

Leasing Torres Strait Islander Deed of Grant in Trust land

A manual for trustees

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This manual

This manual was prepared by the Department of Resources (DoR) in response to the 2008 amendments to the *Torres Strait Islander Land Act 1991*. These amendments gave the power to trustees of Torres Strait Islander Deed of Grant in Trust (DOGIT) land to grant leases over DOGIT land.

The *Torres Strait Islander Land Act 1991* was amended in January 2015 by the commencement of the *Torres Strait Islander and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014*. These amendments simplify the complex leasing arrangements applying to Torres Strait Islander land and allow trustees to manage their land more effectively.

The purpose of this manual is to assist the trustees of Torres Strait Islander DOGIT land fulfil their responsibilities under the *Torres Strait Islander Land Act 1991* and *Land Act 1994* to effectively manage the leasing of land, and contribute to the sustainable social and economic development of their communities.

The Torres Strait Islander Regional Council (TSIRC) and Northern Peninsula Area Regional Council (NPARC) are the current trustees of Torres Strait Islander DOGIT land at the following locations:

Bamaga*	Boigu Island	Coconut Island
Dauan Island	Erub Island	Hammond Island
Iama Island	Kubin, Moa Island	Mabuiag Island
Saibai Island	Seisia*	St Pauls, Moa Island
Ugar Island	Warraber Island	Yorke Island

* The Bamaga and Seisia DOGITs are held in trust by the NPARC. All other Torres Strait DOGITs are held by the TSIRC.

Using this manual

Effective corporate governance

Trustees should use this manual whenever they consider an Expression of Interest (EOI) for a lease of Torres Strait Islander DOGIT land. This manual will assist trustees of Torres Strait Islander DOGIT land to operate according to good corporate governance practices, fulfill their trustee leasing role and meet their corporate governance responsibilities as set out under relevant legislation.

For more information on their duty of care and other responsibilities trustees should refer to the DoR website www.resources.qld.gov.au

Manual content

Parts 1–3 describe:

- the roles of trustees as land managers and their leasing responsibilities,
- the relevant legislation and statutory compliance trustees must consider when leasing DOGIT land, and
- some leasing options and lease conditions.

Part 4 provides an overview of the steps involved in considering an expression of interest (EOI) for the grant of a lease and then provides a detailed description of the leasing procedures that trustees should follow when considering the grant of a lease.

The Appendices include the necessary forms, lease templates and other materials to support trustees to consider the grant of a lease.

Definitions

Text in grey boxes at the end of each chapter provide definitions for key words and phrases used in that chapter.

List of acronyms

ATL	Agreement to lease
DOGIT	Deed of Grant in Trust
EOI	Expression of Interest
GIC	Governor-in-Council
HCE	Housing Chief Executive, Department of Communities, Housing and Digital Economy
PA 2016	<i>Planning Act 2016</i>
DoR	Department of Resources

Part 1: Trustee leasing roles and responsibilities

1.1 Torres Strait Islander DOGIT land and trustees

Torres Strait Islander DOGIT land is State land granted 'in fee simple in trust' by the Governor-in-Council under the *Land Act 1962* (now repealed and replaced by the *Land Act 1994*). Torres Strait Islander DOGIT land is granted for the benefit of Torres Strait Islander inhabitants or for Torres Strait Islander purposes.

Between 1984 and 1986, sixteen Torres Strait Islander DOGITs were granted in Queensland (listed above) with the addition of Badu Island DOGIT which has since been transferred as Torres Strait Islander freehold. A Torres Strait Islander DOGIT may be surrendered, cancelled or have land compulsorily acquired from it.

The Minister administering the *Land Act 1994* (currently the Minister for Natural Resources, Mines and Energy) appoints a trustee as manager and administrator responsible for Torres Strait Islander DOGIT land. The Minister decides an entity is suitable to be appointed as the trustee of Torres Strait Islander DOGIT land because members of that entity have:

- a particular association to the land,
- relevant expertise in managing land for the benefit of Torres Strait Islander people, and
- knowledge of the local community.

To fulfil these responsibilities, trustees are empowered under the *Land Act 1994* to make decisions and undertake actions related to land management and use. Trustees are also empowered under the *Torres Strait Islander Land Act 1991* to decide on the grant of leases.

After appointing a trustee under the *Land Act 1994*, the Minister retains a charter of responsibility for the management of State land, including Torres Strait Islander DOGIT land. The Minister, supported by the department, is therefore responsible for ensuring that Torres Strait Islander DOGIT land is properly and effectively managed by trustees in accordance with the *Land Act 1994*. This includes ensuring that decisions made by the trustee do not diminish the benefit of the land to Torres Strait Islander inhabitants or for Torres Strait Islander purposes. For example, a trustee could diminish Torres Strait Islander benefit by granting inappropriate leases, or granting leases with inappropriate conditions.

The Minister may remove a trustee from office if the Minister is satisfied the trustee has breached the *Land Act 1994* or conditions of the trust, or if the removal of the trustee is in the public interest. The Minister may appoint a new trustee if such a removal action is undertaken.

1.2 TSIRC and NPARC responsibilities as a local government authority

In 1984, Torres Strait Islander community councils were established as the local government authorities for 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 land with their roles and responsibilities set out in the *Land Act 1962* (now repealed).

In 2008, Torres Strait Islander community councils were amalgamated into two regional councils, TSIRC and NPARC, with their roles and responsibilities set out in the *Local Government Act 2009*. The TSIRC and NPARC were then appointed to be the trustees of Torres Strait Islander DOGIT land with their roles and responsibilities set out in the *Land Act 1994*.

The TSIRC and NPARC therefore have dual responsibilities—first, as a local government under the *Local Government Act 2009*, and second, as the trustee of Torres Strait Islander DOGIT land under the *Land Act 1994* with leasing powers under the *Torres Strait Islander Land Act 1991*.

Further information about local government roles and responsibilities of the TSIRC and NPARC can be obtained by contacting the Department of State Development, Infrastructure, Local Government and Planning at:

Postal address: PO Box 15009, City East Queensland 4002. Email: info@dsdmip.qld.gov.au.

The TSIRC's and NPARC's council trustee roles and responsibilities relevant to leasing land under the *Torres Strait Islander Land Act 1991* are described in this manual. The *Torres Strait Islander Land Act 1991* was significantly amended in 2008 to enhance and increase the options for leasing Torres Strait Islander DOGIT land. These amendments also enhance and increase the powers of the regional councils as trustees. More information on the TSIRC's and NPARC's broader roles and responsibilities as trustees (beyond their leasing responsibilities) can be found on the DoR website www.resources.qld.gov.au.

