

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

This statement of reasons (obstacles) regarding the entitlement to lease for lease application **17/86 by Tera and Daisy Kabay** made pursuant to section 31 of the *Aboriginal and Torres Strait Islander Land Holding Act 2013* ("the *Land Holding Act*") is made on **28 May 2020**.

DECISION

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

DECISION-MAKER

Peter Lawrence, Principal Land Officer, Land and Native Title Services, Department of Natural Resources, Mines and Energy.

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 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) 2018* and the *Aboriginal and Torres Strait Islander Land Holding (Chief Executive) Subdelegation (No 1) 2019*.

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 –

- Lease application (Form 1) dated 10 September 1986.
- Lease Entitlement Notice dated 24 May 2019.
- Survey Plan SP277431.
- Advice and Recommendation Report signed 18 May 2020.
- *Aboriginal and Torres Strait Islander Land Holding Act 2013* – Part 4 – Identification of Practical Obstacles

FINDINGS ON QUESTIONS OF FACT

In arriving at my decision, I followed the legislative process in the *Land Holding Act* under Part 4 to identify practical obstacles that need to be resolved before the lease can be granted to satisfy the entitlement and made the following findings of fact –

- a. The location of the area of the lease entitlement can be clearly identified as surveyed Lot 141 on SP277431 which is suitable for the issue of a lease;
- b. The ownership of improvements has been resolved and will be owned by the lessee upon the grant of the lease;
- c. There are no competing interests in the lease entitlement land that need to be dealt with; and
- d. There is no practical obstacle to the grant of a lease to satisfy the lease entitlement.

DECISION

I have considered the evidence identified in this statement and I am satisfied that no practical obstacle exists to satisfying the lease entitlement.

Approved by:



NAME OF DECISION-MAKER Peter Lawrence
POSITION Principal Land Officer
Land and Native Title Services
Department of Natural Resources, Mines and Energy

DATED 28 May 2020

ILO Internal Document
SUBMISSION

INTRODUCTION

Date: 25/05/2020 **eLVAS case ID:** 2019/003145
Applicant Name: Tera and Daisy Kabay **Application No.** 17/86
Description of Land: Lot 141 on SP277431
Local Government: Torres Strait Island Regional Council
Proposed Action: Issue of a perpetual lease under the provisions of section 35 of the *Aboriginal and Torres Strait Islander Land Holding Act 2013*.

BACKGROUND

Beneficiaries:	N/A – the applicants are still both living.
Lease entitlement notice:	Published on the department's website on 24 May 2019.
Trust Area:	Masig Island Deed of Grant in Trust
Trustee:	Torres Strait Island Regional Council
Survey:	The land subject to this valid lease entitlement has been fully surveyed and described as Lot 141 on SP277431.
Native title:	Native title has been addressed in accordance with Module IB of the Native Title Work Procedures as it was determined that the entitlement to a lease is a Pre-Existing Rights Based Act (PERBA). The registered native title body corporate and the native title representative body were notified on 29 May 2019 and were given 28 days to comment on the proposed grant (notification period ended 26 June 2019). No comments were received.
Advice & Recommendation Report:	Signed 18 May 2020.
Statement of Reasons:	No obstacles dated 28 May 2020.

RELEVANT LEGISLATION

Part 5 of the Land Holding Act establishes a process for satisfying a lease entitlement by granting of a lease.

s34 Operation of pt 5

- (1) This part establishes a process for satisfying a lease entitlement by the granting of a lease.
- (2) If there are no practical obstacles identified, the Minister may grant a lease to satisfy the lease entitlement under division 2.
- (3) If a person applies to the Minister to proceed immediately with the grant of a lease and the application is granted under division 3, the Minister may grant a lease to satisfy the lease entitlement under division 4.
- (4) If there are practical obstacles identified, the Minister may grant a lease to satisfy the lease entitlement under division 4.

s35 Minister may grant lease

- (1) The Minister may grant a lease in a trust area if—
 - (a) the lease is to satisfy a lease entitlement included in a lease entitlement notice currently in force; and
 - (b) the lease is granted to—
 - (i) the holder of the lease entitlement as identified in the lease entitlement notice whether or not the holder is deceased; or
 - (ii) if the holder is deceased, an appropriate person having regard to the laws of succession; and
 - (c) either—
 - (i) a statement of reasons (obstacles) stating that there are no practical obstacles to granting the lease was given to the reference entity for the lease entitlement as required under part 4; or
 - (ii) after the Minister has complied with the requirements of division 4, subdivision 2, the Minister considers that there are no practical obstacles to granting the lease.
- (2) The lease must be—
 - (a) if the lease entitlement relates to land of not more than 1ha—a lease in perpetuity for a purpose decided by the Minister; or
 - (b) otherwise—a lease for a term decided by the Minister for a purpose decided by the Minister.
- (3) In deciding a purpose or a term under subsection (2), the Minister must have regard to the lease entitlement notice.
- (5) Before granting a lease under this division, the Minister must notify the person to whom the Minister intends to grant the lease to satisfy the lease entitlement.
- (6) If the proposed grantee is deceased, the notice under subsection (4), must, to the extent practicable, be given to interested persons in the estate of the deceased holder.
- (7) The granting of the lease satisfies the lease entitlement and the lease entitlement notice ceases to be a lease entitlement notice currently in force.
- (8) The chief executive may publish on the department's website that the lease entitlement notice has been satisfied by the grant of a lease.

FINDINGS OF FACT

s35(1)(a) finding – A lease entitlement notice is currently in force and was published on the department's website on 24 May 2019.

s35(1)(b) finding - The holder of the lease entitlement identified in the lease entitlement notice is Tera and Daisy Kabay.

s35(1)(c)(i) finding – A statement of reasons (obstacles) stating that there are no practical obstacles to granting the lease will be published on the department's website and given to the reference entity Torres Strait Island Regional Council.

s35(2)(a) finding – The lease entitlement relates to land of not more than 1ha.

s35(3) finding – The lease entitlement notice makes no reference to a purpose or term. The original application is for residential purposes.

DECISION

Approved under section 35(1) of the *Aboriginal and Torres Strait Islander Land Holding Act 2013* to grant a lease to Tera Kabay and Daisy Kabay as Joint Tenants over Lot 141 on SP277431 in Masig Island Trust Area.

Approved under section 35(2) of the *Aboriginal and Torres Strait Islander Land Holding Act 2013* that the lease be a lease in perpetuity for primarily residential purposes.

Approved under section 35(4) of the *Aboriginal and Torres Strait Islander Land Holding Act 2013* to notify Tera Kabay and Daisy Kabay of the intention to grant the lease.

Approved by:



Date: 25 May 2020

Peter Lawrence
Principal Land Officer
Land and Native Title Services
Delegate of the Chief Executive in accordance with Aboriginal and Torres Strait Islander Land Holding (chief executive) sub-delegation (No 1) 2019.