



Trustee Meeting

Agenda

Date: 27 June 2023
Time: 9.00am
Venue: (VC) VMR 8 – 0299 165 402 - Guest PIN 6905#

Agenda

TSIRC **Trustee** Meeting – 27 June 2023

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Time	Agenda
9.00am	1. Welcome (Chair)
9.05am	2. Opening Prayer
9.10am	3. Attendance
9.15am	4. Apologies
9.20am	5. Conflict of Interest (COI) - Declarable/Prescribed
9.25am	6. Previous Minutes
9.35am	7. Action Items from Previous Meetings
9.45am	8. CORPORATE SERVICES: Freehold Policy
10.15am	9. BUSINESS ARISING
10.20am	10. Next Meeting: 27 June 2023
10.25am	11. Closing Remarks & Prayer



Minutes

TRUSTEE MEETING

May 2023

Tuesday, 25 May 2023

Calvary Christian Church
108 Grafton Street, Cairns

DRAFT

COUNCIL TRUSTEE MEETING
Thursday 25 May 2023

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Thursday, 25 May 2023

PRESENT:

Cr Phillemon Mosby, Mayor
Cr Dimas Toby, Division 1 – Boigu
Cr Torenzo Elisala, Division 2 – Dauan
Cr Conwell Tabuai, Division 3 – Saibai
Cr Laurie Nona, Division 5 - Badu
Cr John Levi, Division 7 – Wug (St. Pauls), Mua Island
Cr Seriako Dorante, Division 8 – Kirirri (Hammond)
Cr Getano Lui (Jnr), Deputy Mayor Division 9 – Iama
Cr Kabay Tamu, Division 10 – Warraber
Cr Francis Pearson, Division 11 – Poruma
Cr Hilda Mosby, Division 12 – Masig
Cr Rocky Stephen, Division 13 – Ugar
Cr Jimmy Gela, Division 14 – Erub
Division 15 – Mer was not represented

PRESENT:

Mr James William, Chief Executive Officer
Ms Hollie Faithfull, Executive Director Financial Services
Mr David Baldwin, Executive Director Engineering Services
Mr Wayne Green, Executive Director Building Services
Mr Dawson Sailor, Head of Community Services
Mr David Kempton, Acting Executive Director Community Services
Ms Julie Marino, Senior Executive Assistant to the Chief Executive Officer
Ms Trudy Lui, Executive Assistant to the Mayor
Mr Darryl Brooks, Secretariat Officer

APOLOGIES:

Cr Keith Fell, Division 4 – Mabuiag
Cr Lama Trinkoon, Division 6 – Arkai

COUNCIL TRUSTEE MEETING
Thursday 25 May 2023

1. 9:03am Welcome

Our Mayor Mosby commenced the Council's Face to Face Meeting, as part of Council's Workshop for May 2023. Mayor Mosby recognised the commitment and dedication of Councillors, the Chief Executive Officer, Executive and staff.

Our Mayor Mosby also acknowledged the traditional Aboriginal custodians of Cairns, where this meeting was being held; as well as:

- Cultural acknowledgements for the Torres Strait region across the length and breadth of Zenadth Kes and the Gimuy-walubarra yidi people – the traditional owners of the lands on which we are meeting;
- Our Heavenly Father for his awesome wisdom, knowledge and understanding; and
- All Elders, past, present and emerging.

Mayor Mosby welcomed our members of the public, Ms Alice Nona and Mr Joseph Stephen as guests.

2. Opening Prayer

Cr John Levi asked everyone to be upstanding and delivered the opening prayer, followed by one minute silence in respect of those who are currently experiencing Sorry Business.

3. Attendance

Mayor Mosby completed a roll call of Councillors to establish a Quorum.

4. Apologies

The following apologies were tabled.

- Cr Lama Trinkoon, Division 6 – Arkai
- Cr Keith Fell, Division 4 – Mabuiag

RESOLUTION

Moved: Cr Francis Pearson; Second: Cr Torengo Elisala

That Council accepts the apology for Cr Lama Trinkoon, for the May 2023 Trustee Meeting.

MOTION CARRIED UNANIMOUS

RESOLUTION

Moved: Cr Jimmy Gela; Second: Cr Laurie Nona

That Council accepts the apology for Cr Keith Fell for the May 2023 Trustee Meeting.