TSIRC and NPARC must be clearly aware of the differences in their roles and responsibilities as a local government and a trustee of Torres Strait Islander DOGIT land. TSIRC and NPARC must ensure that a clear separation between these roles is maintained. This means that TSIRC and NPARC need to be aware of the statutory powers they are using when making decisions about land. This may require that councils adopt the practice of meeting as a local government and dealing with local government business relevant to the *Local Government Act 2009*, then closing the local government meeting and reconvening as the Torres Strait Islander DOGIT land trustee to deal with trustee business relevant to the *Land Act 1994* and the *Torres Strait Islander Land Act 1991*.

1.3 Trustee land management responsibilities

Under the *Land Act 1994*, the main responsibility of trustees of Torres Strait Islander DOGIT land is to manage the land for the benefit of Torres Strait Islander inhabitants or for Torres Strait Islander purposes.

This responsibility includes:

- controlling pest plants and animals
- protecting and maintaining any improvements on the land (eg. buildings, fences, buried pipes)
- exercising a duty of care for the land and taking all action necessary for its maintenance and management
- obtaining a vegetation clearing permit before destroying any vegetation on the land
- maintaining records as required by the Minister or as required under the *Land Act 1994* and other Acts
- complying with other statutory requirements relating to land management.

In addition, trustees:

- may lease all or part of the DOGIT land
- must not mortgage DOGIT land without the approval of the Minister
- are not permitted to sell DOGIT land
- must maintain adequate public liability insurance for the benefit of the trustee, and any member of the public who may use the DOGIT land
- may consult with other parties and enter into management arrangements (e.g. with conservation groups) provided the agreement does not permit activities which do not provide benefit for Torres Strait Islander inhabitants or for Torres Strait Islander purposes
- may not use, sell or lease quarry material, forest products or mineral and petroleum products found on or below the surface of DOGIT land because they are reserved to the State under the *Forestry Act 1959*, *Mineral Resources Act 1989* and *Petroleum Act 1923*.

1.4 Trustee responsibilities when leasing land

When granting a lease over Torres Strait Islander DOGIT land, trustees:

- have no power to bind the State
- are responsible to ensure compliance with the *Native Title Act 1993* (Cth)
- have no authority to recognise native title or to recognise an Torres Strait Islander group as the traditional owner of the land
- must abide by the and other requirements of the *Planning Act 2016* (PA 2016) for proposed development of the land
- must comply with any directions issued by the Minister for Natural Resources, Mines and Energy
- continue to bear the responsibility to ensure the Torres Strait Islander DOGIT land is managed for the benefit of Torres Strait Islander inhabitants or for Torres Strait Islander purposes and cannot delegate that responsibility
- should ensure that trustee land management responsibilities (see section 1.3) are passed on to lessees through the conditions of the lease.

After the grant of a lease:

- payment received from a lease of land must be spent by the trustees on the maintenance or enhancement of the DOGIT land
- payment received for an existing dwelling on a Home Ownership lease (if the dwelling was previously used to provide subsidised housing for residential use) must be spent by the trustee on housing services for Torres Strait Islander inhabitants of the DOGIT land.

1.5 Informed responsibility

To fulfil their leasing responsibilities in an informed and effective manner, trustees of Torres Strait Islander DOGIT land need to have comprehensive knowledge about:

- the values of and appropriate uses for the land,
- existing interests in the land, and
- community opinion on proposed leases over the land.

Trustees of Torres Strait Islander DOGIT land need to have internal policies relating to the leasing of land. Trustees should also make people aware of the leasing options available on DOGIT land and the processes to get a lease.

Planning

Trustees should have access to comprehensive information about appropriate and desirable uses for Torres Strait Islander DOGIT land. Trustees should refer to this information when making decisions about granting a lease to ensure that a lease for a particular piece of DOGIT land is not granted for an unsuitable purpose. A planning scheme, compliant with the PA 2016, is the best source of information about land-use suitability since the PA 2016 requires planning schemes to be developed through a process involving extensive public participation to comprehensively identify existing land values, constraints on land, and the desired outcomes of development. All local government authorities are required to adopt a planning scheme.

In the Torres Strait TSIRC has prepared the Zenadth Kes Planning Scheme (Planning Scheme for the Torres Strait Island Regional Council) 2018. The Scheme has been amended to align with the PA 2016 as a framework for managing development in the TSIRC local government area.

In the Northern Peninsula Area, the Northern Peninsula Area Regional Council Planning Scheme was gazette in August 2018 as a framework for managing development in the NPARC local government area. The planning scheme has been finalized to align with the PA 2016 as a framework for managing development in the NPARC local government area.

The two respective planning schemes enable TSIRC and NPARC as trustees, to identify land that has constraints to development. These constraints may include, but are not limited to, land that:

All local government authorities are required to adopt a planning scheme. Many Torres Strait Islander shire and regional councils have finalised or are in the process of finalising planning schemes for their shire or region. In the absence of a planning scheme, trustees should refer to any available land use or community development plans for the Torres Strait Islander DOGIT land, to check whether the land use and purpose of a proposed lease is suitable and consistent with community aspirations.

If a well-developed land-use plan does not exist, it is recommended that Torres Strait Islander shire councils, as trustees, prepare a land-use and development plan that identifies land that has constraints to development. These constraints may include, but are not limited to, land that:

- is flood prone or unstable
- is not serviced with water, sewerage, waste collection or other services and utilities
- has high cultural heritage values
- has high natural values such as being in a wild rivers catchment, a world heritage area, the habitat of a rare or threatened species, or subject to coastal management considerations
- is already used for another purpose
- is constrained by native title issues.

Their respective planning schemes enable TSIRC and NPARC, as trustees to also identify land where development is desirable, such as land close to existing development that is not affected by the constraints listed above and is considered by trustees to be suitable for development.

Consultation

Trustees are not required under the *Torres Strait Islander Land Act 1991* to consult with the community when considering an expression of interest to lease trust land. Although there is no legislative requirement to do so, it is good practice to seek the views of the community to establish that the community generally agrees with the grant of the lease prior to making any long term decisions about trust land.

Record keeping

Trustees should establish a system to record and manage leases granted over Torres Strait Islander DOGIT land. The following information should be included:

- details of existing interests—leases and licences, their locations, terms and conditions
- a register of interests for financial reporting and lease management purposes
- details of existing land use
- procedures for accessing information held in government databases.

Awareness raising

Trustees should also make people aware of the leasing options available on DOGIT land and the processes for expressing an interest in, and being granted, a lease. Potential lessees, including members of their local community, should be advised about land that is most suitable for various purposes and would receive the most favourable consideration. This advice should be based on the relevant planning scheme.

Trustees should ensure expression of interest forms and other suitable materials are available at Torres Strait Islander shire council offices and distributed by other appropriate methods.

Definitions

Torres Strait Islander DOGIT land

For the purposes of this manual, Torres Strait Islander DOGIT land is defined as land subject to a Deed of Grant in Trust granted for the benefit of Torres Strait Islander inhabitants under the (now repealed) *Land Act 1962* or the *Land Act 1994*.

