

# AGENDA

TORRES STRAIT ISLAND REGIONAL COUNCIL

December 2021

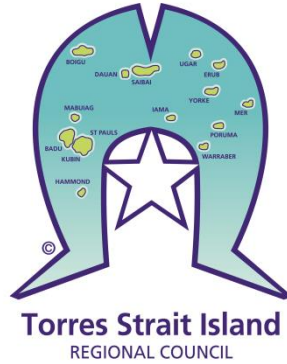
TRUSTEE MEETING

Tuesday, 7<sup>th</sup> December 2021

Video Conference

**TRUSTEE MEETING**  
**Tuesday, 7<sup>th</sup> December 2021**  
**Agenda Items**

- |   |                          |  |
|---|--------------------------|--|
| 1.  | <u>9:00am - 9:03am</u>   | <u>Opening Prayer and Welcome</u>  |
| 2.  | <u>9:03am – 9:05am</u>   | <u>Apologies</u>   |
| 3.  | <u>9:05am - 9:10am</u>   | <u>Declaration of Conflict of Interest (COI) Declarable and Prescribed</u>   |
| 4.  | <u>9:10am – 9:15am</u>   | <u>Confirmation of Trustee Meeting Minutes</u> <ul style="list-style-type: none"><li>• Trustee Meeting – 15<sup>th</sup> November 2021</li></ul>   |
| 5.  | <u>9:15am – 9:20am</u>   | <u>Outstanding Action Items</u>  |
| 6.  | <u>9:20am – 9:30am</u>   | <u>Standing Agenda Item: (verbal update)</u> <ul style="list-style-type: none"><li>• Undocumented commercial land occupation project – verbal update</li><li>• DOGIT Transfers – Verbal Update</li></ul> |
| 7.  | <u>9:30am – 9:30am</u>   | <u>TRUSTEE MOVE INTO CLOSED BUSINESS</u>   |
| 8.  | <u>09:30am – 10:00am</u> | <u>LEGAL – CB – Tripartite Deed for Saibai Community and safety and security facility</u>  |
| 9.  | <u>10:00am – 10:00am</u> | <u>TRUSTEE MOVE OUT OF CLOSED BUSINESS AND RESUME IN OPEN COUNCIL</u>  |
| <b><u>MORNING TEA 10:00am – 10:30am</u></b> |                          |  |
| 10.   | <u>10:30am – 10:50am</u> | <u>LEGAL – TCHHS lease Kubin (lot 134 on SP271019)</u>   |
| 11.   | <u>10:50am – 11:10am</u> | <u>LEGAL – TCHHS lease St Pauls (lot 36 on SP256048)</u>   |
| 12.   | <u>11:10am – 11:15am</u> | <u>Next meeting – to be confirmed</u>  |
| 13.   | <u>11:15am – 11:00am</u> | <u>Closing Remarks and Prayer</u>  |



# DRAFT MINUTES

TORRES STRAIT ISLAND REGIONAL COUNCIL

NOVEMBER 2021

TRUSTEE MEETING

Monday 15<sup>th</sup> November 2021

Nintiringanyi Cultural Training Centre  
Cairns

**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 – Arkai (Kubin), Mua Island  
Cr John Levi, Division 7 – Wug (St Pauls), Mua Island  
Cr Seriako Dorante, Division 8 – Kirriri (Hammond)  
Cr Getano Lui Jnr (Deputy Mayor), 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)

Mr David Baldwin, Acting Chief Executive Officer (ACEO)  
Ms Hollie Faithfull, Executive Director, Financial Services (EDFS)  
Mr Dawson Sailor, Acting Executive Director, Community & Building Services (AEDCBS)  
Mr Adeah Kabai, Acting Executive Director, Engineering Services (AEDES)  
Ms Julia Maurus, Senior Legal Officer (SLO)  
Mrs Ursula Nai, Senior Executive Assistant (SEA)  
Ms May Mosby, Acting Secretariat Officer (SO)

**APOLOGIES:**

Ms Megan Barrett, Interim Executive Director, Corporate Services (IEDCS)

**TRUSTEE MEETING**  
**Monday 15<sup>th</sup> November 2021**

**1. 9:00am - 9:03am Opening Prayer and Welcome**

Mayor Mosby established quorum and acknowledged:

- Our Heavenly Father
- Traditional Owners of the lands we meet on today in the Cairns region and across Zenadth Kes
- All Elders past, present and emerging
- Executive Staff
- May Mosby to the role of Secretariat whilst Kathy Cochran is on secondment.

Mayor Mosby invited Cr Getano Lui to open the meeting in prayer and observed a minute silence for families in sorry business.

**2. 9:03am – 9:05am Apologies**

No apologies. Councillors noted that Cr Dimas Toby would be attending the meeting later in the morning.

**3. 9:05am - 9:10am Declaration of Conflict of Interest (COI) Declarable and Prescribed**

No declaration made however Mayor Mosby encouraged Councillors and staff to make a declaration at any time.

**4. 9:10am – 9:15am Confirmation of Trustee Meeting Minutes**

- Trustee Meeting – 19<sup>th</sup> October 2021

**RESOLUTION:**

*Moved: Cr Aven Noah, Second: Cr Jimmy Gela*

**That the Trustee accepts the minutes of the Trustee meeting held on the 19<sup>th</sup> October 2021 as a true and accurate account of that meeting.**

**MOTION CARRIED**

9.14am - Cr Dimas Toby joined the meeting.

**5. 9:15am – 9:20am Outstanding Action Items**

Acting Chief Executive Officer, Mr David Baldwin updated the Trustee on all action items.

**6. 9:20am – 9:30am Standing Agenda Item (verbal update)**

- TRUSTEE – Undocumented commercial land occupation project – verbal update

Senior Legal Officer, Ms Julia Maurus provided the Trustee with an update.

- DOGIT Transfers - verbal update

Senior Legal Officer, Ms Julia Maurus provided the Trustee with an update.

7. 9:30am – 9:30am TRUSTEE MOVE INTO CLOSED BUSINESS

**RESOLUTION:**

*Moved: Cr Torenzo Elisala; Second: Cr Keith Fell*

That the Trustee resolve to close the meeting to the public pursuant to section 84 of the *Local Government Act 2009* to allow the Trustee Council to discuss business for which public discussion would be likely to prejudice the interests of the Trustee Council or someone else.

**MOTION CARRIED**

- LEGAL – CB – Tripartite Deed for Saibai Community Safety and Security Facility
- LEGAL – CB – Visitor Entry onto DOGIT and COVID-19 Protocols

8. 11:30am – 11:30am TRUSTEE MOVE OUT OF CLOSED BUSINESS AND RESUME IN OPEN COUNCIL

**RESOLUTION:**

*Moved: Cr Lama Trinkoon; Second: Cr Conwell Tabuai*

That the Trustee move out of Closed Business and resume the Trustee meeting in open business.

**MOTION CARRIED**

9. 11:30am – 11:40am LEGAL – CB – Tripartite Deed for Saibai Community Safety and Security Facility

**ACTION:** Senior Legal Officer to liaise with the Department to provide background on how and why the name “Saibai Community Safety and Security Facility” was selected and if the name is open for discussion.

**ACTION:** Senior Legal Officer to investigate how TSIRC can raise community-level issues such as the management of community safety issues, the international border and treaty movements to the State and Border Force and provide a response back to Council.

**MATTER LEFT LAYING ON THE TABLE**

10. 11:40am – 11:48am LEGAL – CB – Visitor Entry onto DOGIT and COVID-19 Protocols

**RESOLUTION:**

*Moved: Cr Francis Pearson; Second: Cr Seriako Dorante*

- a. That Legal Services draft changes to SLL7 (ensuring consistency with and permissible under the *ATSI(JLOM)A*) to reflect the desired process (and formalise the current practice) where Divisional Councillor permission is required before entering community, except in emergency situations where waiting for permission is impractical. Consultation with Mer and Badu PBCs will be necessary to adopt these changes.
- b. That Legal Services draft the COVID-19 policy that we want to apply to our local government area in this public health emergency, including mandating vaccination (if permissible), and advocate with the State Government (via the Office of the Chief Health Officer) for the State to implement this policy as a public health directive / remote area declaration applicable to TSIRC’s local government area, with necessary statutory powers delegated to TSIRC.
- c. That Legal Services seek feedback from Manager Visitor Operations and Manager Environment & Health on the proposed changes, and present the draft changes to next SARG and OM for endorsement. (Note: last SARG meeting for the year is 30 November.)
- d. Responsible executive officer to provide a report on local law enforcement, as a standing agenda item on the monthly trustee meeting agenda.

**MOTION CARRIED**

11. **11:48am – 11:50am** **Next meeting – Tuesday 7<sup>th</sup> December 2021**

Mayor Mosby confirmed the next Trustee meeting date – 7<sup>th</sup> December 2021.

12. **11:50am – 12:00pm** **Closing Remarks and Prayer**

Mayor Mosby thanked Councillors and Staff for their time and declared the Trustee Meeting closed.

**MEETING CLOSED – 12:00PM**

.....  
Mr David Baldwin  
Acting Chief Executive Officer  
Torres Strait Island Regional Council  
7<sup>th</sup> December 2021

.....  
Cr Phillemon Mosby  
Mayor  
Torres Strait Island Regional Council  
7<sup>th</sup> December 2021

Date	STRATEGIC AND OPERATIONAL ACTIONS FROM ORDINARY MEETING AND EXECUTIVE - PLUS OPERATIONAL ACTIONS ONLY FROM SARG TO BE INPUT ONTO THIS DOCUMENT #85075									
	Month of Meeting	Year	Type of Meeting	Community	Agenda Report	Action	Lead Officer	Advisory Officer	Plans - Ongoing	Lead Officer Comments
	November	2021	Trustee	Cairns	LEGAL – CB – Tripartite Deed for Saibai Community Safety and Security Facility	Senior Legal Officer to liaise with the Department to provide background on how and why the name "Saibai Community Safety and Security Facility" was selected and if the name is open for discussion.	Senior Legal Officer			Completed
15	November	2021	Trustee	Cairns	LEGAL – CB – Tripartite Deed for Saibai Community Safety and Security Facility	Senior Legal Officer to investigate how TSIRC can raise community-level issues such as the management of community safety issues, the international border and treaty movements to the State and Border Force and provide a response back to Council.	Senior Legal Officer			Ongoing





# TORRES STRAIT ISLAND REGIONAL COUNCIL

## TRUSTEE AGENDA REPORT

<b>ORDINARY MEETING:</b>	December 2021
<b>DATE:</b>	7 December 2021
<b>ITEM:</b>	Trustee Agenda Item for Resolution by Council
<b>SUBJECT:</b>	TCHHS lease Kubin (lot 134 on SP271019)
<b>AUTHOR:</b>	Julia Maurus, Senior Legal Officer

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### Personal Interests

Councillors are reminded to declare any personal interests relating to:

- Torres and Cape Hospital and Health Service (TCHHS)
- Traditional owner interests at Kubin

### Recommendation:

*That the Trustee resolve, pursuant to the Torres Strait Islander Land Act 1991 (Qld), to grant Torres and Cape Hospital and Health Service (TCHHS) an extension to 30 September 2022 (a further nine-month extension) of the date for the satisfaction of the native title requirements in relation to the proposed lease of Kubin lot 134 on SP271019, subject to continued payment of a monthly land occupation fee (pro rata at the same rate as the starting rent under the proposed lease) until the commencement of the lease (or until TCHHS ceases occupying the land, whichever is earlier), and delegate to the Chief Executive Officer the power to negotiate the terms of the Deed of Variation and lease, sign and discharge the Deed of Variation and lease.*

### Executive Summary:

#### Background:

Under the *Torres Strait Islander Land Act 1991* (Qld) and the *Aboriginal Land Act 1991* (Qld), Council (as Trustee) has the power to grant leases of up to 99 years.

Council has previously made resolutions supporting the grant of standard trustee leases to TCHHS, including for its sites at Kubin and St Pauls.

Minutes extract from February 2018:

## **RESOLUTION**

*Moved: Cr Nona; Second: Cr Sabatino*

1. That pursuant to the Torres Strait Islander Land Act 1991 (Qld), the Trustee grant, subject to registration of Indigenous Land Use Agreement, development approval and survey in each case, a standard lease to Torres and Cape Hospital and Health Service over each of the following areas of land, for the purpose of:

- operating a primary health care centre; and
- undertaking works (subject to obtaining necessary approvals); and
- operating and maintaining residential accommodation for Lessee and Queensland Government agency employees and service providers; and
- other Government Services Use of and incidental to the above.

