



TRUSTEE MEETING
21 AUGUST 2024

MINUTES

Time: 9.00am

Venue: (Microsoft TEAMS)

Meeting ID: 430 295 436 817

Passcode: XW65oF

PRESENT:

Mayor

Division 2 – Dauan

Division 3 – Saibai

Division 4 – Mabuiag

Division 5 – Badu / **Deputy Mayor**

Division 6 – Arkai (Kubin), Mua Island

Division 8 – Kirirri (Hammond Island)

Division 9 – Iama

Division 10 – Warraber

Division 11 – Poruma

Division 12 – Masig

Division 14 – Erub

Division 15 – Mer

Cr Phillemon Mosby

Cr Torengo Elisala

Cr Chelsea Aniba

Cr Keith Fell

Cr Ranetta Wosomo

Cr Iona Manas

Cr Seriako Dorante

Cr Aggie Hankin

Cr Kabay Tamu

Cr Francis Pearson

Cr Ted Mosby

Cr Nixon Mye

Cr Bob Kaigey

APOLOGIES:

Division 1 – Boigu

Division 7 – Wug (St. Pauls Community), Mua Island

Division 13 – Ugar

Cr Dimas Toby

Cr John Levi

Cr Rocky Stephen

Executive Director Financial Services

Ms Hollie Faithfull

OFFICERS:

Chief Executive Officer

Executive Director Building Services

Executive Director Community Services

Executive Director Corporate Services

Executive Director Engineering Services

Preston Law

Executive Support Coordinator

TSIRC Secretariat

Mr James William

Mr Wayne Green

Mr Dawson Sailor – *via TEAMS for
Closed Business discussions only*

Ms Susanne Andres

Mr David Baldwin

Mr Julian Bodenmann

Ms Sharon Russell

Mr Darryl Brooks

**A. WELCOME & QUORUM CONFIRMATION | ACKNOWLEDGEMENTS | OPENING PRAYER
| OBSERVANCES**

At 9.05am the Mayor formally opened the August 2024 Trustee Council meeting, noting that a quorum of members were present.

The Mayor welcomed attendees and made the following acknowledgements:

- Our Heavenly Father for His awesome wisdom, knowledge, understanding, favour and blessings upon our lives and this leadership;
- Our TSIRC team and families;
- The Traditional Custodians throughout the length and breadth of Zenadth Kes and the communities and constituents that Council serves;
- The Traditional Custodians of Cairns; and
- All Elders – past, present and emerging.

The Mayor also conveyed to those members of the Torres Strait Islander community throughout the homelands and on the Australian mainland who may be observing Sorry Business at this time, the thoughts and prayers of all Councillors.

Cr Keith Fell delivered the opening prayer.

B. NOTING OF APOLOGIES

The following apologies were noted by Council:

Division 1 – Boigu

Division 7 – Wug (St. Pauls Community), Mua Island

Division 13 – Ugar

Cr Dimas Toby – *prior commitment*

Cr John Levi - *unwell*

Cr Rocky Stephen – *prior commitment*

C. CONFLICT OF INTEREST DECLARATIONS

Nil.

D. LIVE STREAM

The Mayor advised Council that this meeting is being LIVE STREAMED on Council's YouTube Channel.

1. CONFIRMATION OF MINUTES (24 July 2024)

#T24-28/2024-08/1

CR FELL / CR WOSOMO

Council (as Trustee) confirms the Minutes of the Trustee Meeting held on 24 July 2024.

CARRIED UNANIMOUSLY

1.1. UPDATE ON ACTION ITEMS FROM PREVIOUS MEETINGS

The Chief Executive Officer (Mr James William) spoke to this item and the update was noted by Council.

2. HELIPAD DEVELOPMENT – DEPARTMENT OF HOME AFFAIRS

The Executive Director Corporate Services (Ms Susanne Andres) advised the Council that the Department of Home Affairs will be meeting with the communities before the September 2024 Trustee Council meeting and that it would be preferable to have the outcomes from those meetings included in the report to Council. A request to lay the report on the table for the September 2024 was therefore recommended to Council.

The Mayor agreed and advised that the report will be laid on the table until the September 2024 Trustee Council Meeting.

