

AGENDA

TORRES STRAIT ISLAND REGIONAL COUNCIL

March 2022

TRUSTEE MEETING

Tuesday, 22nd March 2022

Video Conference

TRUSTEE MEETING
Tuesday, 22nd March 2022
Agenda Items

- | | | |
|-----|--------------------------|--|
| 1. | <u>10:00am - 10:03am</u> | <u>Opening Prayer and Welcome</u> |
| 2. | <u>10:03am – 10:05am</u> | <u>Apologies</u> |
| 3. | <u>10:05am - 10:10am</u> | <u>Declaration of Conflict of Interest (COI) Declarable and Prescribed</u> |
| 4. | <u>10:10am – 10:15am</u> | <u>Confirmation of Trustee Meeting Minutes</u> <ul style="list-style-type: none">• Trustee Meeting – 15th February 2022 |
| 5. | <u>10:15am – 10:20am</u> | <u>Outstanding Action Items</u> |
| 6. | <u>10:20am – 10:30am</u> | <u>Standing Agenda Item: (verbal update)</u> <ul style="list-style-type: none">• Undocumented commercial land occupation project – verbal update• DOGIT Transfers – Verbal Update |
| 7. | <u>10:30am – 10:50am</u> | <u>LEGAL – The effect of Native Title on DOGIT</u> |
| 8. | <u>10:50am – 11:10am</u> | <u>LEGAL – Firearms Licence – Landowner consent</u> |
| 9. | <u>11:10am – 11:30am</u> | <u>LEGAL – Masig Lot 29 – consent to development application</u> |
| 10. | <u>11:30am – 11:50am</u> | <u>LEGAL – Telstra request to transfer lease interests to Amplitel</u> |
| 11. | <u>11:50am – 11:55am</u> | <u>Next meeting – Wednesday, 20th April 2022</u> |
| 12. | <u>11:55am – 12:00pm</u> | <u>Closing Remarks and Prayer</u> |



Draft Trustee Minutes

TORRES STRAIT ISLAND REGIONAL COUNCIL

February 2022

TRUSTEE MEETING

Tuesday, 15th February 2022

Video Conference

TRUSTEE MEETING

Tuesday 15th February 2022

PRESENT

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

STAFF:

Ms Hollie Faithfull, Acting Chief Executive Officer (ACEO)
Mr David Baldwin, Executive Director, Engineering Services (EDES)
Mr Dawson Sailor, Acting Executive Director, Community and Building Services (AEDCBS)
Ms Megan Barrett, Executive Director, Corporate Services (EDCS)
Ms Nicola Daniels, Acting Executive Director, Financial Services (EDFS)
Mr Peter Krebs, Manager Legal Services (MLS)
Mrs Ursula Nai, Senior Executive Assistant to the CEO (SEA)
Mr Jacob Matysek, Executive Assistant to the Mayor (EA)
Ms May Mosby, Acting Secretariat Officer (ASO)

APOLOGIES

Nil

TRUSTEE MEETING
Tuesday, 15th February 2022

1. 9:14am - 9:19am Opening Prayer and Welcome

Mayor Phillemon Mosby established a quorum and opened the meeting with a welcome and acknowledged the following:

- Our Heavenly father for his awesome wisdom, knowledge and understanding
- Traditional Owners from where we are dialling in from
- Families in mourning across the region
- Councillors and Executive Team

Mayor Mosby invited Deputy Mayor, Cr Getano Lui to open the meeting with a word of prayer at 9:14am.

Mayor Mosby asked that a minute's silence be observed for our dearly departed, and families in mourning at this time.

9:14am – Cr Levi joined the meeting.

2. 9:19am – 9:19am Apologies

Nil

3. 9:20am - 9:20am Declaration of Conflict of Interest (COI) Declarable and Prescribed

No declarations were made by Councillors. Mayor Mosby encouraged Councillors to make a declaration at any time during the meeting.

4. 9:20am – 9:25am Confirmation of Trustee Meeting Minutes

- Trustee Meeting – 18th January 2022

RESOLUTION:

Moved: Cr Aven Noah, Second: Cr John Levi

That the Trustee accepts the minutes of the Trustee meeting held on 18th January 2022 as a true and accurate account of that meeting.

MOTION CARRIED UNANIMOUS

5. 9:25am – 9:35am Outstanding Action Items

Ms Hollie Faithfull, Acting Chief Executive Officer updated the Trustee on the outstanding Action Items register from January's 2022 meeting.

Cr. Seriako Dorante brought to the attention of the Trustee that he received an email regarding the shooter's licence and sought advice as to how he should respond. It was resolved that the matter be taken offline and refer to Manager Legal Services to respond.

ACTION ITEM: That the Manager, Legal Services follow up with Cr Seriako Dorante offline with regards to the email.

6. 9:35am – 9:45am Standing Agenda Item: (verbal update)

- Undocumented commercial land occupation project – verbal update
- DOGIT Transfers – Verbal Update

Mr Peter Krebs, Manager, Legal Services provided the Trustee with a verbal update on the above topics.

ACTION ITEM: Manager, Legal Services to draft up a letter from the Mayor to the Minister responsible for CEQ outlining concerns regarding leasing of IBIS premises in the region.

7. **9:45am – 10:19am** **LEGAL – Status of LHA lease resolution**

Mr Peter Krebs, Manager, Legal Services spoke to this report.

RESOLUTION:

Moved: Cr Francis Pearson; Second: Cr Jimmy Gela

The Trustee resolves to note the report.

MOTION CARRIED UNANIMOUS

ACTION ITEM: That the Manager, Legal Services write to the Minister outlining Council's concern with the upgrades of Katter lease houses being brought up to an acceptable standard and to cater for elderly and disabled residents.

Cr Kabay Tamu also raised similar upgrade issues at Warraber.

ACTION ITEM: That Secretariat Officer add LEGAL – Status of LHA lease resolution as a topic to the next SARG meeting to discuss scope of Home Ownerships project. Council is not satisfied that current works does not include handrails, ramps etc.

ACTION ITEM: That Manager, Legal Services provide an update to Council on how DOGIT and Native Title co-exist and how this effects the role of the Trustee.

10:09am - Cr Tabuai joined the meeting.

10:13am – Cr Nona joined the meeting.

8. **10:19am – 10:19am** **Next Meeting – Tuesday 22nd March 2022**

9. **10:19am – 10:20am** **Closing Remarks and Prayer**

Mayor Mosby acknowledged and thanked Councillors and Staff for their participation and feedback and declared the Trustee Meeting closed and reconvened in Council Ordinary Meeting.

MEETING CLOSED 10:20AM

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

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

STATEGIC AND OPERATIONAL ACTIONS FROM ORDINARY MEETING AND EXECUTIVE - PLUS OPERATIONAL ACTIONS ONLY FROM SARG TO BE INPUT ONTO THIS DOCUMENT #85075												
Date	Month of Meeting	Year	Type of Meeting	Community	Agenda Report	Action	Lead Officer	Advisory Officer	Budget (Y/N)	Plans - Op Plan,	Lead Officer Comments	ETA
15	February	2022	Trustee	VC	Outstanding Action Items	That the Manager, Legal Services follow up with Cr Seriako Dorante offline with regards to the email	Manager Legal Services				Completed	
15	February	2022	Trustee	VC	Standing Agenda Item	Manager Legal Services to draft up a letter from the Mayor to the Minister responsible for CEQ outlining concerns regarding leasing of IBIS premises in the region	Manager Legal Services				In progress	
15	February	2022	Trustee	VC	Legal - Status of LHA lease resolution	That the Manager Legal Services write to the Minister outlining Council's concern with the upgrade of Katter lease houses being brought up to an acceptable standard and to cater for elderly and disabled residents.	Manager Legal Services				In progress	
15	February	2022	Trustee	VC	Legal - Status of LHA lease resolution	That Secretariat Officer add LEGAL - Status of LHA lease resolution as a topic to the next SARG meeting to discuss scope of Home Ownerships project. Council is not satisfied that current works does not include handrails, ramps etc	Secretariat				This report is currently in progress. Secretariat has liaised with Legal and this will be added to the April SARG meeting	
15	February	2022	Trustee	VC	Legal - Status of LHA lease resolution	That Manager Legal Services provide an update to Council on how DOGIT and Native Title co-exist and how this effects the role of the Trustee	Manager Legal Services				Paper prepared and ready for March Trustee meeting	



TORRES STRAIT ISLAND REGIONAL COUNCIL

TRUSTEE REPORT

TRUSTEE MEETING: March 2022

DATE: 22 March 2022

ITEM: Agenda Report for noting

SUBJECT: The effect of Native Title on DOGIT

AUTHOR: Peter Krebs – Manager Legal Services

Recommendation:

The Trustee resolves to note this report

Executive Summary:

This report is to provide information on the effects of native title on DOGIT and the impacts of native title on the operations of the DOGIT.

Background:

Exclusive determinations of Native Title were made over 13 islands in the TSIRC jurisdiction from 1992 to 2005 with one Native Title Determination still outstanding for Hammond.