Trustee

For the purpose of Torres Strait Islander DOGIT land, a trustee is a registered entity appointed by the Minister for the *Land Act 1994* and responsible for the management of the Torres Strait Islander DOGIT land. The trustees have some particular association or expertise with the land and the local community. In most cases, the TSIRC or NPARC are the trustees of DOGIT land so trustees and councillors are the same group of people.

Governor-in-Council

The Governor-in-Council is a title used when the governor is acting by and with the advice of the executive council. The Governor-in-Council gives formal, legal effect to decisions of the ministry (see the Constitution of Queensland 2001).

Executive council

The executive council, comprised of executive councillors, exists to advise the governor on the exercise of the powers of the Governor-in-Council. In Queensland, it is customary for executive councillors to be the same people who comprise the ministry and cabinet.

Local government

A local government is a body established under the *Local Government Act 2009*. The TSIRC and NPARC are the local governments for Torres Strait Islander DOGIT land.

Part 2: Leasing land

2.1 Background to leasing

The *Torres Strait Islander Land Act 1991* is the principal legislation for regulating land tenure arrangements on Torres Strait Islander DOGIT land. The Act specifies how land tenure is administered and sets out the statutory processes for dealing with land tenure matters, for example an EOI to lease DOGIT land. When a lease is granted under the Act, a “registered interest in land” is created. The objective of leasing Torres Strait Islander DOGIT land is to enable home ownership and social housing, encourage economic development, and facilitate the construction of essential community infrastructure.

Trustees must satisfy their roles and responsibilities under the *Land Act 1994*, and effectively administer their leasing powers under the *Torres Strait Islander Land Act 1991* when considering the grant of a lease on Torres Strait Islander DOGIT land.

Granting a lease means that a trustee agrees to allow exclusive access to and use of a parcel of Torres Strait Islander DOGIT land by another party for an agreed purpose, period of time, rental price, and other terms and conditions as appropriate. When a trustee registers a lease with DoR a “registered interest in land” is created. On registration, the lease is considered granted. The trustee is then known as the lessor and the other party is known as the lessee. When the term of the lease expires the tenure of the land reverts to Torres Strait Islander DOGIT land, unless the lease provides for renewal and the parties agree to exercise the right of renewal.

A registered lease provides lessees with the long-term security and confidence required to commit to home ownership, develop a business, install and operate infrastructure, or undertake other activities. In return, leases provide lessees (ie council as trustees) with a source of income, and the sharing of responsibility and expenses associated with land management. Leasing will also be of general benefit to Torres Strait Islander communities through the diversification of land use and stimulation of activities to improve social and economic wellbeing. Lessees can include Torres Strait Islander people, governments and other parties

Leasing Torres Strait Islander DOGIT land provides home ownership opportunities for individual Torres Strait Islander people and facilitates land-based economic development and infrastructure provision without affecting the background tenure of Torres Strait Islander DOGIT land.

2.2 Statutory issues when considering the grant of a lease

When considering an expression of interest for the grant of a lease over Torres Strait Islander DOGIT land, trustees are responsible to ensure compliance with statutory processes before the lease can be granted. These considerations may prevent the grant of a lease or place conditions on the lease that constrain certain activities.

The TSIRC and NPARC, as trustees of Torres Strait Islander DOGIT land, must comply with the requirements of the *Land Act 1994*, *Torres Strait Islander Land Act 1991* and *Native Title Act 1993* (Cth). As the relevant local government, TSIRC and NPARC are also responsible to fulfil requirements of the *Planning Act 2016* and *Local Government Act 2009*. Other Acts that require statutory processes must also be complied with by the responsible party.

The 2015 amendments to the *Torres Strait Islander Land Act 1991* amongst other things, removed the requirement, under legislation, for the trustee to consult with the community or to seek the Minister’s consent to the grant of any lease. Although there is no legislative requirement to do so, it is good practice to seek the views of the community to establish that the community generally agrees with the grant of the lease prior to making any long term decisions about trust land.

2.2.1 *Planning Act 2016*

The purpose of the *Planning Act 2016* is to facilitate the achievement of ecological sustainability by coordinating and integrating planning at local, regional and State levels, managing the process by which development occurs, and managing the effects of development on the environment (including managing the use of premises). *Planning Act 2016* mechanisms to achieve ecological sustainability include planning schemes developed for a local government area and rules concerning making and deciding development applications.

Under Schedule 2 of the *Planning Act 2016*, dividing land into parts by granting a lease for a period over ten years is defined as reconfiguring a lot. Before the trustee (TSIRC and NPARC respectively) can grant a lease on Torres Strait Islander DOGIT land for more than 10 years, they must refer the proposed lease request to the local government authority (council) in order to grant development approval to reconfiguring a lot. TSIRC or NPARC are both trustee and local government authority. Therefore TSIRC and NPARC, in their capacity as trustees, refer development applications to themselves in their capacity as a local government authority.

Reminder: for Torres Strait Islander DOGIT land the trustee role and the local government role are both vested in the respective regional councils. The TSIRC and NPARC must be clearly aware of their different responsibilities in these two roles and ensure that their operations maintain a clear separation between the roles.

If, for local government reasons, the TSIRC or NPARC do not grant development approval to reconfigure the lot, then the TSIRC or NPARC (as trustee) must not grant the lease.

To maintain transparency between the TSIRC's and NPARC's trustee and local government roles, discussion and decisions made about development approval to reconfigure a lot should be recorded in council meeting minutes.

Note: other trustees of land in a Torres Strait Islander local government area, such as a land trust, must also apply to the council for development approval to reconfigure a lot if a lease is applied for over this land. In these cases there is an obvious separation between the trustee of the land and the local government so the roles of the land owner and local government are clearer.

When the TSIRC or NPARC (in their role as local governments) are considering a development application to reconfigure a lot, they must fulfil the requirements of the PA 2016 to determine if the proposed land use is consistent with the objectives and desired outcomes for land use in that area.

The TSIRC or NPARC, as assessment manager, must also coordinate the consideration of the proposed lease against the requirements of other legislation by liaising with government referral agencies and seeking their concurrence or advice on the development application. Some of the key Acts that may need to be considered by government referral agencies, and may influence the granting or conditioning of a lease, include but are not limited to the *Vegetation Management Act 1999*, and *Torres Strait Islander Cultural Heritage Act 2003*.

Vegetation Management Act 1999

Any lease issued should be conditioned by the trustee so that activity on the leased land does not contravene the *Vegetation Management Act 1999*.

Torres Strait Islander Cultural Heritage Act 2003

Lessees should be made aware that they have a duty of care to protect Torres Strait Islander cultural heritage that exists on leased land and take step to manage their activities to avoid or minimise harm to Torres Strait Islander cultural heritage.

2.2.2 Native Title Act 1993 (Cth)

The *Native Title Act 1993* (Cth) provides for the recognition and protection of native title and establishes ways in which future land and resource dealings affecting native title may proceed and sets standards for the dealings.

Where the registration of a lease is a future act—that is, where any activity associated with the lease may impact on the enjoyment or exercise of native title—the trustee is required to perform a native title assessment in accordance with the *Native Title Act 1993* (Cth). The native title assessment will:

- determine whether native title may exist over the land proposed to be leased or if native title has been wholly extinguished
- identify what action needs to be taken if native title may exist, such as providing procedural rights under a future act provision or the negotiation of an Indigenous Land Use Agreement
- identify what party is responsible for undertaking the identified action. In most cases the potential lessee will be responsible to fulfil the required action, such as the negotiation of an Indigenous Land Use Agreement.

Where housing and infrastructure already exists on Torres Strait Islander DOGIT land, the native title assessment may find that native title has been extinguished and that no further action, such as the negotiation of an Indigenous Land Use Agreement, is required before the lease can be granted.

However, if an Indigenous Land Use Agreement is required it must be negotiated prior to registration of the lease. This will develop agreement between native title parties and the potential lessee that the proposed land use and management on the leased land are appropriate. Native title rights and interests can only be surrendered through an Indigenous Land Use Agreement where the State must be a party to the Indigenous Land Use Agreement.

If an Indigenous Land Use Agreement is required, but cannot be negotiated, the trustee must not grant the lease.

2.2.3 Local Government Act 2009

The *Local Government Act 2009* applies to all Queensland local governments. It was amended in 2007 to provide provisions for Indigenous regional councils, including the TSIRC and the NPARC. The NPARC's local government area includes Torres Strait Islander DOGIT land in Bamaga and Seisia.

The NPARC, as trustee of Torres Strait Islander DOGIT land within their region must consider their obligations under the *Local Government Act 2009* when making any trust change decisions, including the grant of a lease.

2.3 Statutory issues after granting a lease

Trustees should advise the potential lessee that additional processes may need to be satisfied after the lease has been granted and before a desired activity or development may take place on the land. This is because the grant of a lease provides a right to occupy and use the land but it is not an approval for all activity on the land. Certain activities will require approval from the local government or other parties, or may be constrained by statutory requirements. The PA 2016 is the main Act that applies to the assessment and approval of development on leased land.

Under the PA 2016, development is defined as:

- carrying out building work
- carrying out plumbing or drainage work
- carrying out operational work
- reconfiguring a lot
- making a material change of use of premises.

Potential lessees should be advised that before undertaking any of these actions they should check with their local government authority (council) to confirm whether development approval is required, or if codes need to be followed in undertaking any of these activities. For example, building an average house will not require development approval but it will require compliance with the relevant code. However, if a more significant building was proposed it may require development approval.

Native title considerations also apply to additional approvals required for a project. If an Indigenous Land Use Agreement is required before the grant of the lease, the native title considerations associated with additional activities should also be addressed and consented to during the negotiation of the Indigenous Land Use Agreement.

2.4 A proactive approach to leasing

There is a range of actions that TSIRC and NPARC can take to create a land administration system on Torres Strait Islander DOGIT land that facilitates leasing. If these actions are taken it will make the leasing process much simpler, faster and less expensive for potential lessees and trustees.

Actions that councils should consider undertaking are to:

- develop a planning scheme to identify land-use constraints and opportunities for the local government area, and the desired outcomes of development, including the areas where residential, commercial or other development is preferred
- raise awareness within the community of the leasing opportunities that are available and indicate where the council would prefer people to apply for leases for Home Ownership or other purposes
- develop a register of existing leases and other interests in land, including areas where an application has been made or a lease granted under the *Torres Strait Islander and Torres Strait Islander Land Holding Act 2013* or the repealed *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*
- negotiate an Indigenous Land Use Agreement over developed areas and areas where development is anticipated to occur, and where native title may exist, so that individual Indigenous Land Use Agreements are not required to be negotiated for Home Ownership leases in these areas in the future
- survey existing lots and do a mass reconfiguration of the DOGIT land to create separate lots. This will mean that a survey and an application to reconfigure the lot will not be

required for leases over existing lots in the future, although leases over 'greenfield' sites will still require survey and reconfiguration

- develop policies addressing issues they can anticipate will arise with Home Ownership lease applications, such as:
 - how to respond if more than one expression of interest is received for the same piece of land, or land and house
 - how to engage with the Torres Strait Islander people particularly concerned with the land to discuss the proposed lease
 - whether leases on unserviced land will be considered, or under what circumstances the council would be prepared to provide services to leases on currently unserviced land
 - how large a block of land will be allowed for a home ownership lease.

Definitions

Lease

A lease is an enforceable agreement between a lessor and lessee that creates a legal interest in land. A lease provides a lessee with exclusive access to and use of a parcel of land, (according to the terms and conditions of the lease), and gives security, certainty and confidence to a lessee to develop and use the land for an agreed purpose and period of time.

Instrument of lease

An instrument of lease is a document which describes the terms and conditions of a lease, as agreed between a lessor and a lessee.

A standard terms document may be used as the instrument of lease. Standard terms documents describe the standard terms and conditions for particular types of leases. Standard terms and conditions could include, for example, clauses providing for public liability and indemnity insurance. A survey plan identifying the parcel of land the lease refers to will need to accompany the instrument of lease—except in the circumstance where the lease is over an entire lot that has already been fully surveyed.

A schedule may also be attached to a standard terms document detailing additional terms or conditions of a lease.

Registered interest

All leases must be registered in the Land Titles Registry within DoR.

After an instrument of lease is recorded in the appropriate register, the lease becomes a registered interest. A registered interest means a legal interest has been created in the title. Details of the interest will be shown on the current title for the land.

A registered interest provides the lessee certainty and eliminates doubt about the existence of the lease. Provided the lessee uses the lease land in accordance with the terms of the lease, the lessee's use of the land cannot be overridden unless the lessee is in breach of a regulation or legislation.

Part 3: Leasing options and conditions

3.1 Leasing options

In January 2015 the leasing provisions of the *Torres Strait Islander Land Act 1991* were amended to enable the trustees to grant leases on Torres Strait Islander DOGIT land without the requirement to seek the Minister's consent to the grant.

Three lease types are identified in the *Torres Strait Islander Land Act 1991*:

- Standard lease
- Home ownership lease
- Townsite lease

3.2 Lease conditions

Suggested terms and conditions for a standard lease and home ownership lease are available at <https://www.qld.gov.au/atsi/environment-land-use-native-title/leasing-indigenous-land/trustees>. These template lease terms were prepared by the DoR to assist trustees and lessees of Torres Strait Islander and Torres Strait Islander land to condition leases. Note that the lease terms and conditions are recommended terms and conditions only and are not mandatory terms and conditions that must be applied to every lease.

