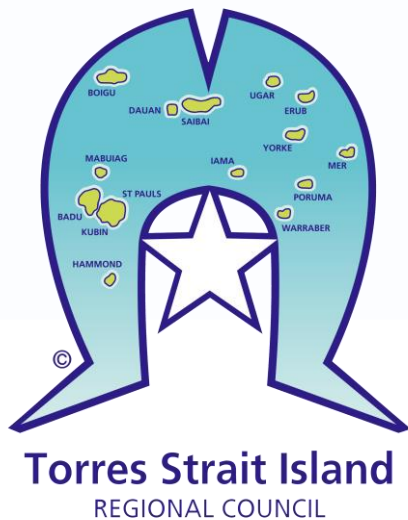


# HOME-OWNERSHIP OPTIONS Hammond Island



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23 May 2018



# Why are we here today?

- Katter/LHA leases
- Ordinary freehold option
- Home-ownership leases
- Q&A about home ownership



# What are the options for home ownership?

1. Grant of **LHA lease** (for valid applications).
  2. If freehold is made available, apply for **private freehold title**.
  3. Apply for a **99-year home ownership Lease** over an existing house.
  4. Apply for a **99-year home ownership Lease** and development approval to build a house on vacant land.
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# How does home ownership affect native title?

Home ownership option	Impact on native title	When can it happen?
<b>Katter lease</b> (Land Holding Act/LHA lease) (a “perpetual” lease that has no expiry date)	Native title is gone forever (extinguished)	PERBA (Pre-Existing Right-Based Act under the Native Title Act) – PBC/claimant agreement not required. <b>OR</b> Agreement (ILUA)
<b>Ordinary freehold title</b>	Native title is gone forever (extinguished)	Agreement (ILUA) unless native title is already gone
<b>99-year home-ownership lease</b>	Native title survives but the land is under a lease	Agreement (ILUA)

ILUA = Indigenous Land Use Agreement signed off by PBC

PERBA = Pre-Existing Right-Based Act (does not require PBC sign-off)

# Katter/Land Holding Act leases summary (as at 1 May 2018)

## Torres Strait Island Regional Council

### Perpetual leases

Island/Community	Perpetual Leases Granted	Entitlements	Invalid Applications	Total
Badu	1	19	13	33
Boigu	0	48	12	60
Poruma	25	1	1	27
Hammond	2	20	31	53
Iama	0	0	33	33
Mabuiag	1	15	0	16
Saibai	0	13	2	15
Ugar	0	6	7	13
St Pauls community	0	25	1	26
Kubin community	4	0	16	20
Warraber	2	17	0	19
Masig	26	13	0	39
<b>Total (12)</b>	<b>61</b>	<b>177</b>	<b>116</b>	<b>354</b>

Note: Of the 12 communities 10 have entitlements and 7 have granted leases.


# Katter/Land Holding Act leases

- Update on LHA leases: *Wigness v Kingham, President of the Land Court of Queensland* [2018] QSC 020.
- What happens next?