With the exception of Mer, all determinations were made by consent determination in the Federal Court, with the States and parties reaching agreement on how native title rights can be exercised as well as any limitation on the exercise of native title.

All of the consent determinations of native title were made subject to similar conditions, for the sake of this paper, I shall use the Native Title Determination for Lama which was made in the Federal Court in 2004 which is cited as *Lui David & Ors on behalf of the Yam Islanders/Tudulaig People [2004] FCA 1576*.

This is the determination of Native Title over Yam and Warrior Island, and how the rights of the DOGIT and TSIRC as the local government body which are termed '**other interests**' are recognised is as follows:

*The relationship between the native title and the **other interests** is that **other interests**, continue to have effect and the rights conferred by or held under the **other interests** may be exercised notwithstanding the existence of the native title; and*

*The **other interests** and any activity done in the exercise of the rights conferred by or held under the **other interests** prevail over the native title and any exercise of the native title.*

The determination of Native Title also lists what are other interest in schedule 4

Taking the Yam determination, we see the following listed in schedule 4:

SCHEDULE 4

Other interests

(a) The interests of the lama Island Council and the beneficiaries under deed of grant No. 21296138.

(J) the powers of the lama Island Council under the Community Services (Torres Strait) Act 1984 (Qld) to discharge the functions of Local Government over the area under deed of grant No. 21296138 and exercise the powers of good rule and government thereof in accordance with the customs and practices of the inhabitants of that area.

I have attached a copy of the Federal Court Native Title Consent Determination for lama with the above sections highlighted.

Comment:

The impact of a determination of native title on DOGIT can be summarised that both native title and DOGIT co-exist, but where there is a conflict between a native title right, and a right under the DOGIT then the DOGIT rights prevail, in other words, native title has no effect.

This also applies to the rights of TSIRC as the Local Government Body.

When it comes to land dealings and the grant of leases of the DOGIT, TSIRC Trustee Policy provides for the recognition of native title and entering into ILUA's where there is a grant of a trustee lease.

Considerations

Risk Management

N/A

Council Finance

N/A

Consultation:

N/A

Links to Strategic Plans:

N/A

Statutory Requirements:

Local Government Act 2009 (Qld)

Local Government Regulation 2012 (Qld)

Native Title Act 1993 (Cth)

Conclusion:

That the Trustee resolves to note this report.



Endorsed:
Peter Krebs
Manager Legal Services



Recommended:
Megan Barrett
Executive Director Corporate Services



James William
Chief Executive Officer



Federal Court of Australia

**David on behalf of the Iama People and Tudulaig v
Queensland [2004] FCA 1576 (13 December 2004)**

Last Updated: 17 December 2004

FEDERAL COURT OF AUSTRALIA

David on behalf of the Iama People and Tudulaig v State of Queensland

[2004] FCA 1576

NATIVE TITLE – determination of – by consent – whether order under s 87 of the *Native Title Act 1993* (Cth) appropriate

**LUI DAVID, CHARLES DAVID, SILEN DAVID, CYRIL STEPHEN, PHILOMENA DAVID AND
PATRICK THAIDAY ON BEHALF OF THE IAMA PEOPLE AND TUDULAIG v STATE OF
QUEENSLAND AND OTHERS**

QG6052 of 1998

COOPER J

YAM ISLAND, TORRES STRAIT

13 DECEMBER 2004

IN THE FEDERAL COURT OF AUSTRALIA

QUEENSLAND DISTRICT REGISTRY

QG6052 OF 1998

**BETWEEN: LUI DAVID, CHARLES DAVID, SILEN DAVID, CYRIL STEPHEN,
PHILOMENA DAVID AND PATRICK THAIDAY ON BEHALF OF
THE IAMA PEOPLE AND TUDULAIG**

APPLICANTS

AND: STATE OF QUEENSLAND

FIRST RESPONDENT

TORRES STRAIGHT REGIONAL AUTHORITY

SECOND RESPONDENT

ERGON ENERGY CORPORATION LIMITED

THIRD RESPONDENT

TELSTRA CORPORATION LIMITED

FORTH RESPONDENT

QUEENSLAND SEAFOOD INDUSTRY ASSOCIATION INC

FIFTH RESPONDENT

JUDGE: COOPER J
DATE: 13 DECEMBER 2004
PLACE: YAM ISLAND, TORRES STRAIT

REASONS FOR JUDGMENT

Background

1 This proceeding arises out of an application for determination of native title filed on 18 June 1996 in accordance with the procedures set out in the *Native Title Act 1993* (Cth) ('the Act'). Mr Lui David, Mr Charles David, Miss Silen David, Mr Cyril Stephen, Miss Philomena David and Mr Patrick Thaiday make this application on behalf of the Iama People and Tudulaig of Yam Island in the Torres Strait. The main respondent to this determination application is the State of Queensland.

2 The determination application shows the claim area as comprising the land and waters on the landward side of the high water mark of:

'(a) Lot 13 on Plan TS177 being part of the island referred to as Yam Island excluding the areas described as:

(i) Lots 4-6 on Plan AP9680; and

(ii) Lease A on Deposited Plan 149845 in Lot 13 on Plan TS177;

(b) Lot 40 on Plan TS216 referred to as Zagai Island or Jeaka Island;

(c) Lot 42 on Plan TS216 referred to as Tudu Island; and

(d) Lot 44 on Plan TS216 referred to as Cap Islet or Mukar Islet or Mugquar Islet.'

3 The determination application also lists certain areas as not covered by the claim. Those areas are:

'Lot 14 on Plan TS178, Lot 1 on Plan TS362, Lot 50 on Plan TS283, Lot 2 on Plan TS117, Lots 4-6 on Plan AP9680, Lease A on Deposited Plan 149845 in Lot 13 on Plan TS177 and all Roads'.

4 The original application has been amended to combine four claimant applications by lama People into one application. The application was further amended on 18 November 2004 to reduce the area of the claim by excluding certain areas previously included. The parties to the claim have mediated the issues which arose under the application to the point where they have agreed to a consent determination. The agreement concerns exclusive and non-exclusive rights of possession, occupation, use and enjoyment of the lands and waters in the claim area. This agreement is subject to the Court being satisfied that it has the power to make the determination sought and that it is proper to do so.

Power of the Court

5 This Court has jurisdiction to hear and determine applications for a determination of native title in relation to an area for which there is no approved determination of native title: ss 13, 61 and 81 of the Act. Division 1C of Part 4 of the Act provides for agreements, to be made by some or all of the parties to an application, to settle the application or part of it.

6 Section 87 of the Act provides that the Court may, if it is satisfied that such an order is within the power of the Court, make an order in, or consistent with, the terms of the parties' written agreement without holding a hearing.

7 **Section 94A** of the Act requires that an order of this Court which makes a determination of native title must set out details of the matters mentioned in **s 225** of the Act. **Section 225** provides:

*'A **determination of native title** is a determination whether or not native title exists in relation to a particular area (the **determination area**) of land or waters and, if it does exist, a determination of:*

- (a) *who the persons, or each group of persons, holding the common or group rights comprising the native title are; and*
- (b) *the nature and extent of the native title rights and interests in relation to the determination area; and*
- (c) *the nature and extent of any other interests in relation to the determination area; and*
- (d) *the relationship between the rights and interests in paragraphs (b) and (c) (taking into account the effect of this Act); and*
- (e) *to the extent that the land or waters in the determination area are not covered by a non-exclusive agricultural lease or a non-exclusive pastoral lease – whether the native title rights and interests confer possession, occupation, use and enjoyment of that land or waters on the native title holders to the exclusion of all others.*

Note: The determination may deal with the matters in paragraphs (c) and (d) by referring to a particular kind or particular kinds of non-native title interests.'

(original emphasis)

Consideration of Agreement and Draft Determination

8 In considering whether it is appropriate to make the orders that the parties seek, I have had the benefit of an affidavit of Mr Patrick Thaiday sworn 30 April 2002. I have also had the benefit of an anthropological report prepared on behalf of the applicant in July 2000 by Dr Maureen Fuary, senior lecturer in Anthropology at James Cook University, Queensland and Mr Kevin Murphy, consultant anthropologist, and filed on 19 November 2004.

9 The report by Dr Fuary and Mr Murphy notes that the one claimant group is alternately named the Tudulaig and lama Islanders. This is in keeping with the cultural identity of Yam Island people who have always been Yam-Tudu people. Members of this group are descended from ancestors who were alive and in occupation of these lands prior to annexation in 1872. The centrality of kinship as an organising principle is ongoing in its influence over daily life on Yam Island, including everyday practices and the observation of social obligations. Yam and Tudu people were semi-sedentary people, systematically moving and settling on a number of islands. As part of their continuing system of land tenure, lama Islanders and Tudulaig continue to exercise and enjoy the rights to gather, hunt, fish, camp, garden, live, manage, maintain and visit the lands under claim. Through these cultural practices they invoke the rights they inherited from their ancestors prior to 1872, and can be seen to have maintained a continuous physical, cultural, and spiritual connection with lands referred to in the report.