However, most of the recommended terms and conditions are based on statutory requirements. Any amendments or additions to the terms and conditions must ensure that all relevant statutory requirements are satisfied and that trustee and lessee interests are protected. Important standard conditions for all lease types are that:

- All leases can be amended, transferred, mortgaged, cancelled and have secondary interests created
- Note – the template lease document conditions the lessee to obtain prior written approval from the trustee to transfer or create another interest in the lease. This is a recommendation only but is considered good practice when administering trust land.
- All leases can include an option to be renewed • other standard conditions relate to warranties; inspection by lessor; nuisance; pest plants and animals; removal of trees; quiet enjoyment; environmental protection; compliance with laws and environmental requirements; access, utilities and services; improvements and repairs; costs; insurance; release and indemnity; default; damage and destruction; removal of improvements when lease ends; surrender; miscellaneous; and cancellation of lease
- The lease can be cancelled for the breach of conditions
- Trustees may include additional conditions in a Schedule depending upon the particulars of the lease and the outcomes of considerations prior to the execution of the lease.

Additional important standard conditions for standard leases are that:

- Lessees must pay ongoing periodic rental payments to the trustee for an amount agreed in the lease, based upon (i) payment for exclusive access to and use of the land, and (ii) payment to cover the costs of local government service charges and other statutory levies and charges.

Additional important standard conditions for Home Ownership leases are that:

- The lease must be for a term of 99 years
- The consideration payable for the lease must include, as a lump sum payment to the trustee prior to the grant of the lease, an amount equal to the value of the lease land, as decided by the trustee using a valuation methodology decided by the DoR chief executive. Currently the purchase price is determined using a 'nominal' based valuation methodology. The nominal value is \$4,000 for leases up to 2,000 m² and that for each

additional 100m² the price would increase by \$100. The nominal value may be reviewed in the future and increased in line with the consumer price index.

- If a social housing dwelling exists on the land, the consideration payable must also include a lump sum payment to the trustee prior to the grant of the lease for an amount equal to the value of the dwelling, as decided by the trustee using a valuation methodology agreed between the trustee and the Housing Chief Executive (HCE), Department of Communities, Housing and Digital Economy.
- An annual rent, for an amount of not more than one dollar per annum, must be charged
- The lessee must pay the costs of local government service charges and other statutory levies and charges directly to the local government or other service providers
- The lease may be forfeited for breach of conditions of the lease, although breach of conditions will not result in automatic forfeiture
- If a dwelling suitable for residential purposes is not situated on the lease land, the lessee must ensure that a suitable dwelling is built on the land within eight years after the grant of the lease
- A secondary interest may be created under the lease including a mortgage of the lease.

Definitions

Standard Lease

A lease granted under Part 8 of the *Torres Strait Islander Land Act 1991*:

- to any person or entity
- for any purpose
- for any term up to 99 years

Home Ownership Lease

A lease granted to an eligible person for a term of 99 years for residential use.

Eligible Person

- a Torres Strait Islander person; or

a person who is not a Torres Strait Islander person if the person is-

- the spouse or the former spouse of a Torres Strait Islander person
- the spouse or the former spouse of a Torres Strait Islander person who is deceased; or
- the holder of another type of lease granted by the trustee (eg a commercial lease)

Torres Strait Islander person

A person of the Torres Strait Islander race of Australia (*Torres Strait Islander Land Act 1991*)

Townsite Lease

- must be granted to a local government authority
- the land must be regulated as Township land
- the term is perpetual

Part 4: Specific leasing procedures

Summary of leasing processes for all lease purposes

EOI consideration and decision making steps	Rejection of EOI
<p>Step 1: Expression of Interest (EOI)</p> <p>The potential lessee submits an EOI by completing the relevant form and providing any required supporting information or documents. The trustee acknowledges receipt of the EOI.</p>	
<p>Step 2: Receipt and review of the EOI</p> <p>The trustee reviews the EOI to check that form has been correctly completed by the applicant and any required supporting information or documents have been supplied.</p> <p>Additional consideration:</p> <p>99 year home ownership leases can only be applied for by an eligible person as defined under the <i>Torres Strait Islander Land Act 1991</i>.</p>	<p>If the EOI has not been correctly made, the trustee advises the potential lessee to correct the EOI.</p>
<p>Step 3: Consideration of the EOI</p> <p>After receipt of a correctly made EOI, the trustee takes actions to:</p> <ul style="list-style-type: none"> • confirm there are no known conflicts with existing interests in the land; <p>Additional processes:</p> <ul style="list-style-type: none"> • if appropriate, undertake consultation or provide notice to the community of the trustees' intention to consider the EOI and allow time for comment to be provided and considered. • For home ownership leases if a dwelling is present on the land, the trustee must confirm that the dwelling is available for purchase. 	<p>If the trustee is unable to confirm any Step3 considerations, the trustee should advise the potential lessee that the EOI cannot proceed and reject the EOI.</p>
<p>Step 4: Confirmation to proceed</p> <p>After confirming Step 3, the trustee should advise the potential lessee that consideration of the EOI can continue.</p>	
<p>Step 5: Preparation of the Agreement to Lease (ATL)</p> <p>The trustee takes action to:</p> <ul style="list-style-type: none"> • assess whether native title exists and, if so, identify how it should be addressed • identify local government services to the land and their indicative costs • determine the annual rent • identify any further registration requirements, including survey of the lot. 	

<ul style="list-style-type: none"> for all leases over 10 years over land that is part of a larger lot, the trustee must seek development approval to reconfigure the lot unless an exemption applies. <p>Additional processes:</p> <ul style="list-style-type: none"> For home ownership leases, the trustee must determine the lump sum consideration payable for the lease of land using the approved land valuation methodology. For home ownership leases if a dwelling is present on the land, the trustee must obtain written confirmation from the HCE that the dwelling is available for purchase and determine the lump sum consideration payable for the dwelling. For the Injinoo, New Mapoon and Umagico divisions of NPARC the trustee must seek advice from the relevant community forum (if one has been established) regarding the grant of the lease. If a community forum has not been established any trust change decisions concerning the grant of a lease must be made with the approval of the majority of the total number of councillors (other than the mayor) and must not be opposed by the divisional councillor. <p>The trustee then records the outcomes of these actions in the ATL.</p>	
<p>Step 6: Offer of the ATL</p> <p>The trustee offers the ATL to the potential lessee, which:</p> <ul style="list-style-type: none"> confirms Step 3 considerations and the outcomes of Step 5 actions identifies any further actions required of the potential lessee prior to the grant of the lease identifies the costs and conditions of the lease if it was to be granted. 	
<p>Step 7: Consideration of the ATL</p> <p>The prospective lessee considers the ATL and advises the trustee whether they accept the ATL and intend to undertake the actions required by the ATL, if any, (such as an Indigenous Land Use Agreement or survey).</p> <p>The prospective lessee may wish to seek professional legal advice when considering the ATL.</p>	<p>If the prospective lessee does not accept the ATL, they should advise the trustee and withdraw the EOI.</p>
<p>Step 8: Fulfilment of the ATL</p> <p>After advising the trustee that the ATL is acceptable, the prospective lessee fulfils actions required by the ATL, if any.</p>	<p>If the prospective lessee is unable to fulfil the requirements of the ATL the trustee must reject the EOI.</p>
<p>Step 9: Execution of the lease</p> <p>After fulfilment of the ATL actions the trustee and prospective lessee must execute the lease by endorsing the lease document. That is the lease document is signed by the trustee and prospective lessee.</p>	

