



Freehold option:

**Trustee implementation
plan guide**



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Overview

The Queensland Government introduced the *Aboriginal and Torres Strait Islander (Providing Freehold) and Other Legislation Amendment Act 2014* during 2014. The freehold provisions commenced on 1 January 2015 and have been incorporated into the *Aboriginal Land Act 1991* (Aboriginal Land Act), *Torres Strait Islander Land Act 1991* (Torres Strait Islander Land Act) and the *Land Act 1994* (Land Act).

This legislation, through enabling a freehold option to be taken up in Indigenous communities, gives the residents of those communities the same access to home ownership opportunities as all other Queensland residents, and will enhance economic development opportunities in those communities.

Freehold pilot project

The Queensland Government is implementing a freehold pilot project that is designed to provide assistance to those Trustees of Indigenous lands who were successful through an open expression of interest process to be candidates for the project.

Freehold pilot project evaluation

One of the requirements of the Freehold Pilot Project is that a review of the effectiveness of the legislation and its implementation occurs. The Queensland Government would appreciate your assistance in evaluating the freehold pilot project.

Scope

This Freehold option: Trustee implementation plan guide has been developed for trustees of Indigenous land to assist them in developing their own implementation plan. It outlines the broad matters that the Department of Natural Resources and Mines (DNRM) recommends trustees give consideration to when implementing the freehold provisions under the Aboriginal Land Act or Torres Strait Islander Land Act.

There are four key phases for trustees to consider when pursuing the freehold option process:

- Trustees become reasonably satisfied that it is appropriate for freehold to be granted in their communities
- Trustees develop a freehold instrument and consults in respect of it, and seeks approval for the freehold instrument from the Minister for Natural Resources and Mines
- Trustees proceed to allocate land for the purpose of granting freehold in accordance with their freehold instrument
- Trustees seek the approval of the Chief Executive of DNRM for land to be granted in fee simple by the Governor-in-Council.



Principles and requirements of the freehold option

The principles of the freehold option are:

- The take-up of freehold is optional
- Requires consultation with community
- Requires consultation with native title holders
- Requires consultation with the local government
- The grant of freehold is initially restricted in who is entitled to and is successful in receiving a grant. After that there are no restrictions as to who the freehold can be transferred to
- Freehold can only be granted in an urban area
- The freehold model is self-funding, that is costs are to be recovered through the sale price or absorbed by trustees
- Trustees will set a sale price for the land, and the rationale for this must be outlined in a freehold policy
- Trustees will decide the value of a social housing dwelling by using the valuation methodology agreed between the trustee and the housing chief executive
- A planning scheme must be in place to enable trustees to take up the freehold option
- Native title must be surrendered through an Indigenous Land Use Agreement (ILUA) or previously extinguished before freehold can be granted

Considerations for trustees that are local governments

The freehold provisions of the Aboriginal Land Act and Torres Strait Islander Land Act make reference to the distinct roles of 'trustee of land' and 'local government'. Trustees that are local governments must give consideration to these separate roles when applying the freehold provisions.

Trustees pursuing the freehold option are responsible for good record keeping in the administration of the freehold process, including the recording of consultations and associated decision making processes. Trustees that are local governments must give consideration as to how records are kept in accordance with their roles as trustees of land and as local governments, when applying the freehold provisions.

Native title

To grant freehold, Native Title must have been considered in the first instance. As such, Trustees should first assess the status of Native Title on the land that they are proposing to make available for the grant of freehold, and determine if they are required to address Native Title, for example through an ILUA.

Should trustees enter into an ILUA, they would be responsible for all costs associated with securing the ILUA and should contemplate recovering costs as part of the sale price for land to be granted as freehold.



Implementation plan template

The State has prepared implementation plan templates to support trustees in implementing the freehold option. These set out in a recommended order, the requirements for trustees to be reasonably satisfied that it is appropriate for freehold to be granted in their communities and if so, to successfully implement the freehold option.

