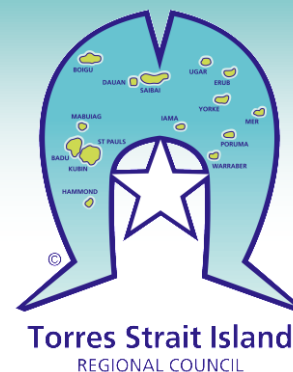


## FREEHOLD TITLE INFORMATION FOR COMMUNITIES



From 1 January 2015, new rules give Aboriginal and Torres Strait Islander communities the option to convert some of their communal lands to freehold land.

The aim is to make it easier for Aboriginal and Torres Strait Islander people to invest in their own homes, businesses and communities.

The new rules will allow Aboriginal and Torres Strait Islander people to own freehold in their own communities and, as owners, to mortgage, lease or run a business on their land. They will be able to sell their land to anyone on the open market if they choose to do so.

**Important:** communities do not have to take up the freehold option. It is up to each trustee to consult with their community to decide whether or not freehold is appropriate for the community.

If your community chooses the freehold option, freehold land will become available as soon as your community's freehold instrument has been approved and attached to your local planning scheme. This could be towards the end of 2015.

### **What is the TSIRC freehold pilot project?**

Torres Strait Island Regional Council is embarking on a major project, in conjunction with the State government, to consult with communities on whether to make ordinary freehold available in Torres Strait (to allow the buying and selling of land in open market similar to anywhere else in Australia).

In June 2015, Council endorsed a Freehold Implementation Plan for Poruma, St Pauls and Hammond as a 'pilot program' in Torres Strait. The program began in July 2015 and completion is projected for 2017.

Over the coming months, Council will be implementing the Freehold Implementation Plan, facilitating consultation within community on the prospect of grant of freehold parcels of land. Council's approval at this time is limited only to a consultative process with community and it has not yet agreed to consider applications for grant of Freehold. The consultations will determine Council's position on Freehold grants, which will be tabled in months to come. Council will consult with native title representatives and claimants.

Until December 2015, Council will consult with Traditional Owners and the community at large on whether Freehold option is suitable for their community. Consultations for **Poruma, St Pauls** and **Hammond** will take place in September.

## What is freehold?

Freehold land is owned absolutely by the owner, with ownership registered as a freehold title.

The freehold owner can use the land as they choose, provided they follow the law and comply with planning requirements. The trustee and the government can't put restrictions on the use of freehold land the way they can for leasehold land.

As a freehold owner, you have the right to:

- sell the land
- lease the land and collect rent
- use the land as security to borrow money (mortgage) for a home or business
- build a home on the land
- improve the land
- run a business on the land.

Owning freehold makes you responsible for the land and any buildings on it. As a freehold owner, you are responsible for:

- controlling weeds and pests on the land
- fixing any problems with the house or land
- getting insurance for the buildings
- paying any local government rates and charges.

### Availability of freehold land on Aboriginal and Torres Strait Islander land

Freehold is an option in 34 Aboriginal shire councils and Indigenous regional councils. These are: Aurukun, **Badu**, Bamaga, **Boigu**, Cherbourg, **Dauan**, Doomadgee, **Erub**, **Hammond Island**, Hope Vale, **Iama** (Yam), Injinoo, Kowanyama, **Kubin**, Lockhart River, **Mabuaig**, Mapoon, **Masig**, **Mer**, Mornington Island, Napranum, New Mapoon, Palm Island, Pormpuraaw, **Poruma**, **Saibai**, Seisia, **St Pauls**, **Ugar**, Umagico, **Warraber**, Woorabinda, Wujal Wujal and Yarrabah.

The freehold option only applies to town land within these communities. This is land identified in the planning scheme as 'urban' or 'future urban' use. Land outside the towns cannot be granted as freehold and must remain as communal land.

Native title must be either surrendered or previously extinguished before freehold will be granted.

Trustees can place further restrictions on what land is available. If your community decides to offer freehold, the trustee will consult with the native title holders and community and identify the available land.

## **Eligibility for freehold land**

The legislation restricts the initial grant of freehold title to Aboriginal or Torres Strait Islander persons and their spouses or former spouses.

Trustees can add extra restrictions to reflect community wishes. For example, following consultation, the trustee could decide to make freehold land available in specific areas only to a particular family or group of families with a connection to that land.

Any restrictions on who is eligible to apply for freehold will be set out in your community's freehold policy. If you do not meet these eligibility restrictions, you cannot apply for freehold.

## **Resale of the land**

Once freehold title to the land has been granted, there are no restrictions on who the land can be sold to.

## **Leaseholders and social housing tenants**

If you are the tenant or leaseholder of land that is being made available for freehold, you (and only you) will be able to apply for freehold over that land.

You will need to meet the eligibility criteria (see above) and have been the leaseholder or tenant as of 1 January 2015.

If there are any buildings on the land, you will need to buy them as part of obtaining freehold (unless you already own them). For example, if you are a social housing tenant, you will need to apply to the housing department to approve the sale of the house. The department and the trustee will set the price for the house.

## **How to apply for freehold land**

You can apply for freehold once the trustee has an approved freehold instrument for your community. The freehold instrument will set out:

- what land is available for freehold
- who is eligible to apply for freehold
- how you can apply.

If you want to apply for freehold or have other questions please contact your trustee.

## **Costs and funding**

The Queensland Government is not funding the freehold process but will not charge for the land. The government will only receive the standard fees that apply to all land transactions.

The community's trustee will need to cover any costs of making the land available through the purchase price they set.

The cost of selling the land could vary significantly, depending on whether:

- the land has already been surveyed
- services such as road access are present or need to be provided
- native title issues have been resolved.

### Consultation and allocation processes

Your trustee will consult the community and native title holders to decide whether to offer freehold land and how to do it.

If freehold land is going to be made available, the trustee will put together a document (the freehold instrument). This document records the details of the land being made available and the process for allocating it. The Queensland Government must approve the document. Your local government will then attach it to its planning scheme.

The trustee will make sure the land is ready to be allocated. For example, they will ensure that native title and road access are addressed and that the land has been surveyed - these costs may be passed on to the person applying for freehold.

Once these steps have been completed, the trustee will begin allocating the land following the process that is set out in the freehold policy, for example, to an existing interest holder or by an auction, ballot or tender process.

If you are a leaseholder or a social housing tenant on the land, the trustee can allocate that land to you directly, as long you meet the eligibility criteria and the land is identified in the freehold instrument.

### More information

- Read about the freehold allocation process in the [freehold guide for trustees](http://www.qld.gov.au/atsi/environment-land-use-native-title/freehold-title-instrument/index.html) ( <http://www.qld.gov.au/atsi/environment-land-use-native-title/freehold-title-instrument/index.html> ).
- Contact your trustee or [local government](http://www.dlg.qld.gov.au/local-government-directory/search-the-local-government-directory.html) ( <http://www.dlg.qld.gov.au/local-government-directory/search-the-local-government-directory.html> ) for more information about the freehold title option in your community.

