



TRUSTEE POLICY

PO 19

Responsible Manager:	Chief Executive Officer
Head of Power:	<p><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></p>
Authorised by:	Council resolution
Authorised on:	15 November 2018; updated 25 June 2019
Implemented from:	15 November 2018
Last Reviewed:	2019
Review History:	2019
Review Date:	30 June 2021
Corporate Plan:	<p><i>Art, Culture, People</i></p> <p>Collective understanding of both Traditional and State Law ensuring a Safe Community</p> <p>Provide a legal framework for Torres Strait Communities within the Torres Strait Island Regional Council municipality which addresses both State and Traditional Lore requirements</p> <p><i>Environment:</i></p>

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

(c) 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)

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

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)

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

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

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)

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)

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

- (a) As Trustee, Council will fulfil its responsibilities in an informed and effective manner.
- (b) 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 about the values of, and appropriate uses for, the DOGIT land, existing interests in the land, and community opinion about proposed leases for that DOGIT.
- (c) The type of community engagement that is appropriate for a proposed project or lease will be determined at the discretion of the Divisional Councillor.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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 consent to the proposed development.

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.

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.

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 the Department of Housing and Public Works, the Department of Aboriginal and Torres Strait Islander Partnerships 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.
- (c) 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 clause 6(e))

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 Land Holding Act lease interests), with advice provided to the Mayor and the Divisional Councillor
Consent to a transfer or surrender of an LHA/Katter lease	Council resolution (note clause 6(e))
Consent to a sublease of an LHA/Katter lease	Council resolution (note clause 6(e))

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

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) Land transfers will be achieved through collaboration between Council, 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.

11. 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-PR1 Native Title and Cultural Heritage Procedure
- PO19-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

AUTHORISATION

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

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.