\$ 38,000.00
3-bedroom detached	\$ 83,000.00	\$ 66,000.00	\$ 50,000.00
4-bedroom detached	\$ 100,000.00	\$ 83,000.00	\$ 66,000.00
5-bedroom detached	\$ 111,000.00	\$ 94,000.00	\$ 74,000.00
6-bedroom detached	\$ 122,000.00	\$ 105,000.00	\$ 83,000.00
7-bedroom detached	\$ 133,000.00	\$ 111,000.00	\$ 89,000.00
8-bedroom detached	\$ 144,000.00	\$ 122,000.00	\$ 100,000.00
2-bedroom duplex	\$ 55,000.00	\$ 44,000.00	\$ 27,000.00
3-bedroom duplex	\$ 61,000.00	\$ 50,000.00	\$ 38,000.00

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

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

### Land price

- (k) For 99-year home-ownership leases, the price methodology is made up of a house price component and a (nominal) land price component. This is confirmed in section

91 of the *Torres Strait Islander Land Act 1991* (Qld). There is no statutory land price payable to obtain ordinary freehold.

- (l) The land price prescribed by the chief executive of the Department of Resources for – year home-ownership lease land is \$4,000 per 2,000 square metres of land, plus \$100 for each additional 100 square metres of land.
- (m) The land price is not payable if the lessee is the recipient of a hardship certificate under the 2013 Land Holding Act and the certificate has not previously been used to obtain a land price exemption, whether or not the land identified in the certificate is the same as the lease land.
- (n) Lessees with a traditional connection to the land under Ailan Kastom and Ailan Lore are eligible for a rebate of 100% of the land price. Traditional connection must be:
  - i. substantiated by way of written confirmation from the RNTBC for the relevant community, and/or the St Pauls Elders Group (for leases of St Pauls DOGIT land), and/or the Hammond Island native title claim group (for leases of Hammond DOGIT land); and
  - ii. ratified by Trustee resolution.

## 10. LAND TRANSFERS

- (a) Council is committed to supporting the full restoration of self-management and self-determination in the Torres Strait Island Regional Council local government area.
- (b) Council envisions the transfer of land currently held by Council under Deed of Grant in Trust to Torres Strait Islander Freehold or Aboriginal Freehold (as the case may be), on a community-by-community basis, when the time is right for each community.
- (c) The transfer of land recognises the spiritual, social, historical, cultural and economic importance of land to Torres Strait Islanders.
- (d) Under the *Torres Strait Islander Land Act 1991* (Qld) and *Aboriginal Land Act 1991* (Qld), land can be transferred to following entities:
  - i. A Registered Native Title Body Corporate (RNTBC)
  - ii. A qualified corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*
  - iii. An existing Land Trust
- (e) However, the Trustee's primary consideration in relation to any land transfer proposal is community benefit. The Trustee will only support a land transfer following adequate consultation by the State Government, and in circumstances where the Trustee can be assured that the land transfer results in the continuation of vital services to the community

and must secure government interests in essential services, community infrastructure and social housing, and no reduction to the level and quality of service to the community.

- (f) The Trustee will also have regard to the impact of any land transfer on Trustee or Council infrastructure when considering whether to support a land transfer.
- (g) The land transfer process is run by Queensland's Department of Resources. Council will participate in land transfer consultations with the State, communities, Registered Native Title Bodies Corporate and other stakeholder bodies.

## **11. FIREARMS (LANDOWNER CONSENT) APPLICATIONS**

- (a) ~~{Insert process}~~ Applications for firearms landowner consent must be made in writing to Council.
- (b) The application will be presented to the Trustee.
- (c) The application may only be approved by the Trustee if the Divisional Councillor for the DOGIT in question votes in favour of the resolution.
- (d) Council shall maintain a register of all landowner consent applications approved by the Trustee.

## **12. PROCEDURE**

This Policy shall be achieved with reference to the following:

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

## **AUTHORISATION**

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

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Cr Phillemon Mosby

Date:

**Mayor**

## SCHEDULE A

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

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

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

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

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

## PLACE ON COUNCIL LETTERHEAD

[Insert date]

[Insert name and contact details]

### Expression of Interest for a lease

The purpose of this letter is to provide you with an update as to the progress of Torres Strait Island Regional Council as Trustee's ("the **Trustee**") consideration of your Expression of Interest ("EOI") for a lease.

The Trustee has a Trustee Policy to guide the way in which decisions about leasing trust land are to be made.

The Trustee is currently in the process of reviewing its Trustee Policy in response to recent guidance provided in a Supreme Court of Queensland case about trustee decision making. Any changes to the Trustee Policy must be approved by the Trustee before any future leases, including those subject to an existing lease application, can be granted.

The draft updated Trustee Policy will be presented to the Trustee in October and November 2023.

It is expected that community consultation on the lease decision-making ~~progress~~process will then take place. The Trustee encourages you to consider any public consultation process for the Trustee Policy and provide submissions in response to that process if you wish.

We are expecting to finalise the Trustee Policy in 2024 and then progress lease applications as soon as possible thereafter.

The Trustee regrets the delay in progressing lease applications but wants to ensure, for the sake of all parties concerned, that its decision-making process is compliant with all legal precedent.

You do not need to do anything in response to this letter. The Trustee acknowledges receipt of your lease application as made, and once the updated Trustee Policy has been adopted, the Trustee will contact you to discuss next steps in relation to your lease application.

Yours sincerely,

**Chief Executive Officer  
TORRES STRAIT ISLAND REGIONAL COUNCIL**





## TORRES STRAIT ISLAND REGIONAL COUNCIL

### TRUSTEE MEETING MOVE INTO CLOSED BUSINESS

#### **Resolution to close the meeting to the public:**

That the Trustee resolve to close the meeting to the public pursuant to section 84 of the *Local Government Act 2009* to allow the Trustee Council to discuss those agenda items listed under Closed Business and for the reasons outlined for those agenda items.

#### **Personal Interests**

Councillors are reminded to declare any Conflict of Interest matters for those items listed and if any conflicts arise during deliberations.

MOVED:

SECONDED:



## TORRES STRAIT ISLAND REGIONAL COUNCIL

### TRUSTEE MEETING MOVE OUT OF CLOSED BUSINESS

#### **Resolution to MOVE OUT of Closed Business:**

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

MOVED:

SECONDED: