

Guideline

Notification by local government
of a freehold instrument

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About this guideline

Purpose

This guideline has been prepared by the Minister under section 32H of the *Aboriginal Land Act 1991* (ALA) and section 28H of the *Torres Strait Islander Land Act 1991* (TSILA).

This guideline sets out the minimum requirements which must be followed by a local government for notifying and consulting on a **freehold instrument** in accordance with section 32H of the ALA and section 28H of the TSILA.

Abbreviations

ALA	<i>Aboriginal Land Act 1991</i>
TSILA	<i>Torres Strait Islander Land Act 1991</i>

Definitions

Freehold instrument	Freehold instrument means a freehold schedule and a freehold policy for the freehold schedule.
Freehold policy	A freehold policy assists the trustee in implementing the freehold schedule. It includes such things as the eligibility criteria for participating in the allocation process for the available land, the sale price of the available land and the social and financial implications for the community in providing freehold.
Freehold schedule	A freehold schedule identifies the freehold option land available to be granted in freehold.
Minor error	A change that is administrative in nature that includes, but is not limited to: <ul style="list-style-type: none">• a spelling, grammatical or mapping error in the freehold instrument that does not materially affect the remainder of the freehold instrument• a factual matter incorrectly stated in the freehold instrument• inconsistent numbering of provisions in the freehold instrument• the format or presentation of the freehold instrument.



Objectives and outcomes

This guideline has been prepared for local governments when requested by a trustee under section 32J of the ALA or section 28J of the TSILA to attach a freehold instrument to a planning scheme.

The guideline prescribes the process required for notifying, consulting on, and making changes (as a result of consultation) to freehold instruments.

The objectives of this guideline are to set out the process for:

- freehold instruments to be publicly notified and made available for comment
- trustees and local governments to consider properly made submissions
- local governments to provide a notice to the Minister on how submissions were dealt with to inform the Minister's decision on whether to approve the freehold instrument
- how changes can be made to the freehold instrument as a result of public consultation.

How to use this guideline

This guideline prescribes the processes for:

- publicly notifying a freehold instrument
- responding to public submissions received about the freehold instrument
- providing a notice to the Minister on how matters raised in submissions were dealt with
- making changes to freehold instruments as a result of public consultation.



Public Consultation

Local government commences public consultation on freehold instrument

Local governments undertaking public consultation on a freehold instrument should seek views and information from the community on the freehold instrument to ensure that a range of perspectives are taken into account, in particular about where and how freehold land will be available.

The local government must undertake the following steps, as a minimum, when undertaking public consultation on the freehold instrument in accordance with section 32H of the ALA or section 28H of the TSILA.

Step 1: Public Notification

- 1.1 The local government must carry out public consultation about the freehold instrument for a period of at least 45 business days.
- 1.2 The local government must notify the public that the freehold instrument is available for public consultation by publishing a notice in a newspaper or other publication circulating generally in the local government's area at least once about the freehold instrument.
- 1.3 The notice must state:
 - a) where copies of the freehold instrument are available for inspection and purchase
 - b) that written submissions may be made to the local government by any person about the freehold instrument
 - c) the requirements for making a properly made submission
 - d) the day by which the submissions can be made, and the person to whom, and the place where, they must be made.

Local government and trustee review submissions and decide how to proceed with the freehold instrument

The local government must consider all properly made submissions. A properly made submission means one that:

- is in writing and is signed by each person who made the submission
- is received during the consultation period
- states the name and residential address or business address of each person who made the submission
- states the grounds of the submission and the facts and circumstances relied on in support of the grounds
- is made to the local government.

It is reasonable to expect that some changes may be required to the freehold instrument through the local government's assessment of the public submissions, and that those changes may affect some individuals and stakeholders.

If changes are required to the freehold instrument that has been released for public consultation, the local government must determine whether those changes result in a minor or major change.

Although it will depend on the individual circumstances of the freehold instrument, the local government should consider the following in making the determination.

A **minor change** to a freehold instrument is a change that may include, but is not limited to, a change that:

- corrects a *minor error*
- is not significantly different to the freehold instrument that was released for public comment
- the local government reasonably believes will not adversely affect the community
- is otherwise of a minor nature.

A **major change** to a freehold instrument is a change that may include, but is not limited to, a change:

- to a significant portion of the freehold option land to be available for freehold in the community
- to a matter which is of widespread public interest throughout the local government area and would be likely to generate multiple public submissions
- to the eligibility criteria to participate in the allocation process
- to where the interest holder allocation process applies or
- that is not a minor change or correcting a minor error.

If changes have resulted in the freehold instrument being significantly different to the version released for public consultation, additional public consultation is necessary as the public would not have had the opportunity to comment on the changes which may impact on them directly.