3. PORUMA – DEPARTMENT OF EDUCATION PROPOSED LEASE – EXTENSION TO CONDITIONAL AGREEMENT TO LEASE TO SATISFY NATIVE TITLE SPECIAL CONDITION

#T24-28/2024-08/3

CR PEARSON / CR MYE

Council (as Trustee) resolves, pursuant to the *Torres Strait Islander Land Act 1991* (Qld), to:

- (a) grant an 18-month extension of time (from 18 September 2024 to 18 March 2026) to the Conditional Agreement to Lease to the State of Queensland, represented by the Department of Education, to satisfy the Native Title special condition for the grant of a lease over Lot 50 on SP270862, Poruma; and**
- (b) Delegate to the Chief Executive Officer the power to negotiate the terms of the extension by signing the Deed of Variation and subsequent lease.**

CARRIED UNANIMOUSLY

4. RESOLUTION TO CLOSE THE MEETING TO THE PUBLIC

#T24-28/2024-08/4

CR FELL / CR TAMU

Council (as Trustee) resolves to close the meeting to the public pursuant to section 84 of the *Local Government Act 2009* to allow the Trustee to discuss items listed on the agenda for closed discussion and for the reasons outlined under those items.

CARRIED UNANIMOUSLY

5. Iama DOGIT Transfer

[Reason for Closed Discussion: this matter involves discussions relating to a legal matter involving the local government for which a public discussion would be likely to prejudice the interests of the local government.]

#T24-28/2024-08/5

CR ELISALA / CR HANKIN

1. Council (as Trustee) notes that the Court proceedings in relation to the Iama DOGIT transfer have concluded with the Court ordering that, due to the Minister failing to properly consider the human rights impact of his decision to transfer the land, his decision is set aside; and the deeds of grant issued under the *Torres Strait Islander Land Act 1991* (TSIL Act) are declared invalid and of no effect. The background is that:
 - a. the above Court order was based on the Minister's offer to settle proceedings. Having reflected on his decision, the Minister accepted that, in making the decision to transfer the land, he was required under section 58(1) of *Human Rights Act 2019* (HRA) to make the decision in a way that was compatible with human rights; and to give proper consideration to human rights relevant to the decision. The offer included the setting aside of the deeds which were deemed to be invalid;
 - b. prior to the Minister's offer, the Minister asserted that he was not required to comply with the HRA as he "could not reasonably have acted differently or made a different decision because of the statutory provision, a law of the Commonwealth or another State". Meaning that, because he was compelled to transfer the land in accordance with the TSIL Act, he was exempt from having to consider human rights;
 - c. the CEO accepted the Minister's offer and requested that, to ensure the human rights issue is adequately addressed, and prior to making a new decision on the land transfer, the Minister must
 - i. undertake additional community consultation aimed at extracting the views of Torres Strait Islanders particularly concerned with the land; and
 - ii. advertise any proposed grantee in a newspaper to further seek the views of Torres Strait Islanders particularly concerned with the land;
 - d. the Minister subsequently advised that he does not consider there to be any requirement for additional consultation in anticipation of his reconsideration of the decision to transfer the land; and the requirement for advertising a proposed grantee in a newspaper does not apply where the proposed grantee is nominated in an Indigenous Land Use Agreement (ILUA);
 - e. the State and Magani Lagaugal PBC negotiated the Iama Land Transfer ILUA (to which Council is not a party), nominating the Magani Lagaugal PBC as proposed grantee of the land; the ILUA was registered 18 June 2024 (after the Minister made the decision);
 - f. the ILUA provides Native Title consent for leases (from Magani Lagaugal PBC to Council) of Council essential infrastructure, including social houses, upon a land transfer;
 - g. Council has not been afforded the right to fully consider and/or agree to the lease terms. Consideration must be given to the impacts on delivery of essential services if access to essential infrastructure is affected;
 - h. consideration must be given to the impact similar decisions may have on the remaining communities; and
 - i. Council is supportive of land transfers, however, considers that they should be on a community-by-community basis, agreement should be what's best for each community and transfers should be when the time is right for the community; and

2. Delegates, pursuant to section 257 of the *Local Government Act 2009*, the power to the Chief Executive Officer to conduct and participate in any matters that may arise, including any appeal or initiating proceeding in the Court if the Minister remakes a decision to transfer the land in the absence of community consultation, advertising of a proposed grantee and/or full consideration of how services can continue to be provided by Council if the land is transferred.