The Implementation Plan templates may be modified by trustees to suit their particular community's needs and circumstances. Please note that the implementation plan templates can identify steps which are the responsibility of others, including the local government and the Minister for Natural Resources and Mines.

The implementation plan templates also provide for activities, anticipated timelines and responsibility for activities.

Implementation stages

Phase 1

Goal: Trustees are satisfied that they and the community are in a position to proceed with the freehold option

Trustees decide broadly what they need to be reasonably satisfied about to proceed with the freehold option and makes a decision to proceed or not proceed. Considerations may include:

- Have we a sound understanding of the freehold process, developing a freehold instrument and of applying the implementation plan.
- What understanding of the freehold process do the Native Title holders, the community and others stakeholders have, and when to consult.
- What costs the trustee may incur in running the freehold process and addressing native title, and how they may recover those costs.
- What support is the State providing in implementing freehold under the pilot project.
- What are the State's expectations of trustees in meeting timelines, and when does the pilot project end.

Prior to commencing consultation, trustees should consider their community's current and emerging planning requirements in relation to what land may be made available for the freehold option. This should be done with reference to their existing or proposed community planning scheme.

Trustees should also assess what interests are located on the land, as those persons that hold interests may become parties to any freehold allocation process.


Phase 2

Goal: Develop the decided way to consult

Before trustees start the process for making a freehold instrument (see heading 'To develop a freehold instrument') they must decide on a way (the decided way) in which they will consult about the making of the freehold instrument, and then document it. The purpose of the consultation is to enable trustees to be reasonably satisfied it is appropriate for the freehold option land to be granted.

How trustees decide they will consult about the making of the freehold instrument must deal with consulting the Native Title holders for the land, notifying the community and allowing sufficient time for each person consulted to express their views.

To assist in the community consultation process, resources such as fact sheets and guidelines are available from the State that will assist trustees to provide information to



the Native Title holders and community members about the freehold option. Trustees can access these resources via the DNRM website or through their government contact officer.

Trustees may also wish to produce their own resource materials for use in their consultation process.

Relevant section of the Aboriginal Land Act – section 32I.

Relevant section of the Torres Strait Islander Land Act – section 28I.

Goal: Address Native Title

Trustees should give consideration to commencing consultation with Native Title holders about any proposal to grant freehold title. Consultation may lead at this stage to obtaining an in-principle agreement on how Native Title will be addressed should the freehold option be progressed.

Goal: Develop a freehold instrument

Prepare a freehold instrument

Trustees are to develop a freehold instrument as required under the Aboriginal Land Act and Torres Strait Islander Land Act. The freehold instrument comprises of two parts:

- **Freehold schedule** that identifies the land that trustees have decided to make available for freehold. The land, which is referred to as available land, can be identified by a lot on plan, or map, or both
- **Freehold policy** that will help trustees to implement the freehold schedule, ensuring that decisions made by trustees are open and equitable

The freehold policy must be in the approved form and can be found on the Queensland Government website www.qld.gov.au.

The form includes certain mandatory information as listed below:

- The Native Title holder consultation process
- The community consultation process
- The criteria for participating in the allocation process (eligibility criteria)
- The allocation process
- The allocation method
- The sale price
- How trustees will deal with interests in the land before it is allocated
- Community notification

Trustees may prepare their own **freehold instrument** or use a **model freehold instrument**.

A model freehold instrument, for the interest allocation process, can only include interests that existed as prescribed by regulation, as at 1 January 2015.

For a freehold instrument (that is, a freehold instrument that is not a model freehold instrument), the local government must consult on the freehold instrument.

The freehold schedule and freehold policy must be made by resolutions of the trustees.

Trustees may at this stage elect to make a resolution to consult on drafts of the freehold instrument (i.e. freehold schedule and freehold policy), with the intent to pass a resolution to accept them following consideration of consultation feedback.

Relevant section of the Aboriginal Land Act – sections 32D and 32K

Relevant section of the Torres Strait Islander Land Act – sections 28D and 28K

Undertake consultation

Trustees must consult on the freehold instrument (freehold schedule and freehold policy) in the way they have decided to consult.