# Ordinary Freehold Option: pilot project at Hammond Island

- 1 January 2015: Freehold option becomes law.
  - June 2015: Council endorsed the Freehold Implementation Plan for the three pilot communities (St Pauls (Moa), Poruma and Hammond Island).
  - 13 September 2015: open community meeting at Hammond Island Community Hall.
  - 14 September 2015: meeting with Kaurareg representatives at Hammond Island Community Hall.
  - 9 November 2015: open community meeting at Hammond Island Community Hall.
  - 12 October 2016: TSIRC advised stakeholders Hammond pilot was on hold due to native title/LHA uncertainty.
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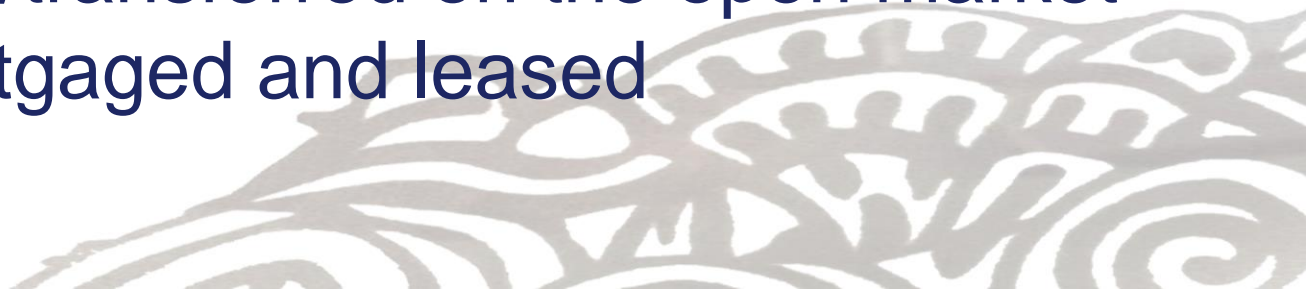
# Ordinary Freehold Option: Hammond Island

- We want to know what you think: should private freehold land ownership be made available at Hammond Island?
- We will listen to feedback today. You can also make comments later: drop off a letter at the Council office or email [freehold@tsirc.qld.gov.au](mailto:freehold@tsirc.qld.gov.au).





# What is ordinary freehold?


- Individual landowner(s) – not communally held
  - Publicly registered Certificate of Title
  - Owner(s) responsible for use of the land
  - Native Title does not apply
  - Deed of Grant in Trust does not apply
  - Exclusive ownership
  - Rateable
  - Can be sold/transferred on the open market
  - Can be mortgaged and leased
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# Pros of freehold

## Pros

1. Native Title and Trustee approval not required for future development or leasing (planning approval may be required).
2. Legal certainty of land ownership.
3. Can be used as a tool to 'cement' traditional boundaries via formal Survey.
4. Exclusive control of your own land (as long as you comply with the law).
5. Potential for economic independence (leasing and mortgaging land available).
6. Land/house becomes an asset with a market value on the property market.
7. Ability to transfer freehold title to loved ones under a Will.
8. Ability to hold land with others as co-owners, and decide who will own the land when the registered owner dies.

*This is not an exclusive list of Pros and Cons and should not be relied upon by potential applicants when deciding whether or not to support/ apply for a freehold grant. Applicants should always seek independent legal and financial advice.*




# Cons of freehold

## Cons

1. Up-front purchase cost
2. Ongoing costs of home ownership
3. Owner is legally responsible for use of the land (and misuse)
4. Traditional rights no longer legally recognised over the land
5. Could weaken Traditional Law and Ailan Kastom in the community
6. Potential sale to non-community members (loss of traditional land)
7. Risk of losing traditional land if unable to afford ongoing costs of home ownership (mortgagee sale)
8. Could make land management in Torres Strait more complicated by adding another type of land holding.

*This is not an exclusive list of Pros and Cons and should not be relied upon by potential applicants when deciding whether or not to support/ apply for a freehold grant. Applicants should always seek independent legal and financial advice.*

# Freehold proposal for Hammond Island

- If the community supports making freehold available, Council's proposal is a **Model Freehold Instrument**.
  - This means that only eligible “**interest holders**” could potentially be granted freehold.
  - A Non-Model Freehold process could be done after the Model process.
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# Am I an interest holder?

- General/Residential Tenancy Agreement interest holders
- Valid LHA /“Katter” lease holders/tenants
- Valid LHA /“Katter” lease entitlement holders or beneficiaries
- 99-year lease holders

Interest must be held as at 1 January 2015.

If there is more than one interest holder for an area of land, either all interest holders have to apply (if eligible), or all interest holders must agree to the applicant making the application.



