

***Changed Statement of Reasons (Obstacles)
Aboriginal and Torres Strait Islander Land Holding Act 2013***

The Statement of Reasons (obstacles) dated and published on 23 June 2016 in relation to lease entitlement **18/89 – Seriako DORANTE on Hammond Island** (‘the lease entitlement’) **is changed** pursuant to section 33(3) of the *Aboriginal and Torres Strait Islander Land Holding Act 2013* (‘the *Land Holding Act*’).

DECISION

There is no practical obstacle to the grant of a lease to satisfy the lease entitlement.

DECISION-MAKER

Geoffrey Renouf, Director, Aboriginal and Torres Strait Islander Land Services.

REASONS FOR DECISION

On 23 June 2016, the Statement of Reasons (obstacles) was published stating practical obstacles exist to the satisfying of the lease entitlement.

On 17 October 2016, the application to amend the Statement of Reasons (obstacles) was refused.

On 5 December 2016, the lease entitlement holders filed an appeal with the Land Court.

On 3 April 2017, the Land Court directed the Minister for Natural Resources and Mines to change the Statement of Reasons (obstacles) the subject of the appeal to state that there is no practical obstacle to the grant of a lease to satisfy the lease entitlement.

DELEGATION

Section 88(1) of the *Land Holding Act* provides that the Minister may delegate the Minister's powers under the *Land Holding Act* to the chief executive. Section 88(2) of the *Land Holding Act* provides that a delegation of the Minister's power to the chief executive may permit the subdelegation of the power to an appropriately qualified public service officer. I am authorised to prepare and give this changed Statement of Reasons (Obstacles) as delegate of the chief executive in accordance with the *Aboriginal and Torres Strait Islander Land Holding (Ministerial) Delegation (No 1) 2014* and the *Aboriginal and Torres Strait Islander Land Holding (Chief Executive) Subdelegation (No 1) 2014*.

Approved by: _____



Name: Geoffrey Renouf
Position: Director, Aboriginal and Torres Strait Islander Land Services,
Department of Natural Resources, Mines and Energy
Date: 19 March 2018

**Statement of reasons (obstacles)
Aboriginal and Torres Strait Islander Land Holding Act 2013**

This statement of reasons (obstacles) regarding lease entitlement 18/89 – **Seriako DORANTE on Hammond Island**, pursuant to section 31(1) of the *Aboriginal and Torres Strait Islander Land Holding Act 2013* (the *Land Holding Act*) is made on 23 June 2016.

DECISION-MAKER

Geoffrey Renouf, Director, Aboriginal and Torres Strait Islander Land Services, Department of Natural Resources and Mines.

DELEGATION

The Minister may delegate the Minister's powers under the *Land Holding Act* to the chief executive under section 88(1) of the *Land Holding Act*. The Minister delegated his powers to the chief executive under the *Aboriginal and Torres Strait Islander Land Holding (Ministerial) Delegation (No 1) 2014*. Section 88(3) of the *Land Holding Act* provides that the chief executive may delegate the chief executive's powers under the *Land Holding Act* to an appropriately qualified public service officer. I am authorised to prepare this statement of reasons (obstacles) as delegate to the chief executive in accordance with *Aboriginal and Torres Strait Islander Land Holding (chief executive) Sub delegation (No 1) 2014*.

DECISION

1. Practical obstacles exist to satisfying the lease entitlement.
2. Seriako DORANTE is an affected person for the obstacle.

RELEVANT LEGISLATION

Part 4 of the *Land Holding Act* establishes a process for examining each lease entitlement to identify practical obstacles that need to be resolved before a lease can be granted to satisfy the lease entitlement.

Section 29 of the *Land Holding Act* provides for what are practical obstacles –

- (1) *Without limiting what practical obstacles to satisfying a lease entitlement may be identified under this Act, the following could be expected to be identified as obstacles—*
 - (a) *that the location of the area of the lease entitlement land cannot be clearly identified;*
 - (b) *that the ownership of improvements on the lease entitlement land needs to be resolved;*
 - (c) *that competing interests in the lease entitlement land need to be dealt with.*
- (2) *However, the identification, or the need to obtain the agreement, of an interested person in the estate of a deceased holder of a lease entitlement is not a practical obstacle under this Act.*

Section 30 of the *Land Holding Act* requires the Minister to refer the lease entitlement notice to the Land Holding stakeholder reference panel for the trust area or the reference entity.

Section 31(1) of the *Land Holding Act* requires that the Minister to consider any information, advice or recommendation given to the Minister by the Land Holding Act stakeholder reference panel or reference entity under section 30 of the *Land Holding Act* and prepare a statement of reasons (obstacles) about satisfying the lease entitlement.

Section 31(2) of the *Land Holding Act* provides that the statement of reasons (obstacles) must -

- (a) *identify, to the extent known –*
 - i. *the practical obstacles that exist to the granting of a lease to satisfy the lease entitlement; and*
 - ii. *the affected persons for the obstacles; and*
- (b) *explain the Minister's reasons for identifying the obstacles and affected persons.*

Section 31(3) of the *Land Holding Act* provides that a statement of reasons (obstacles) may, if appropriate, state that no practical obstacles exist to satisfying the lease entitlement.