<p>Step 10: Registration of the lease</p> <p>The prospective lessee registers the endorsed lease with the Titles Registry in DoR.</p> <p>Additional processes</p> <p>For home ownership leases, the trustee must give the HCE notice of the registration of the lease.</p>	
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Detailed description of leasing processes for all lease purposes on Torres Strait Islander DOGIT land

Step 1: Expression of interest (EOI)

The potential lessee obtains an EOI form for the proposed lease from the TSIRC, NPARC or from <https://www.qld.gov.au/atsi/environment-land-use-native-title/leasing-indigenous-land/trustees>.

The potential lessee completes all sections of the EOI form providing as much detail about the proposed lease as possible and signs all required sections. Any additional supporting information such as a map or survey plan identifying the location of the land to be leased should also be included with the EOI form.

The potential lessee lodges the fully completed EOI form and any necessary supporting information in person or by mail with the trustee. The TSIRC or NPARC will accept the EOI on behalf of the trustee.

Step 2: Receipt and review of the EOI

The trustee should review the EOI and check that it has been correctly completed.

Note: EOI's for home ownership leases can only be accepted from an eligible person.

To confirm that the EOI has been correctly completed requires the trustee to check that the potential lessee has fully completed the EOI form and submitted the necessary supporting information as required by the EOI form.

Recommended maximum timeline: The trustee should review the EOI and advise the potential lessee whether the EOI was correctly made by an eligible person or party within 14 days from lodgment of the EOI.

If the EOI has been correctly made, the trustee should acknowledge receipt of the correctly made EOI, provide it to the potential lessee, and then move to Step 3, Consideration of the EOI.

If the EOI has not been correctly made, the trustee should return the EOI form and any supporting information to the potential lessee for correct completion. The trustee must advise the potential lessee where the EOI has not been completed correctly. The potential lessee should complete and re-lodge the EOI, and the 14-day review period recommences. This step should be repeated until the trustee is satisfied that the EOI has been correctly made and all necessary information has been provided.

If an EOI is submitted by a second potential lessee after a correctly made EOI has already been received for an area of land, they should be informed that their EOI cannot be considered until a decision has been made on the existing EOI.

Trustees should make their own policy about how to respond to a second potential lessee, should they lodge an EOI for an area of land that has already had an EOI lodged for it.

Step 3: Consideration of the EOI

When the trustee is satisfied that a correctly made EOI has been lodged, the trustee should consider the EOI, following steps 3.1–3.4, and then advise the potential lessee whether the EOI can proceed to the next step.

Recommended maximum timeline: The trustee should complete Step 3 and advise the potential lessee whether the EOI can proceed within 90 days from the receipt of a correctly made EOI.

3.1: Confirm that the proposed lease would benefit Torres Strait Islander people particularly concerned with the land

Torres Strait Islander DOGITs were created for the benefit of Torres Strait Islander inhabitants or for Torres Strait Islander purposes. Trustees of DOGIT land are appointed on the basis that they have the capacity to properly and effectively manage the land because they have a particular association relevant to the land, have expertise in managing land for the benefit of Torres Strait Islander people, and knowledge of the local community to carry out these responsibilities.

When an application is submitted, seeking the grant of a lease over Torres Strait Islander DOGIT land, trustees must consider whether:

- granting the lease would be for the benefit of Torres Strait Islander inhabitants of the DOGIT
- leasing that land would contribute to achieving land management objectives for the DOGIT.

Before participating in a decision-making process about the grant of a lease, an individual trustee (that is, a councillor) must decide if they have a conflict of interest. A conflict of interest could exist where the potential lessee is a close relative, friend or business associate of an individual trustee, or is closely connected to an individual trustee in some other way. If a conflict of interest does exist, the individual trustee should declare it to other trustees and exclude themselves from the decision-making process.

If the trustee decides that granting the lease would not be for the benefit of Torres Strait Islander inhabitants or for Torres Strait Islander purposes, the trustee must advise the potential lessee that the grant of the lease would not be beneficial, and reject the EOI.

3.2: Confirm that there are no overlaps or conflicts with existing registered or known interests in the land

Trustees can identify registered interests by contacting DoR and requesting:

- a title search to identify registered interests for the relevant DOGIT
- a search for the dealing numbers for each registered interest in the DOGIT so that information, such as survey plans or sketch plans, can be gathered to indicate the location of the registered interests.

The trustee must use this information to determine whether a registered interest already exists over the area for which the EOI has been submitted. This can be done by comparing the survey plans of registered interests with the sketches or plans of the land proposed to be leased, which are provided by the potential lessee as part of the EOI.

If the trustee identifies an overlap or conflict with a registered interest, which cannot be resolved by the trustee, the trustee may contact DoR for assistance.

Known but unregistered interests in land also need to be identified, particularly unresolved applications for leases under the repealed *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* (Land Holding Act). Trustees must identify whether an EOI lodged for a lease under the *Torres Strait Islander Land Act 1991* conflicts with any known unresolved applications or leases under the Land Holding Act.

A list of unresolved lease applications under the Land Holding Act held by the State has been provided to each trustee of Torres Strait Islander DOGIT land. If the trustee identifies an overlap or conflict with a Land Holding Act application, the trustee should contact the DoR, Indigenous Land Transfers and Leasing team via email IndigenousLand@resources.qld.gov.au or by telephoning 13 QGOV (13 74 68).

If a registered or known interest exists over the land proposed to be leased and the conflicting interests in land cannot be resolved, the trustee must advise the lessee that the land is unavailable and reject the EOI.

Additional processes for particular leases:

3.3: For all leases over 10 years over land that is part of a larger lot.

Granting a lease for over 10 years over land that is part of a larger lot is defined as reconfiguring a lot (that is, subdividing the land) under the PA 2016, and therefore assessable development. In other words, if land the subject of an EOI for a lease has not previously been subdivided out and identified as a separate lot then approval for reconfiguration of the lot is necessary before the lease may be granted. Reconfiguring a lot is required to be assessed and approved by the assessment manager, usually the local government, (that is, TSIRC or NPARC) using the PA 2016.