10 By the time of annexation by the Queensland Government, the reputation of lama Islanders and Tudulaig was reportedly that of powerful defenders of their territory and resources, and as aggressors against other Islanders and European invaders. In 1792 when Captain Bligh was on his second trip to the Torres Strait, Tudu men earned a reputation of fierceness in European folklore, based on their resistance to his visit and attacks on his ships. They were subsequently described as skilful sailors and noted warriors and their island was dubbed 'Warrior Island'. Generally, Europeans tended to avoid the territory of lama Islanders until the late 1860s, when the lure of pearlshell and trepang proved to be a great attraction.

11 Dr Fuary notes that, up until the point of annexation, lama Islanders and Tudulaig lived by a system of law and order regulating their relationships and governing the use and ownership of land. They excluded others from their territory and like many other Torres Strait Island communities exerted power in their region.

12 There is no doubt that the lama Islanders and Tudulaig have continued their connection with the land and waters of the determination area since annexation. The present day lama Islanders and Tudulaig are descended from the autonomous social group who were primarily resident on the islands of Tudu and Yam before 1872. Mr Thaiday has deposed:

'4. The traditional land owners have acknowledged system of traditional laws and customs which they have observed and continue to observe relating to, among other things, land ownership. These laws and customs determine who are the rightful owners of particular parcels of land, how such ownership may rightfully pass from one person to another and collectively recognise the

continuing traditional associations with the claim area of the Yam Island/Tudulaig people.

5. In support of some of the rights included as part of the continuing traditional inheritance of Yam people/Tudulaig and therefore as part of their native title rights, I confirm that:

(a) Yam people have always enjoyed, and continue to enjoy, their rights to use, occupy and live on their lands and to exclude others from it and to use and enjoy the natural resources of the lands such as animal and plant life. For example, my family and I frequently visit Tudu to hunt for turtle, collect turtle eggs, fish from the beach and collect plant materials for food and other purposes. Some Yam families have houses there.

(b) Yam people leave their land to their children and others in accordance with their tradition and custom and grant and withhold permission for others to use their land. For example, my family will inherit my land on Yam when I die.

(c) Yam people hunt over the land, forage the land, garden the land and generally use the resources of the land albeit in somewhat changing ways over the years.

For example, members of my family often collect turtle eggs from Tudu and mud crab from Zegey, and have gardened and collected plant material from Yam and Mukar.

(d) Yam people trade and share in their natural resources amongst themselves and trade with others including Papuans, other Torres Strait Islanders and non-indigenous person. For example, I trade with Papuans on occasion.

(e) Yam people conduct social, religious and economic activities upon the claim area including the visiting of cultural sites of significance, conducting burials and tomb stone openings, participating in festivals and associated traditional dancing and being responsible on a daily basis for the care of the land. For example, I sometimes visit sites of cultural significance on Yam Island and the other claim islands, and I visit the graves of my ancestors in the cemetery at Yam Island.'

13 I accept the evidence contained in Mr Thaiday's affidavit and the opinions contained in the report of Dr Fuary and Mr Murphy. I am satisfied that:

- (a) native title exists in relation to the lands and waters identified in the draft determination agreed to by the parties;
- (b) the members of the claimant group referred to as the Iama People and Tudulaig are members of a society of peoples descended from the Torres Strait Islander peoples who as a society at the time of sovereignty occupied the lands and waters identified in the draft determination in accordance with traditional laws and customs acknowledged and observed by them;
- (c) the laws and customs acknowledged and observed by the society at sovereignty are continued to be acknowledged and observed by the members of the claim group and have

been acknowledged and observed by their predecessors from the time of sovereignty to the present time;

(d)

the members of the claim group and their predecessors through their continued acknowledgement and observance of the traditional laws and customs which existed at the time of sovereignty, have maintained since that time a connection to the determination area;

(e)

the native title rights and interests in the determination area are held by the persons who are or are entitled to be or become members of the claim group called the Iama People and Tudulaig; and

(f)

the nature and extent of the exclusive and non-exclusive native title rights and interests in relation to the determination area are as set out in the agreed draft determination.

14 I am also satisfied on the materials that there are other interests in and in relation to the determination area. Those interests and their relationship with the native title interests are set out in Schedule 4 of the agreed draft determination.

Orders and Determinations

15 The proposed Orders, which are consistent with the terms agreed by the parties, recognise that the Iama People and Tudulaig, as the common law holders of the native title, are entitled to possess, occupy, use and enjoy the land and waters of the determination area, in accordance with their traditional laws and customs. The proposed Orders also recognise the other interests in the lands and waters in the determination area and the relationship of those interests with the native title interests. The proposed Orders contain the elements required by s 94A and s 225 of the Act.

16 I am satisfied that it is within the power of the Court to make the Orders sought and that these Orders can appropriately be made to give effect to the parties' agreement without a full

hearing of the determination application. I therefore make the Orders and determination attached as the Appendix to these reasons.

I certify that the preceding sixteen (16) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Cooper.

Associate:

Dated: 13 December 2004

Solicitor for the Applicant:

Torres Strait Regional Authority

Solicitor for the State of Queensland:

Crown Solicitor

APPENDIX

IN THE FEDERAL COURT OF AUSTRALIA

QUEENSLAND DISTRICT REGISTRY

No. QG 6052 of 1998

LUI DAVID, CHARLES DAVID, SILEN DAVID, CYRIL STEPHEN,
PHILOMENA DAVID AND PATRICK THAIDAY ON BEHALF OF THE
YAM ISLANDERS/TUDULAIG PEOPLE

Applicant

STATE OF QUEENSLAND

First Respondent

TORRES STRAIT REGIONAL AUTHORITY

Second Respondent

ERGON ENERGY CORPORATION LIMITED

Third Respondent

TELSTRA CORPORATION LIMITED

Fourth Respondent

BERNARD BRADLEY

Fifth Respondent

CARL D'AGUIAR

Sixth Respondent

NEVILLE DAVIES

Seventh Respondent

BARRY EHRKE

Eighth Respondent

PAUL GREEN

Ninth Respondent

PHILLIP JOHN HUGHES

Tenth Respondent

MARK MILLWARD

Eleventh Respondent

AL MOLLER-NIELSEN

Twelfth Respondent

DARYL O'HANLON

Thirteenth Respondent

BRUCE ROSE

Fourteenth Respondent

FRANK SWINBURNE

Fifteenth Respondent

MARK WILLIS

Sixteenth Respondent

BARRY WILSON

Seventeenth Respondent

ORDER

JUDGE:

DATE OF ORDER:

WHERE MADE:

THE COURT ORDERS BY CONSENT THAT:

1. Native title exists in relation to the land and waters described in Schedule 1 and shown on the plan in Schedule 2 ("the Determination Area").
2. Native title is held by the people described in Schedule 3 ("the Native Title Holders").
3. Subject to paragraphs 4 and 5, the native title is a right to possession, occupation, use and enjoyment to the exclusion of all others.
4. Subject to paragraph 5, the native title in relation to Water is a non-exclusive right to:
 - (a) hunt and fish in or on, and gather from, the Water for the purpose of satisfying personal, domestic or non-commercial communal needs; and

(b) take, use and enjoy the Water for the purpose of satisfying personal, domestic or non-commercial communal needs.

The native title in relation to Water does not confer possession, occupation, use and enjoyment of the Water on the Native Title Holders to the exclusion of all others.

5. The native title is subject to and exercisable in accordance with:
 - (a) the laws of the Commonwealth of Australia and the State of Queensland including the common law; and
 - (b) traditional laws acknowledged and traditional customs observed by the Native Title Holders.

6. The nature and extent of the other interests in relation to the Determination Area are set out in Schedule 4.
7. The relationship between the native title and the other interests referred to in paragraph 6 is that:
 - (a) the other interests continue to have effect and the rights conferred by or held under the other interests may be exercised notwithstanding the existence of the native title; and
 - (b) the other interests and any activity done in exercise of the rights conferred by or held under the other interests prevail over the native title and any exercise of the native title.
8. If a word or expression is not defined in this order, but is defined in the *Native Title Act 1993* (Cth) then it has the meaning given to it in the *Native Title Act 1993* (Cth). In addition to the other words defined in this order:
 - (a) "High Water Mark" has the meaning given to it in the *Land Act 1994* (Qld);
 - (b) "Local Government" has the meaning given to it in the *Local Government Act 1993* (Qld);
 - (c) "Roads" means the roads shown on the plan in Schedule 2 and all other roads whether declared, notified, constructed, surveyed or taken under the laws of the Commonwealth of Australia or the State of Queensland including the common law, to be a road; and
 - (d) "Water" has the meaning given to it in the *Water Act 2000* (Qld).

9. Paragraphs 1-7 will take effect on the agreement referred to in item (d) of Schedule 4 being registered on the Register of Indigenous Land Use Agreements.
10. In the event that the agreement referred to in paragraph 9 is not registered within six (6) months of the date of this order or such later time as this Court may order, the matter is to be listed for further directions.
11. Upon paragraphs 1-7 taking effect, the native title is to be held in trust by the Magani Lagaugal (Torres Strait Islanders) Corporation for the benefit of the Native Title Holders.
12. Each party to the proceeding is to bear its own costs.