The local government must undertake steps 2 and 3 below when reviewing public submissions and making changes to the freehold instrument as a result of consultation:

Step 2: Dealing with public submissions

2.1 The local government and the trustee must consider all properly made submissions about the freehold instrument.

2.2 After considering the submissions, the local government:

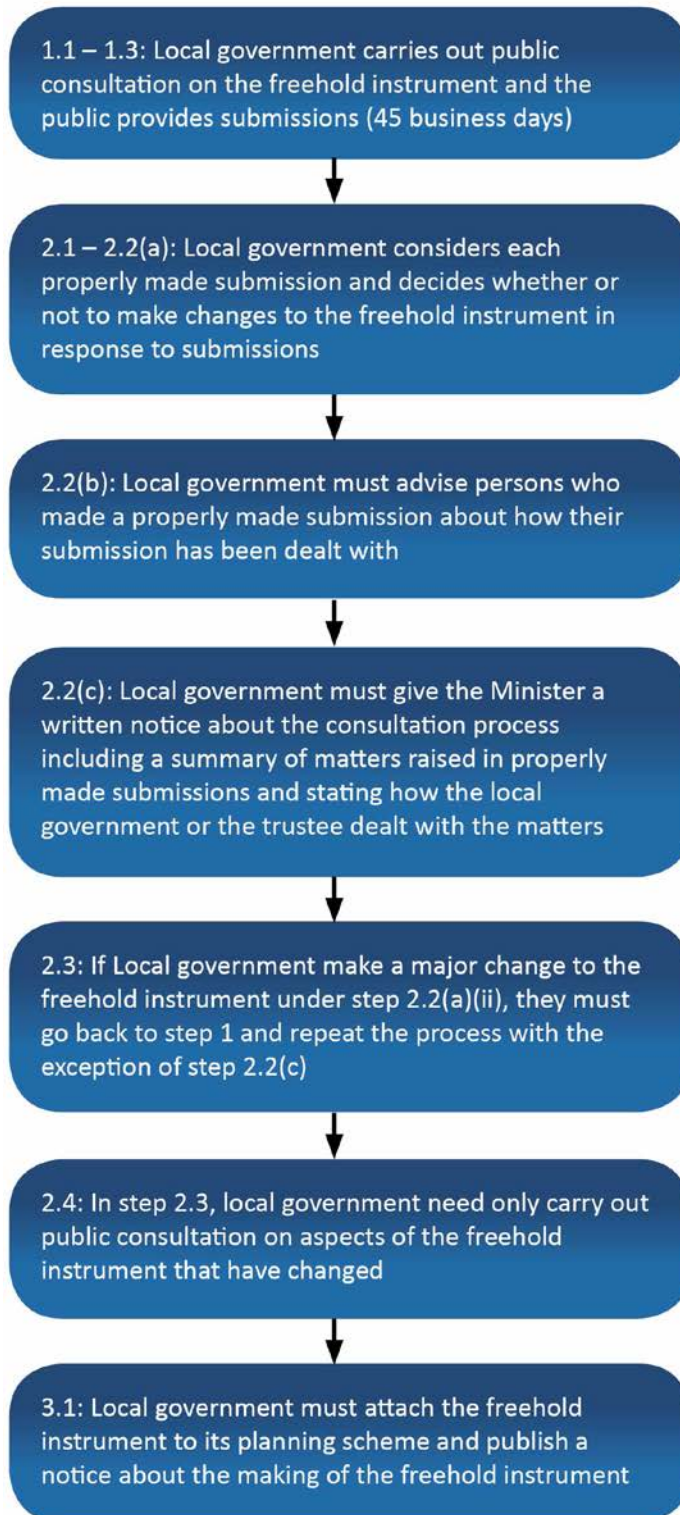
- a) may change the freehold instrument as a result of the public consultation to:
 - i. make a *minor change* or
 - ii. make a *major change*

- 
- b) must advise persons who made a properly made submission about how the local government or the trustee has dealt with the submissions.
 - c) must give to the Minister a written notice about the consultation process containing a summary of matters raised in the properly made submissions and stating how the local government or the trustee dealt with the matters.
- 2.3 If the local government makes a *major change* to the freehold instrument under step 2.2(a)(ii), the local government must go back to step 1 and repeat the process (with the exception of step 2.2(c)).
- 2.4 Despite step 2.3, public consultation may be limited to those aspects of the freehold instrument which have changed.

Step 3: Notification about the making of the freehold instrument

- 3.1 If the Minister approves a freehold instrument, the local government must:
- a) attach the freehold instrument to its planning scheme
 - b) publish a notice in a newspaper or other publication circulating generally in the local government's area stating that the freehold instrument is approved and attached to the planning scheme.

The process for making minor or major changes to a freehold instrument





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