MOTION CARRIED UNANIMOUS

COUNCIL TRUSTEE MEETING
Thursday 25 May 2023

5. Conflict of Interest (COI) - Declarable/Prescribed

Mayor Mosby requested that members make any relevant conflict of interest declarations and advise if any relevant legal proceedings were current pertaining to Council business to be considered at the meeting. No such declarations were made.

6. Confirmation of Previous Trustee Minutes of 18 April 2023

RESOLUTION

Moved: Cr Francis Pearson; Second: Cr Jimmy Gela

That Council resolves to accept the minutes of the Trustee Meeting held on 18 April 2023, to be a true and accurate account of that meeting.

MOTION CARRIED UNANIMOUSLY

7. Action Items from Previous Meetings

Acting Executive Director Corporate Services provided the Council with a verbal update on action items from the Trustee Meeting held in March 2023.

Regarding processes for Councillors to be excused from Council meetings for other business, the Acting Executive Director Corporate Services advised that a paper would be submitted to Council's June 2023 Ordinary Council meeting.

- A. ACTION: Acting Executive Director Corporate Services to prepare an updated policy paper for Council's June 2023 meeting in relation to processes for Councillors to be excused from Council meetings for other business.**

In relation to the Government's review of veto powers, the Acting Executive Director Corporate Services advised that Council only had 'real' veto power on land and infrastructure matters and veto power over entry matters is basically non-applicable.

Cr Laurie Nona then led a robust discussion on the Power of Veto (*Action Item 9B of 18 April 2023 Trustee Meeting refers*). Mayor Mosby stated that best practice is to adhere to sound and consistent policy because of Council's legislated obligations and potential for exposure to legal action. Council therefore needs to operate within a clearly defined policy framework.

The Chief Executive Officer suggested that this conversation be held off line.

- B. ACTION: Acting Executive Director Corporate Services to prepare a briefing paper on Power of Veto matters for consideration at an upcoming meeting of the Culture, Arts, Land and Heritage Committee.**

8. Corporate Services – St Paul's Lots 46 and 152 – Consent to development application

RESOLUTION

Moved: Cr John Levi; Second: Cr Torenzo Elisala

1. That the Trustee grant owner's consent to Community Enterprises Queensland in support of a development application for a Reconfiguration of Lot (2 into 3 lots) over Lots 46 and 152 on SP256048 (Oza Bosun Road, St Pauls), as per RPS Drawing 10358-85a, dated 17 November 2022 ; and

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2. Authorise the Chief Executive Officer to sign the owner's consent form and, subject to local government approval, the resulting survey plans.

MOTION CARRIED UNANIMOUSLY

Deputy Mayor Cr Getano Lui (Jnr), asked Acting Executive Director Community Services if we can emulate this resolution to our other islands rather than Peppercorn Rent.

Chief Executive Officer is having a face to face discussion with Michael Dykes, CEQ (Community Enterprises Queensland) Tuesday 30 June on Thursday Island and will raise this matter.

Cr Jimmy Gela, apologised and declared that he may have had a problem with declaring Conflict of Interest as his brother is the General Manager of QBuild.

Mayor Mosby replied that there is no conflict of interest in this particular matter and advised Councillors that it would be prudent to be aware of the implication of our views and to stay within our lane as Councillors.

ACTION: Chief Executive Officer to write to CEQ to clarify that the granting of this consent to development application should not be regarded by CEQ as ongoing acceptance by the Council of the terms and conditions under the existing current leasing arrangements.

9. **Council Moves into Closed Business**

RESOLUTION

Moved: Cr Laurie Nona, Second: Cr Torenzo Elisala

That in accordance with Section 254J of the *Local Government Regulation 2012 (Qld)* it is resolved for the meeting to go into closed business to discuss matters of the following nature:

- **Status of LHA Lease Resolution**

MOTION CARRIED UNANIMOUSLY

10. **Corporate Services – Status of LHA Lease Resolution**

11. **Move out of Closed Business**

RESOLUTION

Moved: Cr Torenzo Elisala; Second: Cr Kabay Tamu

That Council resolves to move out of closed business and resume in open business.

MOTION CARRIED UNANIMOUSLY

Resolution from Closed Business Agenda Item

10. **Corporate Services – Status of LHA Lease Resolution**

Moved: Cr Laurie Nona Second: Cr John Levi

RESOLUTION

That the Trustee resolve to:

1. Note the report on the status of LHA lease resolution; and
2. Authorise the Chief Executive Officer to submit Council's response to the Department of Resources review of the Land Holding Act 2013; and

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3. Authorise the Chief Executive Officer to submit a written proposal to the Department of Resources for the resolution of three LHA lease entitlements at Boigu Island.