<b><i>Lot on Plan Description</i></b>	<b><i>Community</i></b>
<i>Lot 87 on SP 270862 (1,664m<sup>2</sup>)</i>	<i>Poruma</i>
<i>Lot 36 on SP 256048 (2,066m<sup>2</sup>)</i>	<i>St Pauls (Moa)</i>
<i>Lot 124 on SP 277431 (714m<sup>2</sup>) and Lot 125 on SP 277431 (1,484m<sup>2</sup>)</i>	<i>Masig</i>
<i>Lot 49 on SP 270872 (373m<sup>2</sup>), subject</i>	<i>Dauan</i>
<i>Lot 134 on SP 271019 (1,668m<sup>2</sup>)</i>	<i>Kubin (Moa)</i>
<i>Lot 11 on SP 282706 (unregistered) (738m<sup>2</sup>)</i>	<i>Ugar</i>

Subject to confirming Trustee consultation with community, Native Title consent, Development Approval, and/or surrender of existing leases (as applicable).

2. That the Trustee delegate to the Chief Executive Office the power to conclude the terms of each of the above leases.

**MOTION CARRIED**

3:23pm – Cr Stephen, Cr Elisala, Cr Bosun and Cr Akiba came back into the room.

Minutes extract from April 2018:

### **17. LEGAL SERVICES – TRUSTEE – TCHHS Lease Update**

#### **RESOLUTION:**

*Moved: Cr Pearson; Second: Cr Akiba*

1. That, further to the Trustee's February and March 2018 resolutions for the grant of leases to Torres and Cape Hospital and Health Service at Poruma, St Pauls, Masig, Dauan, Kubin and Ugar, the Trustee authorise the Chief Executive Officer to enter into those leases on the terms proposed in TCHHS's letter dated 12 April 2018, notwithstanding inconsistency with the Trustee's rent methodology resolution in February 2018.

<b><i>Land Use</i></b>	<b><i>Price per m2</i></b>
<i>Residential/ Community</i>	<i>\$4</i>
<i>Commercial/ Government*</i>	<i>\$10.80</i>

**\*Minimum charge of \$6,000p.a shall apply.**

**MOTION CARRIED**

In May 2018, Council as Trustee for the various Deeds of Grant in Trust (including Kubin and St Pauls) set a rent methodology of \$10.80 per square metre per annum (starting rent subject to CPI) for commercial/government leases, with a minimum charge of \$6,000 per annum. This rent methodology applies to the proposed leases for Kubin and St Pauls.

The original Deed of Agreement to Lease for Kubin dated 1 June 2018 provides for a lease term of 40 years at a starting rent of \$18,014 per annum (starting rent subject to CPI). Council has previously consented to two Deeds of Variation to extend the native title condition deadline (from 1 June 2020 to 31 December 2020, and again to 31 December 2021).

In December 2020, Council as Trustee granted TCHHS an extension of time to 31 December 2021 to satisfy the native title condition for the proposed Kubin Primary Health Care Centre lease:

**7. 10:08am – 10:13am LEGAL – TCHHS Leases Kubin and St Pauls**

Mr Peter Krebs, Senior Legal Counsel spoke to the report. Mr Krebs rang Cr Levi and spoke with him and Cr Levi gives his support and approval. Cr Trinkoon is present and give his support and approval.