Date that entry is stamped:

.....
Deputy District Registrar

SCHEDULE 1

DETERMINATION AREA

The land and waters on the landward side of the High Water Mark of:

- (a) Lot 13 on Plan TS177 being part of the island referred to as Yam Island excluding the areas described as:
 - (i) Lots 4-6 on Plan AP9680; and
 - (ii) Lease A on Deposited Plan 149845 in Lot 13 on Plan TS177;
- (b) Lot 40 on Plan TS216 referred to as Zagai Island or Jeaka Island;
- (c) Lot 42 on Plan TS216 referred to as Tudu Island; and
- (d) Lot 44 on Plan TS216 referred to as Cap Islet or Mukar Islet or Muquar Islet.

Lot 14 on Plan TS178, Lot 1 on Plan TS362, Lot 50 on Plan TS283, Lot 2 on Plan TS117, Lots 4-6 on Plan AP9680, Lease A on Deposited Plan 149845 in Lot 13 on Plan TS177 and Roads are not subject to native title determination application Yam Islanders/Tudulaig Combined QG 6052 of 1998 and do not form part of the land and waters described above.

SCHEDULE 2

NATIVE TITLE DETERMINATION PLAN

[illegible]

NATIVE TITLE HOLDERS

The Yam Islanders/Tudulaig People, being:

- (a) the descendants of one or more of the following apical ancestors: Kebisu, Rusia, Ausa, Auda, Porrie Daniel, Gawadi or Kelam; and
- (b) Torres Strait Islanders who have been adopted by the above people in accordance with the traditional laws acknowledged and traditional customs observed by those people.

SCHEDULE 4

OTHER INTERESTS

The nature and extent of the other interests in relation to the Determination Area are:

(a) the interests of the Iama Island Council and the beneficiaries under deed of grant No. 21296138;

(b) the interests of the Urapun Tubudal Gal Land Trust and the beneficiaries under deed of grant No. 40032519;

(c) the interests of the State of Queensland in the following reserves, the interests of the persons in whom they are vested and the interests of the persons entitled to access and use those reserves for the respective purposes for which they are reserved:

- (i) Reserve 21 over Lot 40 on Plan TS216;
and
- (ii) Reserve 201 over Lot 44 on Plan TS216;

(d) the interests of the State of Queensland under an indigenous land use agreement dated 22 November 2004 between it and Lui David, Charles David, Silen David, Cyril Stephen, Philomena David and Patrick Thaiday;

(e) the interests of Ergon Energy Corporation Limited, being:

(i) rights and interests as the owner and operator of electricity generation, transmission and distribution facilities within the Determination Area;

(ii) rights and interests in exercising its statutory powers and responsibilities;

(iii) rights to enter the Determination Area by employees, agents or contractors of Ergon Energy Corporation Limited to enable access to its facilities in, and in the vicinity of, the Determination Area or

otherwise as required in the exercise of their powers or the performance of their responsibilities; and

(iv) the rights and interests under an indigenous land use agreement between the Native Title Holders and Ergon Energy Corporation Limited dated 25 November 2004;

(f) the rights and interests of Telstra Corporation Limited, being:

(i) rights and interests as the owner or operator of telecommunications facilities installed within the Determination Area and as the holder of a carrier licence under the *Telecommunications Act 1997* (Cth);

(ii) rights and interests created pursuant to the *Post and Telegraph Act 1901* (Cth), the *Telecommunications Act 1975* (Cth), the *Australian Telecommunications Corporation Act 1989* (Cth), the *Telecommunications Act 1991* (Cth) and the *Telecommunications Act 1997* (Cth);

(iii) rights to enter the Determination Area by employees, agents or contractors of Telstra Corporation Limited in the performance of their duties, to enable access to its telecommunications facilities in, and in the vicinity of, the Determination Area; and

(iv) rights and interests under an indigenous land use agreement between the Native Title Holders and Telstra Corporation Limited dated 29 November 2004;

(g) the interests of the State of Queensland in the accommodation facilities located within the areas described as Lease B on Crown Plan 825770 in Lot 13 on Plan TS177 and Lease S on Deposited Plan 151800 in Lot 13 on Plan TS177 including the:

(i) rights to use, operate and maintain the facilities;

(ii) rights to control access to and use of the facilities; and

(iii) rights of its employees, contractors, agents, representatives, licensees, permittees and invitees to enter the Determination Area for the purposes of accessing the facilities;

(h) the interests of the State of Queensland in the community health centre located within the area described as Lease H on Deposited Plan 150248 in Lot 13 on Plan TS177 including the:

(i) rights to use, operate and maintain the centre;

(ii) rights to control access to and use of the centre; and

(iii) rights of its employees, contractors, agents, representatives, licensees, permittees and invitees to enter the Determination Area for the purposes of accessing the centre;

(i) any interests under an application under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* (Qld) set out below:

(i) Application No. 1/89;

(ii) Application No. 2/89;

(iii) Application No. 3/89;

(iv) Application No. 4/89;

(v) Application No. 5/89;

(vi) Application No. 7/89;

(vii) Application No. 8/89;

(viii) Application No. 9/89;

(ix) Application No. 10/89;

(x) Application No. 11/89;

(xi) Application No. 12/89;

(xii) Application No. 13/89;

(xiii) Application No. 14/89;

(xiv) Application No. 15/89;

(xv) Application No. 16/89;

(xvi) Application No. 17/89;

(xvii) Application No. 18/89;

(xviii) Application No. 19/89;

(xix) Application No. 20/89;

(xx) Application No. 21/89;

(xxi) Application No. 22/89;

(xxii) Application No. 23/89;

(xxiii) Application No. 24/89;

(xxiv) Application No. 25/89;

(xxv) Application No. 26/89;

(xxvi) Application No. 27/89;

(xxvii) Application No. 28/89;

(xxviii) Application No. 29/89;

(xxix) Application No. 30/89;

(xxx) Application No. 31/89;

(xxxi) Application No. 32/89;

(xxxii) Application No. 33/89;

(xxxiii) Application No. 34/89; and

(xxxiv) Application No. 35/89;

(j) the powers of the lama Island Council under the *Community Services (Torres Strait) Act 1984* (Qld) to discharge the functions of Local Government over the area under deed of grant No. 21296138 and exercise the powers of good rule and government thereof in accordance with the customs and practices of the inhabitants of that area;

(k) the interests, powers and functions of the Torres Shire Council as Local Government for Lots 40, 42 and 44 on Plan TS216;

(l) the interests recognised under the *Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related matters* signed at Sydney on 18 December 1978 as in force at the date of this order including the interests of indigenous Papua New Guinea persons in having access to the Determination Area for traditional purposes; and

(m) any other interests that may be held by reason of the force or operation of the laws of the Commonwealth of Australia or the State of Queensland including the common law.



TORRES STRAIT ISLAND REGIONAL COUNCIL

TRUSTEE REPORT

TRUSTEE MEETING:	March 2022
DATE:	22 March 2022
ITEM:	Agenda Item for Resolution by Trustee
SUBJECT:	Firearms Licence – Landowner consent
AUTHOR:	Peter Krebs

Recommendation:

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.
- 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.

Executive Summary:

The purpose of this report is to provide options in giving landowner consent on the DOGIT regarding applications for firearms licences.

Background:

Section 13 of the Weapons Act 1990 requires that an applicant for a recreational Shooting licence must produce a written permission from a landowner authorising the applicant to shoot on the landowner's land.

Section 168A of the Weapons Act 1990 provides that where a landowner provides written permission to shoot on the landowner's rural land for more than 50 people, then the landowner must keep a register.

In July 2021, Richard Gela of Hammond Island, sent a formal request to the TSIRC CEO for landowner permission to obtain his firearms licence. Since TSIRC holds the Hammond Island DOGIT, it is the landowner for this purpose.

A search on the TSIRC database revealed that there were no previous applications on record and there was no guidance in the form of a policy or procedure on how these requests should be processed.

Former Mayor Fred Gela advised that in the past, the Divisional Councillor would sign off on the requests without any formality. This process he was requesting Cr. Dorante to follow on behalf of his son's application.

Cr. Dorante had some concerns about signing off and wishes to seek Council guidance on the matter.

Comment:

The lack of a formal process and proper record keeping could be the subject of complaint. There are also concerns that it is unknown how many licences have been granted in the past and to whom.

Richard Gela made the application in July 2021 and there has been a delay in processing his application due to the situation.

Considerations

Risk Management

Under Section 168 of the Weapons Act, the Landowner incurs no liability merely because the Landowner provides a person with written permission to shoot on the Landowners land.

Council Finance

No financial effect other than additional workload for administrative staff in processing and maintaining a registry of applications.

Consultation:

- Former Mayor Fred Gela
- Cr. Dorante – Hammond Island
- TSIRC's Culture, Arts, Heritage and Land Standing Committee

Links to Strategic Plans:

Outline the link to pillars in Corporate Plan and objectives in Operational Plan if applicable.

Statutory Requirements:

Local Government Act 2009

Local Government Regulation 2012

Weapons Act 1990

Conclusion:

As per report.