The purpose of this consultation is to enable trustees to be reasonably satisfied it is appropriate for the freehold option land to be granted. Although full community consensus is not required, trustees must be comfortable in making the decision to proceed with the freehold option.

Trustees may at this stage, either subject to feedback, revisit the freehold instrument with the intent to pass a further resolution making an amended freehold instrument; or pass a resolution accepting any draft freehold instrument consulted upon.

Relevant section of the Aboriginal Land Act – section 32I

Relevant section of the Torres Strait Islander Land Act – section 28I

Trustee is reasonably satisfied to proceed

If following consultation trustees are reasonably satisfied it is appropriate to make freehold available, they may progress the freehold option process.

Progressing Freehold Instrument

Trustees must: if using a model freehold instrument, give the instrument to the Minister of Natural Resources and Mines to approve; or if not using a model freehold instrument, give that instrument to the local government for it to attach it to its local planning scheme.

If a local government receives a freehold instrument from a trustee, that is an Instrument that is not a model freehold instrument, the local government must follow a process stated in a guideline made by the Minister for Natural Resources and Mines about attaching the instrument to the local government's planning scheme. This includes preliminary requirements to publicly give a notice about the instrument, to carry out public consultation about the Instrument and to give the Minister a notice summarising the matters raised during the consultation, and how the local government or trustees dealt with the matters.

The guideline setting out the minimum requirements which must be followed by a local government for notifying and consulting on a freehold can be found by searching on the Queensland Government website www.qld.gov.au.

Once the process is completed, the local government is to give the freehold instrument to the Minister for approval. They must also give the Minister a notice summarising the matters raised in public consultation and how they or trustees dealt with them.

Relevant sections of the Aboriginal Land Act – section 32H and 32K

Relevant section of the Torres Strait Islander Land Act – sections 28H and 28K

Ministerial approval of freehold instrument

The Minister for Natural Resources and Mines is required to consider a freehold instrument (whether it is a model freehold instrument or a freehold instrument that is not a model freehold instrument), and give approval for the instrument.

If a freehold instrument is given to the Minister, the Minister may:

- approve the freehold instrument
- approve the freehold instrument on condition the local government or trustee for the land amends the freehold instrument in the way the Minister directs
- refuse to approve the freehold instrument.

The Minister's approval will consider if trustees have consulted with Native Title holders and if consultation was consistent with the trustee's 'decided way'. The Minister will also, where the freehold instrument is not a model freehold instrument, have regard to information given to the Minister by the local government after it has completed a process for notifying and consulting on a freehold instrument.

Relevant section of the Aboriginal Land Act – section 32

Relevant section of the Torres Strait Islander Land Act – section 28L

If the Minister approves the freehold instrument without a condition, the Local Government must attach the instrument to its planning scheme and publish a notice stating that the Instrument has been approved and is attached to its planning scheme.

If the Minister approves the freehold instrument subject to a condition, the local government or the trustee must amend the instrument before the local government can notify about the approval and attach it to its planning scheme.

Relevant section of the Aboriginal Land Act – section 32L

Relevant section of the Torres Strait Islander Land Act – section 28L



Phase 3

Goal: Commence allocation process

Once the Minister for Natural Resources and Mines has approved the freehold instrument and it has been attached to the local government's planning scheme, trustees can commence the allocation process for the available land in accordance with their approved freehold instrument.

At this stage, Trustees must have addressed any Native Title requirements, and finalised any survey or provision of access matters.

Relevant divisions of the Aboriginal Land Act – Division 5 and .

Relevant divisions of the Torres Strait Islander Land Act – Division 5 and 6

Phase 4

Goal Grant freehold

To finalise the granting of freehold land, trustees must apply to the Chief Executive of the Department of Natural Resources and Mines and be given approval for the available land to be granted. The Governor-in-Council may then grant the land in fee simple.

Relevant section of the Aboriginal Land Act – section 32C

Relevant section of the Torres Strait Islander Land Act – section 28C

Relevant section of the Land Act – section 14.