MOTION CARRIED UNANIMOUSLY

12. Business Arising

Cr Rocky Stephen asks about the status of Ugar and Saibai re DOGIT.

Chief Executive Officer replied that he has made representation to Minister Scott Stewart who is becoming more receptive, however the process needs to be accelerated. We are advocating the impact on Community and will report back to Council in the next few months.

Chief Executive Officer further commented that it is part of a Councillor's role to inform the Community. Being Traditional Land Owners, we want ownership. Transfer of DOGIT does not tick a box. We should not be afraid to speak to our Community about this in a frank and open discussion.

ACTION: Further information to be provided to Minister Scott Stewart by Chief Executive Officer on TSIRC's stand on DOGIT and lessons learned.

13. Next Meeting

Council noted that its next meeting will be on 27 June 2023 VC.

14. Closing Remarks & Prayer

Our Mayor Mosby thanked Councillors, Chief Executive Officer, Executive and Administration Staff for their support, leadership, participation and an invited participants to be upstanding as he closed the meeting in prayer.

The meeting closed at 10:35am.

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

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



TRUSTEE MEETING

ACTION ITEMS

Actions Arising from May 2023 Meeting

Agenda Item	Action	Action Area	Current Status
7A	Acting Executive Director Corporate Services to prepare an updated policy paper for Council's June 2023 meeting in relation to processes for Councillors to be excused from Council meetings for other business.	Acting Executive Director Corporate Services	Paper to be considered at June 2023 Council meeting.
7B	Power of Veto Acting Executive Director Corporate Services to prepare a briefing paper on Power of Veto matters for consideration at an upcoming meeting of the Culture, Arts, Land and Heritage Committee.	Acting Executive Director Corporate Services	To be completed.
8	St Paul's Lots 46 and 152 – Consent to development application Chief Executive Officer to write to CEQ to clarify that the granting of this consent to development application should not be regarded by CEQ as ongoing acceptance by the Council of the terms and conditions under the existing current leasing arrangements.	Senior Legal Officer, Corporate Services	
12	Business Arising (Status of Ugar and Saibai re DOGIT) Further information to be provided to Minister Scott Stewart by Chief Executive Officer on TSIRC's stand on DOGIT and lessons learned.	Chief Executive Officer	



TORRES STRAIT ISLAND REGIONAL COUNCIL

AGENDA REPORT

TRUSTEE MEETING:	June 2023
DATE:	27-28 June 2023
ITEM:	Agenda Item for Resolution by Council
SUBJECT:	Freehold Policy
AUTHOR:	David Kempton, Manager Legal Services

Recommendation:

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

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

Executive Summary

By a series of actions over 250 years the British Empire, the Australian Government and the Queensland Government have purportedly removed the sovereignty of the Torres Strait Islanders to their islands. This is an oddity as the Torres Strait Islanders were not dispossessed of the islands nor denied access to their culture, lore and custom.

In fact, Ailan Kastom and Ailan Lore have endured to date.

There have been several judicial, legislative and administrative actions to restore land ownership and governance to Torres Strait Islanders, however whilst approaching the door none have enabled Torres Strait Islanders to step through.

There is clearly a desire for Torres Strait Islanders to have their sovereign right to land restored in the form of freehold, as enjoyed by most Australians.

It is ironic that the only obstacle to residential freehold is the impact of native title rights and interests.

According to State policy native title rights and interests (Ailan Lore and Ailan Kastom) must first be removed in order to restore Torres Strait Islanders rights to own and occupy their lands according to Ailan Lore and Ailan Kastom.

This is illogical and cannot be the intended outcome of the Mabo decision or the *Native Title Act*.

It rests more in a policy steeped in paternalism and control.

This policy is designed to address all of the considerations and implications of residential freehold for Council in its role as local government authority and trustee of the DOGIT in the best interests of the Torres Strait Island community and in the context of the Masig Statement.

Background

Prior to colonisation, Torres Strait Islanders used and occupied the Islands according to Ailan Lore and Ailan Kastom. Ailan Lore and Kastom provided Islanders had ownership of discrete areas of land and dwellings they could pass down through family lines or to other islanders. This system of ownership represents sovereignty.