CARRIED UNANIMOUSLY

Action:

Cr Aniba (through Council's Culture, Arts, Land and Heritage Advisory Committee) to progress the development of a clear policy position in relation to responsibility for DOGIT matters/land tenure (TSIRC or PBCs) in the context of a Torres Strait Regional Assembly arrangement.

6. Native Title Consent Process for New Housing

[Reason for Closed Discussion: this these matters involve discussions relating to a commercial matter (State Funding Agreement and proposed future funding) involving the local government for which a public discussion would be likely to prejudice the interests of the local government]

#T24-28/2024-08/6

CR FELL / CR ELISALA

AGAINST: CR ANIBA (insufficient documentation and signatures of attendees, as well as PBC Chair endorsement, sighted by her for this Trustee decision)
CRS KAIGEY AND MANAS (disagree with process)

Council (as Trustee):

- (a) resolves to seek Native Title consent for new housing on Mabuiag under section 24JAA of the *Native Title Act 1993* (NTA); and
- (b) delegates to the Chief Executive Officer the power to prepare, finalise and execute on behalf of Council any notices or other documents required to give effect to paragraph (a) of this resolution, including a section 24JAA notice; and
- (c) notes:
 - (i) as proponent of the works (building of the homes), it is the responsibility of the Trustee to obtain Native Title consent; and
 - (ii) options for Native Title consent include the negotiation of a Social Housing Indigenous Land Use Agreement (ILUA) or the use of section 24JAA of the NTA; and
 - (iii) in accordance with Council's Trustee Policy, Native Title consent under section 24JAA of the NTA should be used as a last resort, where consent-based validation (e.g. an ILUA) is not reasonably practicable in the opinion of the Divisional Councillor; and
 - (iv) in consultation with the community and the Goemulgaw (Torres Strait Islanders) Corporation RNTBC (the PBC), Councillor Fell agrees that an ILUA is not feasible in this instance due to extended timeframes for ILUA negotiations and the urgent need for homes. Additionally, Councillor Fell notes the importance of Council delivering new homes to Mabuiag; and
 - (v) the PBC and the community supports Council using the section 24JAA process for Native Title consent; and
 - (vi) the delivery timelines under the State Funding Agreement for construction of the homes is at risk of not being able to be met; and

- (vii) if the delivery timelines of the State Funding Agreement are not met, this could impact on future funding opportunities; and
- (viii) if the delivery of the new homes under the State Funding Agreement is not met, Mabuiaig may miss out on the opportunity; and
- (ix) this resolution applies only to Mabuiaig (66 New Village Road and 89 School Street only) and it is not a blanket approach to resolving Native Title for social housing in the region.

CARRIED**Action:**

Council's Trustee Policy to provide clear consultation processes that must be undertaken prior to the submission of requests to the Trustee Council for decisions on matters requiring Native Title consent.

7. RESOLUTION TO RETURN THE MEETING TO OPEN DISCUSSION

#T24-28/2024-08/7

CR FELL / CR TAMU

Council (as Trustee) resolves to move out of closed discussions pursuant to Section 84 of the Local Government Act 2009.

CARRIED UNANIMOUSLY

➤ *The Trustee meeting was suspended from 10.35am to 10.45am for morning tea.*

8. CONSIDERATION OF MATTERS DISCUSSED IN CLOSED SESSION

Council (as Trustee) formally resolved as outlined in Agenda Items 5 and 6 above.

9. ITEMS ARISING

Nil.

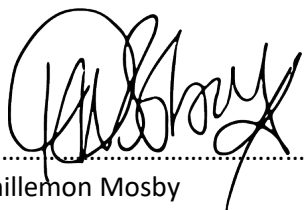
10. NEXT MEETING – 17 SEPTEMBER 2024 (DAUAN)

Noted by Council (as Trustee).

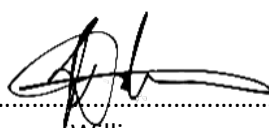
11. CLOSE OF MEETING

The Mayor closed the Trustee meeting at 11.00am.

MINUTES CONFIRMED – 18 September 2024



Cr Phillemon Mosby
Mayor
Torres Strait Island Regional Council
Date: 18 September 2024



James William
Chief Executive Officer
Torres Strait Island Regional Council
Date: 18 September 2024