Endorsed:

Peter Krebs
Manager Legal Services



Recommended:

Megan Barrett
Executive Director Corporate Services



James William
Chief Executive Officer

TORRES STRAIT ISLAND REGIONAL COUNCIL

TRUSTEE REPORT

ORDINARY MEETING:	March 2022
DATE:	22 March 2022
ITEM:	Agenda Item for Resolution by Trustee
SUBJECT:	Masig Lot 29 – consent to development application
AUTHOR:	Julia Maurus, Senior Legal Officer
PRESENTER:	Peter Krebs, Manager Legal Services

Recommendation:

1. That the Trustee grant owner's consent to the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships in support of a development application for a Reconfiguration of Lot (1 into 2 Lots) over **Lot 29 on SP277431** (29 & 46 Lowatta Road, Masig Island), on behalf of Anna Ruth Kris, Bethelia Nai, Lily Elma Lena Gela, Margaret Tubau Stephen, Robert Gela, Christina Moira Gela and Leonard Francis Gela (the beneficiaries of Land Holding Act Lease No. 715653392) and Paul Lowatta (lease entitlement holder); and
2. Authorise the Chief Executive Officer to sign the owner's consent form and, subject to local government approval, the resulting survey plans.

Executive Summary:

This report seeks the Trustee's consent to subdivide Katter lease land at Lot 29 SP277431 so that there is one land parcel for each house on the land (29 & 46 Lowatta Road, Masig).

Council has received a request from ATSIP (Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships) on behalf of Anna Ruth Kris, Bethelia Nai, Lily Elma Lena Gela, Margaret Tubau Stephen, Robert Gela, Christina Moira Gela and Leonard Francis Gela and Paul Lowatta, to subdivide the land at Lot 29 SP277431.

At present, there is a registered Katter lease (715653392) over all of Lot 29 SP277431. The lease commenced on 4 June 1987. The lease is held by the seven beneficiaries of the Deceased Estate of the Late Matilda Gela as published in the Certificate of Entitlement (Beneficiary Certificate) issued on 27 September 2021 under Section 60 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, all of whom hold an equal interest to the estate: Anna Ruth Kris, Bethelia Nai, Lily Elma Lena Gela, Margaret Tubau Stephen, Robert Gela, Christina Moira Gela and Leonard Francis Gela.

There are two social houses on Lot 29 SP277431:

- 29 Lowatta Road Masig Island (part of Lot 29SP277431): It is proposed to grant home ownership to the above-mentioned seven beneficiaries of Katter lease 715653392.
- 46 Lowatta Road Masig Island (part of Lot 29 SP277431): Paul Lowatta holds a Katter lease entitlement to this land. Paul Lowatta was identified as the sole beneficiary of the original applicant Dorothy Lowatta on a Certificate of Entitlement dated 24 October 2014. Granting the Katter lease to Paul Lowatta will require partial surrender of the existing

registered Katter lease by the above-mentioned seven beneficiaries. This three-bedroom Social Housing Dwelling is tenanted by Peter Lowatta (son of entitlement holder).

The subdivision will enable separate lots for 29 & 46 Lowatta Road.

Robert (Rocky) Gela has signed a request and statutory declaration for the subdivision on behalf of the seven beneficiaries. Paul Lowatta has also signed a request for the subdivision and seeks home ownership of 46 Lowatta Road.

Background:

The proposed subdivision is shown in the images **below**.

Reconfiguring a Lot – Subdivision (one lot into two lots)



29 and 46 Lowatta Road on Lot 29 SP277431

Comment:

This step is only the Trustee's consent to the subdivision. The partial surrender of the existing Katter lease, to allow a Katter lease to be granted to Paul Lowatta, will be done through a separate process with the ATSIP Home Ownership Team, after the subdivision is finalised.

Considerations

Risk Management

Compliance:

Consultation was undertaken with Robert (Rocky) Gela in September 2018 and October 2020 regarding the partial surrender process. Robert Gela has signed a request and statutory declaration for the subdivision on behalf of the seven beneficiaries. Paul Lowatta has also signed a request for the subdivision and seeks home ownership of 46 Lowatta Road. The future partial surrender of the existing Katter lease will require the signatures of all seven beneficiaries.

Council Finance

Not applicable

Consultation:

- Supported by Cr Hilda Mosby. Cr Mosby has advised that the beneficiaries and Paul Lowatta are members of her extended family.

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

Links to Strategic Plans:

TSIRC Corporate Plan 2020–2025

Delivery Pillar: Sustainability

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

- 8.1: Effective management of DOGIT Land as a Trustee

Operational Plan:

LHA (Katter) lease resolution

Statutory Requirements:

Torres Strait Islander Land Act 1991 (Qld)

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

Conclusion:

It is recommended that the Trustee consent to the proposed development application.

**Recommended:**

Peter Krebs

Manager Legal Services

**Endorsed:**

Megan Barrett

Executive Director, Corporate Services

**Endorsed:**

James William

Chief Executive Officer

TRUSTEE AGENDA REPORT

ORDINARY MEETING:	March 2022
DATE:	22 March 2022
ITEM:	Trustee Agenda Item for Resolution by Council
SUBJECT:	Telstra request to transfer lease interests to Amplitel
AUTHOR:	Julia Maurus, Senior Legal Officer

Personal Interests

Councillors are reminded to declare any personal interests relating to:

- Telstra Corporation Limited
- Amplitel Pty Ltd
- Traditional owner interests on land currently occupied by Telstra

Recommendation:

(Each Trustee resolution should be carried separately, with the relevant Divisional Councillor as mover)

1. **Boigu:** That the Trustee resolve, pursuant to the Torres Strait Islander Land Act 1991 (Qld), to consent to Telstra's lessee request to transfer or licence of **Lease T (712162563)** from Telstra Corporation Limited to Amplitel Pty Ltd as trustee for the Towers Business Operating Trust, care of Telstra Corporation Limited; and delegate to the Mayor and Chief Executive Officer each the power to sign and discharge lease transfer, Deed of Consent to Assignment and General Consent forms, as required.
2. **Dauan:** That the Trustee resolve, pursuant to the Torres Strait Islander Land Act 1991 (Qld), to consent to Telstra's lessee request to transfer or licence of **Lease T (715884617)** from Telstra Corporation Limited to Amplitel Pty Ltd as trustee for the Towers Business Operating Trust, care of Telstra Corporation Limited; and delegate to the Mayor and Chief Executive Officer each the power to sign and discharge lease transfer, Deed of Consent to Assignment and General Consent forms, as required.
3. **Saibai:** That the Trustee resolve, pursuant to the Torres Strait Islander Land Act 1991 (Qld), to consent to Telstra's lessee request to transfer or licence of **Lease 719676460** (Lot 103 SP267944) from Telstra Corporation Limited to Amplitel Pty Ltd as trustee for the Towers Business Operating Trust, care of Telstra Corporation Limited; and delegate to the Mayor and Chief Executive Officer each the power to sign and discharge lease transfer, Deed of Consent to Assignment and General Consent forms, as required.
4. **Mabuiag:** That the Trustee resolve, pursuant to the Torres Strait Islander Land Act 1991 (Qld), to consent to Telstra's lessee request to transfer or licence of **Lease T (716045963)** from Telstra Corporation Limited to Amplitel Pty Ltd as trustee for the Towers Business Operating Trust, care of Telstra Corporation Limited; and delegate to the Mayor and Chief Executive Officer each the power to sign and discharge lease transfer, Deed of Consent to Assignment and General Consent forms, as required.
5. **Arkai/Kubin:** That the Trustee resolve, pursuant to the Torres Strait Islander Land Act 1991 (Qld), to consent to Telstra's lessee request to transfer or licence of **Lease T (716688153) and Lease U (717120988)** from Telstra Corporation Limited to Amplitel Pty Ltd as trustee for the Towers

Business Operating Trust, care of Telstra Corporation Limited; and delegate to the Mayor and Chief Executive Officer each the power to sign and discharge lease transfer, Deed of Consent to Assignment and General Consent forms, as required.