By several actions between 1770 and 1879, the sovereignty in land of Torres Strait Islanders was forfeited to the British Empire:

- In 1770, Cook planted flag on possession claiming east coast of Australia for the British Empire.
- In 1788, Governor Arthur Phillip planted the flag at Botany Bay claiming the whole of Australia for the British Empire.
- Between 1872 and 1879, the British by proclamation annexed the Torres Islands to Queensland.

In 1984, the Torres Strait Islander community councils were established as the local government authorities or the Torres Strait Islander DOGIT land with their roles and responsibilities set out in the *Community Services (Torres Strait) Act 1984*. Torres Strait Islander community councils were then appointed to also be trustees of Torres Strait Islander DOGIT.

The Torres Strait Islander Land Act 1991 (TSILA) provided the transfer of the islands to “inalienable freehold” which meant the trustee held the land as freehold for the benefit of Torres Strait Islander people particularly concerned with the land. The TSILA created Deeds of Grant in Trust (DOGIT) which cannot be sold or mortgaged or leased without the Minister’s consent. The DOGITs created by the Act are “conditional freehold” and did not extinguish native title.

In the Mabo No. 1 and Mabo No. 2 rulings, the High Court of Australia decided that British possession had not eliminated the title of the Meriam people and that they are entitled as against the whole world to possession, occupation use and enjoyment of the lands of the Murray Islands. The Court explicitly rejected the doctrine of *Terra Nullius* (“land of nobody”) that had been relied upon by the British at the time of colonisation.

The High Court also found that traditional law and custom did not confer legal or beneficial interest in the land, however where connection has been maintained there may be community title. This is a notion that according to Ailan Kastom and Lore is clearly wrong.

The Native Title Act 1993 (Cth) recognised the rights and interests of Aboriginal and Torres Strait Islander people in land and waters according to their traditional laws and custom.

The Native Title Act 1993 also codified Ailan Lore and Kastom into native title rights and interests and created Prescribed Body Corporates (RNTBCs) to hold the “native title” on behalf of native title holders.

The 1997 amendments to the *Native Title Act 1993* in response to the common law (*Wik* decision) provided that all prior grants of freehold extinguished native title. This is well accepted, however the Act did not provide that all future grants of freehold necessarily extinguish native title.

The Aboriginal and Torres Strait Islander Land (Providing Freehold) Amendment Bill 2014 ensured Torres Strait Islanders can own their own homes in freehold the same as the rest of Australians and remove barriers

to economic development and social reform. It was however conditional freehold in that conditions included Ministerial approval, restricted to townships and grants being limited to Torres Strait Islanders and spouse in the first instance.

The State Government policy is that a grant of freehold necessarily extinguishes native title and that native title rights and interests must be surrendered. That is, a grant of freehold cannot be conditional upon native title rights and interests.

Home ownership 99-year leases were provided for by amendments to the TSILA in 2015. TSIRC as Trustee of the DOGIT is able to grant leases for home ownership for up to 99 years. Home-ownership leases can be transferred, mortgaged etc however they are still leases and capable of reverting to the Trustee and the Department maintains ultimate control.

Freehold is available to Torres Strait Islanders pursuant to existing legislation, regulation and processes.

All that is required is a policy shift by the State Government.

Torres Strait Islanders should not accept a form of residential home ownership that is inferior to that enjoyed by non-Indigenous Australians.

Considerations

Risk Management

The transfer of the DOGIT to the PBC could foreclose on freehold option and have other financial planning and management implications for Council.

Reputational

Nil perceived

Council Finance

Nil at present

Consultation:

Council workshop 23 May 2023

Links to Strategic Plans:

TSIRC Corporate Plan 2020–2025

Delivery Pillar: Sustainability

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

- 8.1: Effective management of DOGIT Land as a Trustee

Strategic Pillar One - People

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

Pillar

7.1 Facilitate improvement to community housing awareness and information.

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

Operational Plan Objective 2022/23

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

Success Measure 2022/23: *Working group established*

Statutory Requirements:

Land Act 1994

Native Title Act 1993

Torres Strait Islander Act 1991

Conclusion:

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

- 1) The statutory and practical implications of residential freehold land on Torres Strait Island DOGIT.
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- 5) The interactions with Council Trustee lease policy, and
- 6) The role of security of tenure in self-governance.



Recommended:

David Kempton

Manager Legal Services

Endorsed:

James William

Chief Executive Officer