# Freehold Proposal for Hammond Island

- Draft **Freehold Instrument** for Hammond Island:
    1. **Freehold Policy** (sets the rules for making freehold available at Hammond Island and the conditions and costs to get freehold title)
    2. **Freehold Schedule** (shows the land where freehold could be made available)
  - Minister must approve the Freehold Instrument before any ordinary freehold can be granted at Hammond Island.
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# Draft Freehold Schedule (map)





# Draft Freehold Schedule

- The lots included in the Draft Freehold Schedule are all those marked as “Granted LHA”, “LHA Lease Entitlement” and “Social Housing (RTA)”.
- Council has not set a maximum block size.
- Council has not set a limit on how many blocks a person can apply for at one time (but the applicant must be an “interest holder”).



# Draft Freehold Policy: Eligibility (Who could get freehold?)

Default eligibility criteria:

**The grant of freehold is limited to the following categories of people:**

- an Aboriginal person or Torres Strait Islander
- the spouse of an Aboriginal person or Torres Strait Islander
- a former spouse of an Aboriginal person or Torres Strait Islander
- a widow or widower of an Aboriginal person or Torres Strait Islander

Applicant must also be an “interest holder”.



# Discussion: Eligibility (Who could get freehold?)

- Council has not set any additional eligibility criteria.



# Cost to obtain freehold: summary

- Application fee
- House price (unless privately owned)
- Land price
- Compensation (if applicable)
- Cost of survey (if land not yet surveyed)
- Registration fees (Land Titles Office)
- Legal costs



# Draft Freehold Policy: Application fee

- The Trustee will set an application fee, to cover administration costs.



# Draft Freehold Policy: House Price

House type	New condition	Good condition	Fair condition
2 bedroom detached	\$65,000	\$50,000	\$35,000
3 bedroom detached	\$75,000	\$60,000	\$45,000
4 bedroom detached	\$90,000	\$75,000	\$60,000
5 bedroom detached	\$100,000	\$85,000	\$67,000
6 bedroom detached	\$110,000	\$95,000	\$75,000

The same house prices apply for 99-year home ownership leases.

Cost for Katter/LHA lease house: to be advised.

Before the house can be sold, Council and the Department of Housing must agree to sell the house.

# Draft Freehold Policy: Land Price

- Land price is set by the Trustee.
- Price to be confirmed.





# Draft Freehold Policy: Compensation

- Where native title exists, an ILUA (agreement with the PBC/claimant) is required.
- The applicant for freehold may have to pay compensation to the PBC because the TO of that land will lose native title forever.
  - Example 1: NIL compensation/freehold title as compensation (where applicant is the Traditional Owner of the land)
  - Example 2: could be calculated based on estimated valuation (land value) + additional special value for native title extinguishment




# Draft Freehold Policy: Other conditions

- The land must be surveyed, must have dedicated road access and must have access to essential services (water, waste and power).
- The applicant would be responsible for the cost of satisfying all conditions.

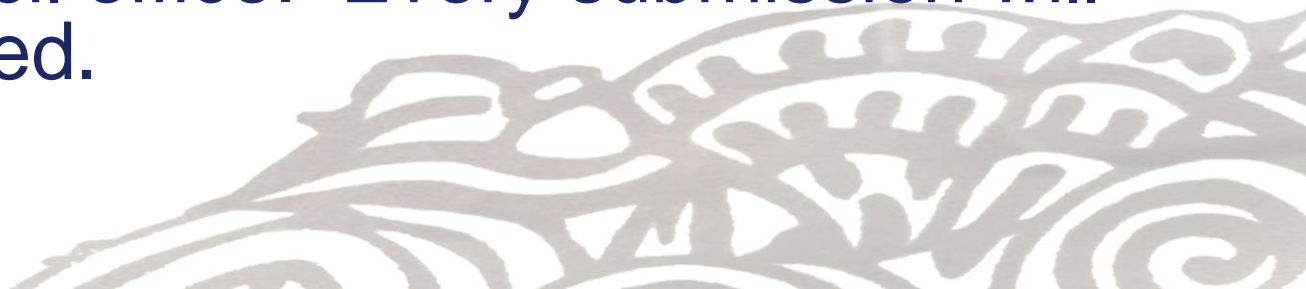


# What happens next?


1. The draft Freehold Instrument is available to the community for comment.
  2. Council will consider all feedback and decide whether to make freehold available at Hammond Island.
  3. If Council decides to make freehold available, Council will submit the Freehold Instrument to the Minister.
  4. If Freehold is made available, Council (as Trustee) will invite “interest holders” to apply for freehold title.
  5. For applications approved by the Trustee, the State will grant the freehold.
  6. The process must address native title.
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# Freehold is optional