6. **Wug/St Pauls:** *That the Trustee resolve, pursuant to the Torres Strait Islander Land Act 1991 (Qld), to consent to Telstra's lessee request to transfer or licence of **Lease T (716688174)** from Telstra Corporation Limited to Amplitel Pty Ltd as trustee for the Towers Business Operating Trust, care of Telstra Corporation Limited; and delegate to the Mayor and Chief Executive Officer each the power to sign and discharge lease transfer, Deed of Consent to Assignment and General Consent forms, as required.*
7. **Kirriiri/Hammond:** *That the Trustee resolve, pursuant to the Aboriginal Land Act 1991 (Qld), to require the occupant of **Lot 10 on SP248418** (Francis Rd, Hammond Island), being the operator of the Hammond Island R/T (Site ref TC16965) (Telstra Corporation Limited or Amplitel Pty Ltd as trustee for the Towers Business Operating Trust, care of Telstra Corporation Limited), to enter into a standard Trustee lease, subject to native title future act validation; and delegate to the Mayor and Chief Executive Officer each the power to negotiate, sign and discharge the Deed of Agreement for Lease, Lease and General Consent forms, as required.*
8. **Iama:** *That the Trustee resolve, pursuant to the Torres Strait Islander Land Act 1991 (Qld), to consent to Telstra's lessee request to transfer or licence of **Lease T (713124952)** from Telstra Corporation Limited to Amplitel Pty Ltd as trustee for the Towers Business Operating Trust, care of Telstra Corporation Limited; and delegate to the Mayor and Chief Executive Officer each the power to sign and discharge lease transfer, Deed of Consent to Assignment and General Consent forms, as required.*
9. **Warraber:** *That the Trustee resolve, pursuant to the Torres Strait Islander Land Act 1991 (Qld), to consent to Telstra's lessee request to transfer or licence of **Lease T (715884606)** from Telstra Corporation Limited to Amplitel Pty Ltd as trustee for the Towers Business Operating Trust, care of Telstra Corporation Limited; and delegate to the Mayor and Chief Executive Officer each the power to sign and discharge lease transfer, Deed of Consent to Assignment and General Consent forms, as required.*
10. **Poruma:** *That the Trustee resolve, pursuant to the Torres Strait Islander Land Act 1991 (Qld), to consent to Telstra's lessee request to transfer or licence of **Lease T (715600944)** from Telstra Corporation Limited to Amplitel Pty Ltd as trustee for the Towers Business Operating Trust, care of Telstra Corporation Limited; and delegate to the Mayor and Chief Executive Officer each the power to sign and discharge lease transfer, Deed of Consent to Assignment and General Consent forms, as required.*
11. **Masig:** *That the Trustee resolve, pursuant to the Torres Strait Islander Land Act 1991 (Qld), to consent to Telstra's lessee request to transfer or licence of **Lease 718782028** (Lot 213 SP277431) from Telstra Corporation Limited to Amplitel Pty Ltd as trustee for the Towers Business Operating Trust, care of Telstra Corporation Limited; and delegate to the Mayor and Chief Executive Officer each the power to sign and discharge lease transfer, Deed of Consent to Assignment and General Consent forms, as required..*
12. **Ugar:** *That the Trustee resolve, pursuant to the Torres Strait Islander Land Act 1991 (Qld), to consent to Telstra's lessee request to transfer or licence of **Lease T (713124934)** from Telstra Corporation Limited to Amplitel Pty Ltd as trustee for the Towers Business Operating Trust, care of Telstra Corporation Limited; and delegate to the Mayor and Chief Executive Officer each the power to sign and discharge lease transfer, Deed of Consent to Assignment and General Consent forms, as required.*
13. **Erub:** *That the Trustee resolve, pursuant to the Torres Strait Islander Land Act 1991 (Qld), to consent to Telstra's lessee request to transfer or licence of **Lease T (713124893)** from Telstra Corporation Limited to Amplitel Pty Ltd as trustee for the Towers Business Operating Trust, care of Telstra Corporation Limited; and delegate to the Mayor and Chief Executive Officer each the power to sign and discharge lease transfer, Deed of Consent to Assignment and General Consent forms, as required.*

Executive Summary:

Telstra has requested Trustee consent to transfer or licence its various leases on Council-held DOGIT land to its new subsidiary, Amplitel Pty Ltd. Under the terms of the leases, the Trustee cannot unreasonably refuse consent to Telstra's request.

Amplitel intends to use the leased premises for the same purposes as Telstra currently uses those premises. The terms of the leases will not change, other than that Amplitel will become the tenant or licensee (as appropriate) under the leases.

Background:

On 30 June 2021, Telstra announced the sale of a non-controlling stake in its mobile and non-mobile towers business to a high-calibre consortium – comprising the Future Fund, Commonwealth Superannuation Corporation and Sunsuper and managed by HRL Morrison & Co. Telstra has retained 51 per cent ownership and continues to own the active parts of its network.

This transaction was completed on 1 September 2021.

To facilitate this sale, the assets and operations of the tower business have been transferred into a new Telstra subsidiary called Amplitel Pty Ltd. On 1 September 2021, the Future Fund, Commonwealth Superannuation Corporation and Sunsuper acquired a 49 per cent interest in Amplitel.

Amplitel will continue to operate the towers business in a similar manner to Telstra, including allowing telecommunications carriers and other tower users access to the facilities to operate their mobile telephone and other networks.

As part of the sale, leases held by Telstra used for towers and associated assets, including any leases, licences or other tenures granted by Torres Strait Island Regional Council may be transferred to Amplitel. Some tenures will remain with Telstra where these have fixtures that are used by Telstra, but will be licensed or sublicensed to Amplitel (for example, Telstra will grant licences by Amplitel to its customers and contractors requiring access to the tower and other facilities on the land).

The leases granted by Council to Telstra require consent to be transferred or licensed to Amplitel. Telstra has contacted Council seeking this consent from Council. Telstra will not seek to transfer the leases requiring consent of the Council until it has received that consent.

Amplitel Pty Ltd agrees with Council to comply with the tenant's obligations under the leases from the date of the lease transfer as if Amplitel Pty Ltd was named in the leases as the tenant.

There will be no other proposed changes to the terms of the leases and the operations of the tower business will continue as usual.

Leases to be transferred to Amplitel – consent sought

Site Ref	Site Name	Lease no.	Lot on Plan	Address
TC16279	BANKS PEAK R/T	716688153	Lease T on SP274785 in Lot 5 SP271019	Banks Peak, Moa Island
TC17112	MABUYAG RT (WAS MABUIAG)	716045963	Lease T on SP267833 in Lot 105 SP273192	104 Bani Rd, Mabuiag Island
TC17153	MOA ISLAND R/T	716688174	Lease T on SP145580 in Lot 21 SP256048	26 Main St, St Pauls
TC17351	UGAR RT (WAS STEPHENS ISLAND R/T)	713124934	Lease T on SP175711 in Lot 4 SP282706	Cemetery Rd, Stephen Island
TC17290	SAIBAI ISLAND R/T	719676460	Whole of Lot 103 SP267944	

Sites to be licensed from Telstra to Amplitel – consent sought

Site Ref	Site Name	Lease no.	Lot on Plan	Address
TC14662	YORKE ISLAND WEST RT	718782028	Whole of Lot 213 SP277431	54 Steve & Jeff Road, Masig

TC16783	PORUMA RT (WAS COCONUT ISLAND R/T)	715600944	Lease T on SP145583 in Lot 1 SP270862	Mimia St, Coconut Island
TC17152	KUBIN VILLAGE R/T	717120988	Lease U on SP238257 in Lot 51 SP271019	51 Gerainelgau Yabu Rd, Kubin Village
TC17634	WARRABER RT (WAS SUE ISLAND R/T)	715884606	Lease T on SP145584 in Lot 44 SP270859	Aikuru St, Warraber Island
TC16873	DAUAN ISLAND R/T	715884617	Lease T on SP146515 in Lot 39 SP270872	Main St, Dauan Island
	BOIGU ISLAND R/T	712162563	Lease T on SP175710 in Lot 67 SP273190	
	ERUB / DARNLEY ISLAND R/T	713124893	Lease T on SP175712 in Lot 73 SP270873	
	IAMA / YAM ISLAND R/T	713124952	Lease T on SP151805 in Lot 104 SP270867	

The proposed resolutions give Trustee consent to a transfer or licence to Amplitel of each site, rather than specifying a transfer or licence in each case. This is for the sake of administrative efficiency, so that, if Telstra changes its intentions (deciding to transfer instead of licensing, or vice versa), it will not be necessary for Council to make another Trustee resolution. JLL/Telstra have already advised of changes since its letter of 2 March 2022 (**attached**).

Comment:

Clause 17.1 of each lease between Council and Telstra states that Telstra may transfer the lease only with the Trustee's written consent, which the Trustee must not unreasonably withhold. Telstra is liable for its obligations under the lease up to the date of transfer. From the date of transfer, Amplitel will be liable for all lessee obligations under the lease, while Telstra remains liable for all matters up to the date of transfer.

Hammond Island R/T (Site ref TC16965) (Lot 10 SP248418) (Francis Rd, Hammond Island)

Telstra's correspondence sought Trustee approval to transfer the lease for the Hammond Island Telstra site to Amplitel. However, on reviewing the land title, it has come to light that Telstra does not have a registered lease over this land. This seems to have been overlooked. There are no registered interests for this land. Amplitel will require a new lease for this land, so this site has been added to the list of undocumented commercial land occupation. JLL is seeking instructions to confirm that Amplitel is seeking a new lease for this land. The new lease may require native title future act validation. Development approval will not be required because it is an existing use.

Considerations

Risk Management

Compliance (leasing, land titles, native title):

The transfer and licence of the Telstra leases is consistent with the terms of the leases. Therefore, native title future act validation is not required for the proposed lease transfers and licences.

Amplitel Pty Ltd agrees with Council to comply with the tenant's obligations under the leases from the date of the lease transfer as if Amplitel Pty Ltd was named in the leases as the tenant.