**RESOLUTION:**

*Moved:* Cr Trinkoon; *Second:* Cr Noah

- 1. That the Trustee, pursuant to the Torres Strait Islander Land Act 1991 (Qld), grant Torres and Cape Hospital and Health Services (TCHHS) an extension to 31 December 2021 (a further 12-months extension) of the date for the satisfaction of the native title requirements in relation to the proposed lease of Kubin lot 134 on SP271019, subject to payment of a monthly land occupation fee (pro rata at the same rate as the starting rent under the proposed lease) from 1 January 2021 until the commencement of the lease (or until TCHHS ceases occupying the land, which ever is earlier), and delegate to the Chief Executive Officer the power to negotiate the terms of this lease, sign and discharge the lease.**
- 2. That the Trustee pursuant to the Torres Strati Islander Land Act 1991 (Qld), grant Torres and Cape Hospital and Health Services (TCHHS) an extension to 31 December 2021 (a further 12-month extension) of the date for the satisfaction of the native title and works approval requirements in relation to the proposed lease of St Pauls Lot 36 on sp256048, subject to payment of a monthly**

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land occupation fee (pro rata at the same rate as the starting rent under the proposed lease) from 1 January 2021 until the commencement of the lease (or until TCHSS ceases occupying the land, whichever is earlier), and delegate to the Chief Executive Officer the power to negotiate the terms of this lease, sign and discharge the lease.

TCHHS has advised that the negotiations for the ILUA are still ongoing and are unlikely to be concluded by 31 December 2021, which is the current due date for the Native Title condition in clause 5 of the Deed of Agreement for Lease for Kubin Island Primary Health Care Centre. TCHHS has

negotiated stand alone ILUAs on Moa Island, given that the matter has been ongoing for some time so TCHHS was not anticipating the use of the regional ILUA for this reason.

TCHHS has requested a further nine-month extension to get native title validation to secure this lease at Kubin.

Clause 3 of the Deed provides that Council must not unreasonably refuse a request for an extension of time to satisfy the conditions.

**Comment:**

The proposed lease area is currently occupied by TCHHS, with Health/TCHHS having had the benefit of the use of that land for many years.

Under the current Deed of Agreement to Lease, since 1 January 2021 TCHHS has been required to pay the trustee a commercial land occupation fee for its occupation of this land until a lease is eventually registered and commences. TCHHS was unable to agree to back-payment of licence fees.

It is recommended that the Trustee agree to the requested extension of time for the Kubin Deed of Agreement to Lease, provided TCHHS continues paying TSIRC a monthly licence fee (pro rata at the same rate as the starting rent under the proposed leases) until the commencement of the lease (or until TCHHS ceases occupying the land, whichever is earlier), and including this commitment in the proposed DOATL variation.

For completeness, it is noted that TCHHS has also requested a nine-month extension to the Deed of Agreement to Lease for the St Pauls site. However, Cr Levi has advised that he does not support a further extension. Cr Levi's view is that it is taking far too long to negotiate the ILUA, that this is unacceptable and his community is being denied quality healthcare services. Cr Levi has asked TCHHS to look at alternatives (e.g. a notification under section 24JAA of the *Native Title Act 1993*). If TCHHS had utilised the registered Moa Infrastructure and Housing ILUA then by now it could have completed future act validation with the consent-based process under the registered ILUA (or, failing that, a notification under the *Native Title Act*).

Legal Services is awaiting a response from Crown Law in relation to Cr Levi's objection.

## **Considerations**

### Risk Management

Compliance (land titles)

Compliance (native title)

### Council Finance

The Trustee is receiving commercial land occupation fees for this site.

## **Consultation:**

- Crown Law
- Cr Lama Trinkoon (Kubin)
- Cr John Levi (St Pauls)

## **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

Trustee lease revenue is vital to ensuring the sustainability of the Trustee's functions and improvement of the DOGIT.

## **Statutory Requirements:**

*Torres Strait Islander Land Act 1991 (Qld)*

*Native Title Act 1993 (Cth)*

*Land Title Act 1994 (Qld)*

## **Conclusion:**

It is recommended that the Trustee grant Torres and Cape Hospital and Health Service (TCHHS) the requested extension to 30 September 2022 of the date for the satisfaction of the native title requirements in relation to the proposed lease of Kubin lot 134 on SP271019, subject to continued payment of a monthly land occupation fee, and delegate to the Chief Executive Officer the power to negotiate, sign and discharge the Deed of Variation and lease.