- Ordinary freehold does not have to be introduced to Hammond Island. It could happen **now**, **later** or **never**.
- Council will decide based on the community's feedback.
- Let us know what you think of the freehold option today or later.
- Written comments are welcome: please email [freehold@tsirc.qld.gov.au](mailto:freehold@tsirc.qld.gov.au) or drop off a letter at the Council office. Every submission will be considered.



# Questions and discussion

- Q&A
  - **Should private freehold land ownership be made available at Hammond Island?**
  - What would be the social and financial effects in providing the option of private freehold at Hammond Island? (good and bad)
  - What are the potential opportunities available to attract investment into Hammond Island community by providing ordinary freehold?
  - If freehold is made available, should there be any additional eligibility criteria to apply for freehold?
  - Should there be restricted eligibility criteria for particular areas of land?
  - Are there any areas that should not be made available for freehold?
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# 99-year home ownership lease

- 18 Expressions of Interest for 99-year home-ownership leases at Hammond Island.
- Expression of Interest forms available through Council.



# Who can get a home-ownership lease?

To be eligible to apply, you must be either:


- an Aboriginal or Torres Strait Islander person;
- the spouse, or former spouse of an Aboriginal or Torres Strait Islander person (this includes a de facto partner and a registered partner);
- the spouse or a former spouse of a deceased Aboriginal or Torres Strait Islander person; or
- the holder of an existing lease within the community.





# 99-year home ownership lease: House Price

House type	New condition	Good condition	Fair condition
2 bedroom detached	\$65,000	\$50,000	\$35,000
3 bedroom detached	\$75,000	\$60,000	\$45,000
4 bedroom detached	\$90,000	\$75,000	\$60,000
5 bedroom detached	\$100,000	\$85,000	\$67,000
6 bedroom detached	\$110,000	\$95,000	\$75,000


- You will pay an amount to the trustee to buy the lease and any house on the leased land if you did not build it.
  - Before the house can be sold, Council and the Department of Housing must agree to sell the house.
  - If there is no house on the land when you lease it, you must build an approved house within 8 years.
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# What costs are involved?


You will need to pay:

- upfront cost of the land, which will vary depending on the size of the area to be leased;
- annual rental lease charge of no more than \$1;
- purchase price of a house (if there is an established house on the land);
- cost of building a house (if the land is vacant).

You may also need to pay for:

- surveying the land;
  - native title negotiations;
  - a development application and approval from the local council to build a house.
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# How are leases granted?

1. Expression of Interest received by Council.
  2. Trustee consultation (with community).
  3. Trustee resolution to endorse granting the lease, subject to native title requirements, payment of sale price, survey, and development approval (if required).
  4. All conditions are met to grant the lease, including native title requirements, payment of sale price, survey, and development approval (if required).
  5. If there is social housing on the land, then:
    - The sale of the house needs to be approved by the Department of Housing and Public Works first; and
    - Payment for the house is required.
  6. Parties sign the lease ('execution') and house transfer agreement (for a social house). Lease applicants should get independent legal advice before they sign the agreement(s).
  7. Registration of the lease with the Land Titles Office (part of the Department of Natural Resources and Mines).
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# Home loan queries

- To ask about a home loan, please contact TSRA's Economic Development team:
- Project Managers: Tania Hirakawa & Mali Ingram
- Free call: 1800 079 093
- Telephone (07) 4069 0700
- Email [Mali.INGRAM@tsra.gov.au](mailto:Mali.INGRAM@tsra.gov.au)



# Q&A about home ownership

- Any questions?