Compliance (Trustee decision-making process):

To effect each lease transfer, a Council Trustee resolution will be required. As the Divisional Councillor has effective veto power for land-related decision-making, it is recommended that a separate trustee resolution is made for each Telstra lease, and that individual Councillors move the resolution relevant to their respective communities. If a Divisional Councillor is absent from the Trustee meeting, the resolution for that particular community should be held over to the next Trustee meeting.

Following the Trustee resolution, for each lease a Form 1 lease transfer and Form 18 general consent form will need to be executed by the parties and lodged with Queensland's Land Titles Office.

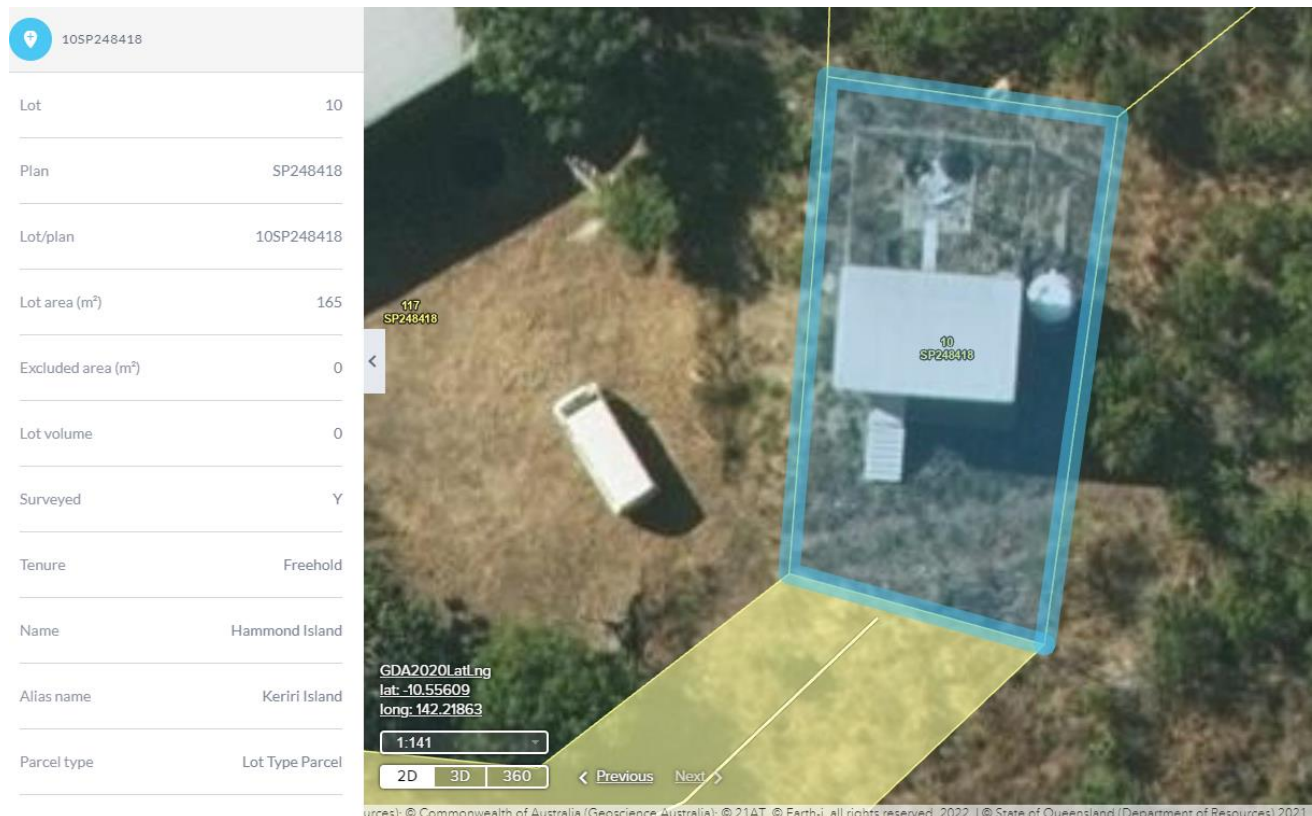
Council Finance

Telstra will cover Council's reasonable costs of these lease dealings, where the lease requires this.

Rent is payable under all of the leases, however most of the Telstra leases involved payment of rent

at the beginning of the lease. Only four of the leases (Kubin Lease T, Kubin Lease U, St Pauls and Saibai) involve ongoing annual rent. This is summarised in the **attached** table.

Trustee lease revenue is vital to ensuring the sustainability of the Trustee's functions and improvement of the DOGIT. The Hammond Island site has been added to the list of undocumented commercial land occupation and the Legal Services team will work with Telstra/Amplitel to progress a lease for this site consistent with the Trustee's commercial rent methodology. Hammond Lot 10 SP248418 (shown below) is a small lot totalling 165m² so the minimum starting rent of \$6,000 per annum will apply.



Consultation:

- Telstra

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

Statutory Requirements:

Torres Strait Islander Land Act 1991 (Qld)

Native Title Act 1993 (Cth)

Land Title Act 1994 (Qld)

Conclusion:

Unless there are reasonable grounds to withhold consent, it is recommended that the Trustee consent to Telstra's request to transfer and/or licence its leases of DOGIT land.



Recommended:

Peter Krebs
Manager Legal Services



Endorsed:

James William
Chief Executive Officer



Endorsed:

Megan Barrett
Executive Director, Corporate Services

Current Registered Telstra leases

Division	Lessee	Premises / Lot and / or Plan Description	Lease number	Title Reference	Commencement Date	Expiry Date	Rental/ Consideration excluding GST	Invoice Period
Boigu	Telstra Corporation Limited	Lease T on Lot 4 on SP175710	712162563	51146323	12.12.2008	11.12.2038	\$15,000	Full term
Dauan	Telstra Corporation Limited	Lease T Lot 9 on CP TS169 on SP146515	715884617	51093448	20.03.2014	23.05.2031	\$15,000	Full term
Erub	Telstra Corporation Limited	Lease T on Lot 4 on CPTS156 on SP175712	713124893	51073597	23.02.2010	22.02.2036	\$15,000	Full term
Iama	Telstra Corporation Limited	Lease T on Lot 13 on CP TS177	713124952	51080143	19.02.2010	18.02.2036	\$15,000	Full term
Kubin	Telstra Corporation Limited	Lease T on Lot 5 SP248095	716688153	51089383	21.08.2014	22.01.2032	\$5,633	Annual with CPI
Kubin	Telstra Corporation Limited	Lease U on Lot 5 on CP TS158	717120988	51089019 51089413	22.09.2015	22.01.2032	\$5,549	Annual with CPI
Mabuiag	Telstra Corporation Limited	Lease T on Lot 2 on SP242990	716045963	51176800	20.03.2014	23.05.2031	\$15,000	Full term
Masig	Telstra Corporation Limited	Lease AA on Lot 213 on SP277431	718782028	51071774	01.09.2016	31.08.2056	\$15,000	Full term
Poruma	Telstra Corporation Limited	Lease T on SP145583 - Lot 6	715600944	51078100	28.06.2013	23.05.2031	\$15,000	Full term
Saibai	Telstra Corporation Limited	Lot 103 on SP267944	719676460	51134357	10.03.2016	09.03.2046	\$5,895	Annual with CPI
St Pauls	Telstra Corporation Limited	Lease T on Lot 6 -CP TS158 on SP145580	716688174	21296136	21.08.2014	22.01.2032	\$5,633	Annual with CPI
Ugar	Telstra Corporation Limited	Lease T on Lot 7 on CP TS174	713124934	51146429	29.01.2010	28.01.2036	\$15,000	Full term
Warraber	Telstra Corporation Limited	Lease T on Lot 4 on CPTS171 on SP145584	715884606	51056768	20.03.2014	29.07.2032	\$15,000	Full term



2 March 2022

Julia Maurus
Torres Strait Island Regional Council

By email: Julia.Maurus@tsirc.qld.gov.au

Dear Julia,

Transfer of tenures associated with Telstra's towers business to Amplitel

You may be aware that Telstra Corporation Limited recently announced the sale of a non-controlling stake in its mobile and non-mobile towers business to a high-calibre consortium – comprising the Future Fund, Commonwealth Superannuation Corporation and Sunsuper and managed by HRL Morrison & Co. Telstra has retained 51 per cent ownership and continues to own the active parts of its network.

To facilitate this sale, the assets and operations of the tower business are being transferred into a new Telstra subsidiary called Amplitel Pty Ltd.

Amplitel will continue to operate the towers business in a similar manner to Telstra, including allowing telecommunications carriers and other tower users access to the facilities to operate their mobile telephone and other networks.

As part of the sale, leases held by Telstra used for towers and associated assets, including any leases, licences or other tenures granted by Torres Strait Island Regional Council may be transferred to Amplitel. Some tenures will remain with Telstra, but will be licensed or sublicensed to Amplitel.

The details for Amplitel are as follows:

Amplitel Pty Ltd ACN 648 133 073
contactable care of Telstra Corporation Limited
242 Exhibition Street
Melbourne VIC 3000

Tenures granted to Telstra

A list of the leases granted by the Council to Telstra that are covered by this letter, is in Attachment 1.