### **Recommended:**

Peter Krebs

Manager Legal Services



### **Endorsed:**

Megan Barrett

Interim Executive Director, Corporate Services

### **Endorsed:**

David Baldwin

Acting Chief Executive Officer







# TORRES STRAIT ISLAND REGIONAL COUNCIL

## TRUSTEE AGENDA REPORT

**ORDINARY MEETING:** December 2021

**DATE:** 7 December 2021

**ITEM:** Trustee Agenda Item for Resolution by Council

**SUBJECT:** TCHHS lease St Pauls (lot 36 on SP256048)

**AUTHOR:** Peter Krebs, Manager Legal Services

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### Personal Interests

Councillors are reminded to declare any personal interests relating to:

- Torres and Cape Hospital and Health Service (TCHHS)
- Traditional owner interests at St Pauls

### Recommendation:

*That the Trustee resolve, pursuant to the Torres Strait Islander Land Act 1991 (Qld), to grant Torres and Cape Hospital and Health Service (TCHHS) an extension to 30 April 2022 (a further four-month extension) of the date for the satisfaction of the native title requirements in relation to the proposed lease of St Pauls lot 36 on SP256048, subject to continued payment of a monthly land occupation fee (pro rata at the same rate as the starting rent under the proposed lease) until the commencement of the lease (or until TCHHS ceases occupying the land, whichever is earlier), and delegate to the Chief Executive Officer the power to negotiate the terms of the Deed of Variation and lease, sign and discharge the Deed of Variation and lease.*

### Executive Summary:

#### Background:

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Council has previously made resolutions supporting the grant of standard trustee leases to TCHHS, including for its sites at Kubin and St Pauls.

Minutes extract from February 2018:

## **RESOLUTION**

*Moved: Cr Nona; Second: Cr Sabatino*

1. That pursuant to the Torres Strait Islander Land Act 1991 (Qld), the Trustee grant, subject to registration of Indigenous Land Use Agreement, development approval and survey in each case, a standard lease to Torres and Cape Hospital and Health Service over each of the following areas of land, for the purpose of:

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<i>Lot 11 on SP 282706 (unregistered) (738m<sup>2</sup>)</i>	<i>Ugar</i>

Subject to confirming Trustee consultation with community, Native Title consent, Development Approval, and/or surrender of existing leases (as applicable).

2. That the Trustee delegate to the Chief Executive Office the power to conclude the terms of each of the above leases.

**MOTION CARRIED**

3:23pm – Cr Stephen, Cr Elisala, Cr Bosun and Cr Akiba came back into the room.

Minutes extract from April 2018:

## **17. LEGAL SERVICES – TRUSTEE – TCHHS Lease Update**

### **RESOLUTION:**

*Moved: Cr Pearson; Second: Cr Akiba*

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<i>Land Use</i>	<i>Price per m<sup>2</sup></i>
<i>Residential/ Community</i>	<i>\$4</i>
<i>Commercial/ Government*</i>	<i>\$10.80</i>

*\*Minimum charge of \$6,000p.a shall apply.*

**MOTION CARRIED**

In May 2018, Council as Trustee for the various Deeds of Grant in Trust (including Kubin and St Pauls) set a rent methodology of \$10.80 per square metre per annum (starting rent subject to CPI) for commercial/government leases, with a minimum charge of \$6,000 per annum. This rent methodology applies to the proposed leases for Kubin and St Pauls.



The original Deed of Agreement to Lease for St Pauls dated 1 June 2018 provides for a lease term of 40 years at a starting rent of \$22,312.92 per annum (starting rent subject to CPI). Council has previously consented to two Deeds of Variation to extend the native title condition deadline (from 1 June 2020 to 31 December 2020, and again to 31 December 2021).

In December 2020, Council as Trustee granted TCHHS an extension of time to 31 December 2021 to satisfy the native title condition for the proposed St Pauls Primary Health Care Centre lease:

**7. 10:08am – 10:13am**

**LEGAL – TCHHS Leases Kubin and St Pauls**

Mr Peter Krebs, Senior Legal Counsel spoke to the report. Mr Krebs rang Cr Levi and spoke with him and Cr Levi gives his support and approval. Cr Trinkoon is present and give his support and approval.