As the owner of the land, the trustee must ensure that development approval for the reconfiguration of a lot has been provided by the assessment manager (local government authority) prior to granting a lease. Development application forms can be downloaded from the Department of State Development, Infrastructure, Local Government and Planning website www.statedevelopment.qld.gov.au.

Until the local government authority makes a decision about the reconfiguration of the lot, the trustee cannot make a decision about the grant of the lease. If development approval is granted, the trustee should record this approval and associated conditions in the ATL.

If the local government authority does not approve the reconfiguration of the lot, the trustee must advise the potential lessee that development approval was not granted, and reject the EOI.

3.4: For home ownership leases if a dwelling is situated on the land

If a dwelling is situated on the land proposed to be leased, the trustee must confirm if the dwelling was constructed using public funding and used to provide subsidised housing, and if so, whether the dwelling is available for purchase. The lease may not be granted without the written approval of the HCE to confirm the dwelling is available for purchase and until after the lessee has paid for the dwelling.

The HCE may decide that the dwelling is no longer required to provide social housing and advise the trustee that the dwelling is available for disposal. Alternatively, the HCE officer may decide that the dwelling should remain available to provide social housing and advise the trustee that the dwelling is not available for disposal.

To receive written approval that the dwelling is available for purchase:

- the trustee must give the HCE written notice of the intention to grant the lease

- the HCE must give the trustee written notice stating whether the dwelling has been used for social housing and whether it may be disposed of through sale as part of a residential lease— within 28 days of receiving the notice.

If the HCE decides that the dwelling is unavailable for purchase, the trustee should advise the potential lessee that the dwelling is not available for sale, and reject the EOI.

Step 4: Confirmation to proceed

After confirming Step 3 considerations, the trustee should advise the potential lessee that there is no preliminary reason why consideration of the EOI cannot continue.

Step 5: Preparation of Agreement to Lease (ATL)

After considering the requirements of Step 3 and confirming that there is no preliminary reason why consideration of the EOI cannot continue, the trustee should take further actions to consider the EOI and prepare an ATL (go to <https://www.qld.gov.au/atsi/environment-land-use-native-title/leasing-indigenous-land/trustees> for an ATL for a home ownership lease).

Recommended maximum timeline: The trustee should complete Step 5 and offer the potential lessee with an ATL within 90 days from the completion of Step 4.

5.1: Native title issues

The trustees of Torres Strait Islander DOGIT land must comply with the *Native Title Act 1993* (Cth). To fulfil this responsibility, when an EOI is received to lease land the trustees must conduct a native title assessment to identify whether native title exists or may exist. If native title does or may exist the provisions of the *Native Title Act 1993* (Cth) must be followed.

In some cases native title is able to be addressed through a notification and opportunity to comment, or submission process. For example, if the trustee lease was for the purpose of a telecommunications facility to be operated for the general public, it could proceed in relation to native title under Section 24KA of the *Native Title Act 1993* (Cth).

However, if the *Native Title Act 1993* (Cth) requires an Indigenous Land Use Agreement, the consent of the relevant native title party to the proposed lease will need to be obtained through the Indigenous Land Use Agreement.

The trustee must advise the potential lessee about the outcome of the native title assessment and any required actions arising from the assessment. The trustee must include these required actions in the ATL and require that the potential lessee fulfils the required actions before the lease is granted.

The time taken to negotiate an Indigenous Land Use Agreement depends on how quickly the parties can reach agreement. The time taken for registration varies from a minimum of one month for a body corporate Indigenous Land Use Agreement to a minimum of three months for an area agreement Indigenous Land Use Agreement.

Further information about Indigenous Land Use Agreements can be found on the National Native Title Tribunal website www.nntt.gov.au. A guide to negotiating Indigenous Land Use Agreements can also be found on the DoR web site www.resources.qld.gov.au.

5.2: Services and ongoing service charges

As part of the liaison with the local government regarding approval to reconfigure a lot, the trustee should also seek advice about the services the local government authority is prepared to provide to the land proposed to be leased, and the typical cost of these services. Local government services provided are typically water, sewerage and waste collection.

In established town areas, the services provided to land proposed to be leased and their costs should not be difficult to determine. However, in non-serviced areas, the local government will have to consider if it is prepared to provide services to the land proposed to be leased. It is possible that the costs of these services, if provided to non-serviced areas, will be higher than in areas where they are already established, and a significant connection fee may be charged to establish the service.

The local government services that will be provided and their indicative costs should be outlined in the ATL document so that the potential lessee can consider this cost in deciding whether to proceed with the lease application.

5.3: Registration requirements

The trustee should advise the potential lessee of any further requirements that need to be satisfied to register the lease with DoR. This will include requirements for survey of the land to be leased.

Note: An exemption from the payment of fees and charges applies to the lodgement and registration of a Home Ownership lease instrument in the land registry.

5.4: Annual rent

The trustee must determine the annual rental amount for the lease. This is because a key criterion of any lease for any purpose in Queensland is that an annual rent must be paid on the lease.

For home ownership leases, the trustee must set a rent on the lease of not more than one dollar per annum, to be collected on demand. (rent for a home ownership lease is set at this peppercorn rate because the major consideration payable for these leases is paid as a lump sum prior to the grant of the lease.)

For standard leases for other purposes the trustee should seek the highest rent they can achieve.

The trustee must outline the annual rental amount for the land to be leased in the ATL so the potential lessee can consider this cost in deciding whether to proceed with the lease application.

5.5: For Home Ownership leases

Only after a consideration equal to the value of the land proposed to be leased has been paid to the trustee can the trustee grant a lease for Home Ownership purposes. The consideration payable is decided by the trustee using a valuation methodology decided by the DoR chief executive. Currently the purchase price is determined using a 'nominal' based valuation methodology. The nominal value is \$4,000 for leases up to 2,000 m² and that for each additional 100m² the price would increase by \$100.

The current land valuation methodology can be found on the DoR website www.resources.qld.gov.au.

The trustee must identify the consideration payable for the land to be leased in the ATL so the potential lessee can consider this cost in deciding whether to proceed with the lease application.

5.6: For Home Ownership leases if a dwelling is present on the land

Where a dwelling exists on land proposed to be leased for Home Ownership purposes, the consideration payable for the lease must include, as a lump sum payment prior to the grant of the lease, an amount equal to the value of the dwelling, in addition to the value of the land.

If the HCE has confirmed that a dwelling on the land proposed to be leased has been used to provide subsidised housing for residential purposes, and that house is available for sale, the

trustee must, before the lease is granted, decide the value of the dwelling using a methodology agreed between the trustee and the HCE.