RELEVANT EVIDENCE

In making my decision, I took into consideration the following material –

1. *Aboriginal and Torres Strait Islander Land Holding Act 2013* – Part 4
2. Lease application (Form 1) dated 24 July 1989.
3. Lease Entitlement Notice dated 20 August 2015.
4. Consultation between the Department of Natural Resources and Mines and Seriako DORANTE as identified in the Advice and Recommendation Report dated 9 March 2016.
5. Lease Entitlement Assessment Report dated 7 March 2016.
6. Survey plan SP248418.
7. Advice and Recommendation Report prepared by the reference entity being the Torres Strait Island Regional Council (TSIRC) dated 10 March 2016 identifying that; “There are no practical obstacles to the grant of the lease and the lease can be granted under section 35 of the *Land Holding Act* to the applicant.”
8. Extract from the Register of Native Title Claims, dated 25 September 2014, reference Federal Court number QUD362/2010, identifying Pearson Wigness & Ors on behalf of the Kaurareg People #3 and the State of Queensland (Kaurareg People #3) lodged a claim (the native title claim) over areas which include Hammond Island (including the *Land Holding Act* lease entitlement land) on 30 August 2010. The claim remains active.
9. Department of Natural Resource and Mines (DNRM) advice that native title is a competing interest that needs to be dealt with to satisfy the lease entitlement, and would therefore be considered a practical obstacle under section 29 of the *Land Holding Act*; and, the grant of the lease under the *Land Holding Act* will be a future act under the *Native Title Act 1993* (Cth).

FINDINGS ON QUESTIONS OF FACT

In identifying that practical obstacles exists to the grant of the lease entitlement, I made the following finding of facts –

1. The reference entity’s advice that there is no practical obstacle to the grant of the lease.
2. DNRM advice that a practical obstacle exists to the grant of the lease, being native title.
3. DNRM advice that there is a requirement to gain native title consent in an Indigenous Land Use Agreement (ILUA).
4. The lease entitlement area is within the description of the area covered by the native title claim (reference QUD362/2010).
5. The lease entitlement may still be satisfied as:
 - a. while native title has been identified as a practical obstacle, native title can be addressed through negotiation and subsequent registration of an ILUA;
 - b. the Kaurareg People #3 are the applicants for the native title claim area, which includes the lease entitlement area;
 - c. the Kaurareg People #3 could agree to, amongst other things, the grant of the lease to Seriako DORANTE in accordance with the terms of the ILUA;
 - d. once the ILUA was registered, the Kaurareg People #3 will be taken to have consented to the grant of the lease to Seriako DORANTE;
 - e. native title would no longer be identified as a practical obstacle that exists to the granting of the lease to satisfy the lease entitlement.
6. Section 29(1)(c) of the *Land Holding Act* identifies that competing interests in the lease entitlement land may be a practical obstacle to satisfying a lease entitlement.
7. In accordance with s.29(1)(c) of the *Land Holding Act*, native title is a competing interest and could be expected to be identified as an obstacle to satisfying the grant of the lease entitlement and needs to be dealt with. Accordingly, the lease

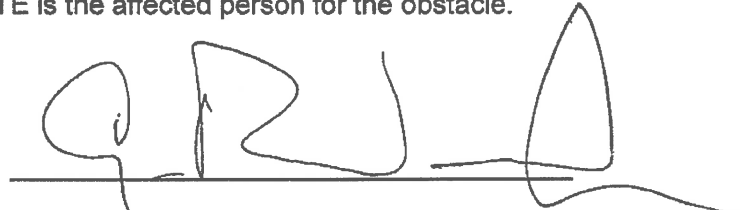
entitlement to Seriako DORANTE cannot be granted until native title has been dealt with.

8. In identifying Seriako DORANTE as an affected person for the obstacle, I have made the following findings of fact:
 - a. the advice that Seriako DORANTE is an affected person for the obstacle;
 - b. the Lease Entitlement Notice states that Seriako DORANTE is the applicant for the lease entitlement;
 - c. that unless native title is resolved, Seriako DORANTE's lease entitlement cannot be granted.

DECISION

1. For the reasons identified in this statement, I am satisfied that a practical obstacle exists to satisfying the lease entitlement. I have identified, to the extent known, that native title is a competing interest and therefore a practical obstacle to the grant of the lease entitlement to Seriako DORANTE, and that native title is required to be addressed before the lease can be granted.
2. For the reasons identified in this statement, I have identified, to the extent known, that Seriako DORANTE is the affected person for the obstacle.

Approved by:



NAME OF DECISION-MAKER *Geoffrey Renouf*
POSITION *Director*
Aboriginal and Torres Strait Islander Land Services
Department of Natural Resources and Mines

Dated this Twenty-Third day of June 2016