**RESOLUTION:**

**Moved:** Cr Trinkoon; **Second:** Cr Noah

1. That the Trustee, pursuant to the Torres Strait Islander Land Act 1991 (Qld), grant Torres and Cape Hospital and Health Services (TCHHS) an extension to 31 December 2021 (a further 12-months extension) of the date for the satisfaction of the native title requirements in relation to the proposed lease of Kubin lot 134 on SP271019, subject to payment of a monthly land occupation fee (pro rata at the same rate as the starting rent under the proposed lease) from 1 January 2021 until the commencement of the lease (or until TCHHS ceases occupying the land, which ever is earlier), and delegate to the Chief Executive Officer the power to negotiate the terms of this lease, sign and discharge the lease.
2. That the Trustee pursuant to the Torres Strati Islander Land Act 1991 (Qld), grant Torres and Cape Hospital and Health Services (TCHHS) an extension to 31 December 2021 (a further 12-month extension) of the date for the satisfaction of the native title and works approval requirements in relation to the proposed lease of St Pauls Lot 36 on sp256048, subject to payment of a monthly

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land occupation fee (pro rata at the same rate as the starting rent under the proposed lease) from 1 January 2021 until the commencement of the lease (or until TCHSS ceases occupying the land, whichever is earlier), and delegate to the Chief Executive Officer the power to negotiate the terms of this lease, sign and discharge the lease.

TCHHS has advised that the negotiations for the ILUA are still ongoing and are unlikely to be concluded by 31 December 2021, which is the current due date for the Native Title condition in clause 5 of the Deed of Agreement for Lease for St Pauls Primary Health Care Centre. TCHHS has

negotiated stand-alone ILUAs on Moa Island, given that the matter has been ongoing for some time so TCHHS was not anticipating the use of the regional ILUA for this reason.

TCHHS has requested a further four-month extension to get native title validation to secure this lease at St Pauls.

Clause 3 of the Deed provides that Council must not unreasonably refuse a request for an extension of time to satisfy the conditions.

**Comment:**

The proposed lease area is currently occupied by TCHHS, with Health/TCHHS having had the benefit of the use of that land for many years.

Under the current Deed of Agreement to Lease, since 1 January 2021 TCHHS has been required to pay the trustee a commercial land occupation fee for its occupation of this land until a lease is eventually registered and commences. TCHHS was unable to agree to back-payment of licence fees.

It is recommended that the Trustee agree to the requested extension of time for the St Pauls Deed of Agreement to Lease, provided TCHHS continues paying TSIRC a monthly licence fee (pro rata at the same rate as the starting rent under the proposed leases) until the commencement of the lease (or until TCHHS ceases occupying the land, whichever is earlier), and including this commitment in the proposed DOATL variation.

Initially, Cr Levi has advised that he had concerns that it was taking far too long to negotiate the ILUA, and that this is unacceptable and effected his community getting quality healthcare services. Cr Levi has asked TCHHS to look at alternatives (e.g. a notification under section 24JAA of the *Native Title Act 1993*). Legal Services then raised the issue with TCHHS and Crown Law in relation to Cr Levi's objection and requested a shorter extension period of 4 months so that they could investigate alternatives regarding Native Title compliance.

Cr. Levi was happy with the request to extent for only 4 months to allow this to happen.

## **Considerations**

Risk Management

Compliance (land titles)

Compliance (native title)

## Council Finance

The Trustee is receiving commercial land occupation fees for this site.

## **Consultation:**

- Crown Law
- Cr John Levi (St Pauls)

## **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

Trustee lease revenue is vital to ensuring the sustainability of the Trustee's functions and improvement of the DOGIT.

## **Statutory Requirements:**

*Torres Strait Islander Land Act 1991 (Qld)*

*Native Title Act 1993 (Cth)*

*Land Title Act 1994 (Qld)*

## **Conclusion:**

It is recommended that the Trustee grant Torres and Cape Hospital and Health Service (TCHHS) the requested extension to 30 April 2022 of the date for the satisfaction of the native title requirements in relation to the proposed lease of St Pauls lot 36 on SP256048, subject to continued payment of a monthly land occupation fee, and delegate to the Chief Executive Officer the power to negotiate, sign and discharge the Deed of Variation and lease.



### **Recommended:**

Peter Krebs

Manager Legal Services



### **Endorsed:**

Megan Barrett

Interim Executive Director, Corporate Services

### **Endorsed:**

David Baldwin

Acting Chief Executive Officer