The trustee must give the HCE written notice of the intention to grant the lease.

The HCE will provide the trustee with a valuation for the dwelling so the trustee can decide the consideration to be paid.

For further information concerning the sale price for dwellings the trustee should contact the Director-General, Department of Communities, Housing and Digital Economy.

The trustee must identify the consideration payable for the dwelling in the ATL so the potential lessee can consider this cost in deciding whether to proceed with the lease application.

Step 5.7: Dual responsibilities for Regional Councils - TSIRC and NPARC for the Bamaga and Seisia divisions.

When an EOI in the grant of Torres Strait Islander DOGIT land is received by TSIRC or NPARC as trustee of the Torres Strait Islander DOGIT land within the region, the council, as trustee of Torres Strait Islander DOGIT land within the region, the trustee must consider their obligations under the *Local Government Act 2009* when making any trust change decisions, including the grant of a lease, within any of its divisions.

Under the current provisions of the Local Government Act, each Indigenous regional local government may decide to establish a community forum for the whole of its area or for any of its divisions.

If the Indigenous regional local government decides to establish a community forum, then the local government must seek input from the community forum of the proposed trust change for example, the intention to grant a lease. The Indigenous regional local government must have regard to any submission received from the community forum on the proposed lease. If the Indigenous regional local government decides to make a decision contrary to the views of the community forum it must give written notice of the reasons for its decision to the community forum. Then if the community forum advises the Indigenous regional local government it does not support the decision, the local government must take reasonable steps to advise the community of the lack of support.

If a community forum has not been established any trust change decisions concerning the grant of a lease must be made with the approval of the majority of the total number of councillors (other than the mayor) and must not be opposed by the divisional councillor.

Further information is available from the Department of State Development, Infrastructure, Local Government and Planning website www.statedevelopment.qld.gov.au.

Step 6: Offer of the ATL

After considering the requirements of Step 5, and if it is confirmed that there is no reason why the lease should not be granted, the trustee should conditionally offer a lease to the potential lessee. In offering the conditional lease the trustee should provide the potential lessee with a:

- ATL
- draft lease
- standard terms document relevant to the purpose of the lease, amended if necessary, according to the specifics of the particular lease

The lease document (Form 7) and standard terms document (Form 20) will become the instrument of lease for the purpose of registration. Go to

<https://www.qld.gov.au/atsi/environment-land-use-native-title/leasing-indigenous-land/trustees> for lease documents.

The ATL will:

- confirm that there are no existing interests in the land
- confirm if a development application for the reconfiguration of the lot is required
- outline native title requirements to be fulfilled prior to the grant of the lease (e.g. whether an Indigenous Land Use Agreement is required)
- identify whether a survey of the land is required to be completed by the potential lessee to satisfy registration requirements
- identify annual rental costs
- identify ongoing service charges
- confirm that the dwelling is available for purchase, for Home Ownership leases where a dwelling exists on the land
- identify up-front lump-sum cost of the lease land and dwelling where one exists, for Home Ownership leases
- identify any additional requirements of the lessee such as a business plan or a land management plan for example might be required for some leases
- alert the potential lessee to Torres Strait Islander cultural heritage duty-of-care requirements
- identify potential lessee reporting requirements to the trustee regarding the fulfilment of requirements of the ATL.

Step 7: Consideration of the ATL

The potential lessee must consider the ATL, lease document and standard terms, and if the potential lessee is satisfied with these documents, the potential lessee advises the trustee of their acceptance by counter-signing the ATL and returning it to the trustee.

Step 8: Fulfilment of the ATL

The potential lessee fulfils any requirements of the ATL. If an Indigenous Land Use Agreement is required, it must be registered with the National Native Title Tribunal before the trustee and potential lessee can rely on consents contained within the Indigenous Land Use Agreement.

Recommended maximum timeline: The potential lessee should fulfil any requirements of the ATL, unless an Indigenous Land Use Agreement or survey is required, within 90 days from the date of counter-signing the ATL. If an Indigenous Land Use Agreement or survey is required the potential lessee has a total of two years to satisfy the requirements of the ATL and may negotiate an additional 12 months, if necessary.

If the potential lessee cannot satisfy ATL requirements within the initial 90 days, the trustee may require the potential lessee to provide the trustee with a letter every three months describing their progress in fulfilling ATL requirements.

If the potential lessee cannot satisfy the requirements of the ATL within two years and cannot negotiate an additional 12 months; or if the trustee is not satisfied that sufficient progress is demonstrated in the potential lessee's three-monthly letters, then the trustee should advise the potential lessee that insufficient progress is being made and the EOI is being rejected.

Step 9: Execution of the lease

Once the trustee is satisfied that the potential lessee has fulfilled the requirements of the ATL, the potential lessee and the trustee must execute the lease (Form 7) document.

If a new survey plan was prepared for the lease, the trustee must also sign the back of the plan as owner of the land. If development approval was required for the lease, the plan must also be endorsed by the local government authority.

The trustee should make copies of the original versions of the executed lease, standard terms and endorsed survey plan for their records.

The original copies of the executed lease (Form 7), standard terms document (Form 20), and endorsed survey plan must then be given to the potential lessee for lodgment and registration in the Land Registry within DoR.

Step 10: Registration of the lease

DoR provides community, industry, governments and other stakeholders with accurate, secure and readily accessible land registers. Lease documents must be registered before the lease can commence.

The potential lessee must lodge the correctly completed and executed lease documents, with DoR's Titles Registration unit in person at selected offices or via post. If the potential lessee wishes to lodge a lease via post, they should first contact DoR for instructions.

If the lease documentation is lodged and contains errors it may be 'requisitioned'. A requisition notice will identify what corrections need to be made to the documentation for the registration to proceed. A small fee applies to all requisitions.

After the documents are lodged and registration fees paid if required, the potential lessee will receive a lodgment receipt. This receipt will have two dealing numbers, one for the lease and one for the survey plan. The receipt is an important document which must be kept in a safe place by the potential lessee.

The lease documents and survey plan are examined by a title examiner before they can be passed and registered. This process takes between five and ten working days to complete provided there are no errors. A requisition will be issued at this stage if documents are not in order.

Once the documents have been examined and passed a confirmation statement will be mailed to the potential lessee confirming registration of the lease. A copy of the confirmation statement is also sent to the trustee as evidence of registration of the lease.

At this point the potential lessee ceases to be a potential lessee and becomes the lessee. The lessee is then free to use the leased land in accordance with the conditions of the lease.

Additional process for Home Ownership leases:

Within 28 days after lease registration, the trustee must give the HCE notice of registration of the lease.

The letter will state:

- the day the lease was registered
- the name of the parties to the lease
- evidence of the lump sum amount paid for the dwelling
- evidence of the lump sum amount paid for the lease land.