Our records indicate that some of the leases granted by the Council to Telstra require consent to be transferred to Amplitel, whether under the terms of the lease or by law. We are seeking this consent from the Council, but please let us know if we also need to engage with a Minister or any other third party regarding the consent sought. We would be grateful for any assistance that the Council can provide in coordinating obtaining any required third-party consents.

The remaining leases granted by the Council to Telstra do not require the Council's consent to be transferred to Amplitel, as Amplitel is a related body corporate of Telstra. These tenures not requiring consent were transferred to Amplitel on 31 August 2021.



Telstra will not seek to transfer the leases requiring consent of the Council and/or any other third party until it has received that consent. Telstra will give notice to the Council once the leases requiring consent have been transferred or licensed to Amplitel.

Transfer and licensing of tenures to Amplitel

By this letter, Telstra is:

- (a) giving notice to the Council that the leases in Attachment 1 are proposed to be transferred or licensed to Amplitel (as indicated in Attachment 1);
- (b) giving notice to the Council that the leases in Attachment 1 marked “Consent not required” have been assigned to Amplitel (as indicated in Attachment 1); and
- (c) seeking the Council’s consent to the transfer of those leases marked “Consent sought” in Attachment 1, and to the ongoing use and operation of the tower and other facilities on the land, for all tenures in Attachment 1 (including, where relevant, to grant licences by Amplitel to its customers and contractors requiring access to the tower and other facilities on the land).

There will be no other proposed changes to the terms of the leases and the operations of the tower business will continue as usual.

In order to confirm that Amplitel is bound by the leases from the transfer date, Amplitel will agree to sign a document in favour of the Council under which it agrees to comply with the leases from the transfer date. Please let us know if the Council would like Amplitel to sign such a document.

Further questions

We know you may have more questions about this letter. You will see some frequently asked questions (FAQs) included with this letter, which will provide more details on Amplitel, the sale of the towers business and the transfer of the Council’s leases. These FAQs have been prepared for the landlords of Telstra and Amplitel and do not necessarily address any particular requirements of the Council.

We would also welcome the opportunity to meet with you to discuss the transfer further, including any assistance we can provide that will help you to manage the volume of this request efficiently. We will be in touch over the next two weeks to schedule a meeting to discuss next steps in further detail. If you require any further information, please let us know.

If you have any other questions or concerns, please email **TowersProperty@team.telstra.com**.

Yours sincerely,

Julian McKernan
Property Principal
Finance Operations and Reporting
Global Business Services
Telstra Corporation Limited and Telstra Limited



Attachment 1 List of leases

Sites to be transferred to Amplitel – consent sought

Site Ref	Site Name	Lot on Plan	Address
TC16279	BANKS PEAK R/T	Lot 5 Plan 271019	Banks Peak, Moa Island
TC16585	BADU ISLAND R/T	Lot 14 Plan 253545	Badu Island
TC16965	HAMMOND ISLAND R/T	Lot 10 Plan 248418	Francis Rd, Hammond Island
TC17112	MABUYAG RT (WAS MABUIAG)	Lot 105 Plan 273192	104 Bani Rd, Mabuiag Island
TC17153	MOA ISLAND R/T	Lot 21 Plan 256048	26 Main St, St Pauls
TC17351	UGAR RT (WAS STEPHENS ISLAND R/T)		Cemetery Rd, Stephen Island

Sites transferred to Amplitel – consent not required

Site Ref	Site Name	Lot on Plan	Address
TC17290	SAIBAI ISLAND R/T	Lot 103 Plan 267944	



Sites to be licensed from Telstra to Amplitel - Consent required

Site Ref	Site Name	Lot on Plan	Address
TC14662	YORKE ISLAND WEST RT	Lot 213 Plan 277431	54 Steve & Jeff Road, Masig
TC16783	PORUMA RT (WAS COCONUT ISLAND R/T)	Lot 51 Plan 270862	Mimia St, Coconut Island
TC17152	KUBIN VILLAGE R/T	Lot 51 Plan 271019	51 Gerainelgau Yabu Rd, Kubin Village
TC17634	WARRABER RT (WAS SUE ISLAND R/T)	Lot 44 Plan 270859	Aikuru St, Warraber Island
TC16873	DAUAN ISLAND R/T	Lot 39 Plan 270872	Main St, Dauan Island



AMPLITEL PTY LTD LEASE TRANSFER FREQUENTLY ASKED QUESTIONS

1. Who is Amplitel?

On Wednesday, 30 June 2021, Telstra announced the sale of a non-controlling stake in its mobile and non-mobile towers business to a high-calibre consortium – comprising the Future Fund, Commonwealth Superannuation Corporation and Sunsuper and managed by HRL Morrison & Co.

This transaction was completed on 1 September 2021.

To facilitate this sale, the assets and operations of the tower business will be transferred into a new Telstra subsidiary called Amplitel Pty Ltd. Some tenures will remain with Telstra where these have fixtures that are used by Telstra, but will be licensed or sublicensed to Amplitel.

2. What is included in the Amplitel towers infrastructure portfolio?

The Amplitel towers business (originally known as InfraCo Towers) is the largest passive or physical mobile tower infrastructure provider in Australia. It includes Telstra's passive tower infrastructure asset portfolio of over 8,000 physical towers, mast and large pole structures used to mount mobile and non-mobile communication equipment for Telstra, other mobile network operators and non-mobile customers.

3. Who owns Amplitel?

Telstra has retained 51 per cent ownership of Amplitel and will continue to own the active parts of its network, including the radio access network and spectrum assets.

The Future Fund, Commonwealth Superannuation Corporation and Sunsuper became strategic partners in Amplitel when they acquired a 49 per cent interest in Amplitel on 1 September 2021.

4. What are Amplitel's contact details?

- Legal Entity: Amplitel Pty Ltd as trustee for the Towers Business Operating Trust, care of Telstra Corporation Limited
- ACN: 648 133 073
- ABN: 75 357 171 746
- Address: 242 Exhibition Street, Melbourne VIC 3000

Telstra's head office at 242 Exhibition Street, Melbourne will be the registered office of Amplitel.

5. How will Amplitel operate?

It is anticipated that Amplitel will operate the towers infrastructure in the same way as Telstra currently operates those assets. In particular, Amplitel will host telecommunications equipment of Telstra and other telecommunications access seekers on the towers as well as equipment for broadcast services and emergency services.



6. Is my consent needed for the transfers?

Yes, for some or all the leases listed in Attachment 1. The tenures requiring your consent are marked 'Consent sought'.

Where any of the leases that allow a transfer to a related body corporate of Telstra (such as a subsidiary of Telstra), consent will not be required as Amplitel remains a subsidiary of Telstra. These tenures are marked 'Consent not required'.

7. When will the transfers take place?

Where the lease requires your consent for the transfer to Amplitel, once your consent is obtained.

8. When will Amplitel become bound by the lease?

Amplitel becomes bound by the lease from the date of the transfer. For leases that transferred on 31 August 2021, Amplitel became bound on that date.

Telstra will contact you to confirm when the transfer of the lease has taken place. From that transfer date, Amplitel replaces Telstra as your tenant and will comply with the lease from that date.

In order to confirm that Amplitel is bound by the lease from the transfer date, Amplitel will agree to sign a document in favour of you under which it agrees to comply with the lease from the transfer date.

9. What do I have to do for the transfers?

Apart from any administrative requirements that you may have, very little. Telstra and Amplitel will take the necessary steps to transfer the leases from Telstra to Amplitel.

You will not need to re-issue rent tax invoices where Telstra has already paid that rent. Instead, Telstra and Amplitel will make any necessary adjustments between themselves for rent payable by Amplitel for the period from the transfer date until the next rent payment is due.

After the lease transfer, any rent and any other payments that become due under the lease will be paid by Amplitel.

If you send out your own tax invoices for the rent and other payments, you will need to address those tax invoices to Amplitel, and not Telstra. The tax invoice can still be sent to the current property managers, JLL.

Where JLL has issued tax invoices for you (as recipient created tax invoices), JLL will issue any future tax invoices to you and show Amplitel as the tenant.

Any correspondence between Amplitel and you will still need to be sent to JLL using the current email address.

As a reminder, that email address is: TelstraProperty@team.telstra.com



10. Will you cover our legal and administrative costs?

Where your lease requires this, Telstra will cover the reasonable costs that you incur in connection with the transfer.

We are keen to minimise the amount of work required to implement the transfer, and would welcome the opportunity to implement any efficiencies that are available, for example use of a single consent or assignment document covering multiple tenures, to the extent that such documentation is required.

11. Will the lease change?

No, other than that Amplitel will become the tenant or licensee or will be appointed as a licensee or sublicensee (as appropriate) under the lease, licence or other tenure. Otherwise, the lease will not be amended and will remain the same.

12. Will the use of the land change?

No. As mentioned, Amplitel intends to use the premises for the same purposes as Telstra currently uses those premises.

13. What if I have other questions?

If you have any other questions about the transfers, you can send the questions to Telstra and Amplitel at TowersProperty@team.telstra.com.

We will endeavour to respond to your questions as soon as possible.