

Form 1

Section 32D *Aboriginal Land Act 1991*

Section 28D *Torres Strait Islander Land Act 1991*

Freehold policy

Freehold policy for Poruma

This policy template is to be completed by the trustee when providing the option of freehold land in their community. This freehold policy has been prepared under section 32D of the *Aboriginal Land Act 1991* and section 28D of the *Torres Strait Islander Land Act 1991*.

This form must be prepared at the same time that a freehold schedule for the freehold option land is prepared, as both documents make up the freehold instrument. As the trustee, you must consult your community and native title holders about the proposed freehold instrument.

Part 1: Trustee details

Name:	Torres Strait Island Regional Council
Aboriginal or Torres Strait Islander community represented:	Poruma (Coconut Island)

Guidance information

- The objective of this freehold policy is to ensure that when making trust land available for freehold, you have made decisions and applied processes that are equitable, consistent and transparent and that the community knows on what basis freehold will be made available.
- Freehold is to be made available through a fair and open process that is consistent with the information provided in this policy.
- You must undertake appropriate consultation about the freehold instrument. You may also consult about whether freehold should be available in your community, before developing the freehold instrument.
- Before you start to consult on the freehold instrument, you must decide how this consultation will be undertaken. This decision must comply with the decision making process set out in either section 179 of the *Aboriginal Land Act 1991*, or section 135 of the *Torres Strait Islander Land Act 1991* as applicable.
- If a model freehold schedule is being used then the trustee must ensure that the freehold policy reflects the model freehold schedule. For example, the allocation processes set out in the freehold policy must be permitted by the model freehold schedule.
- In order to grant freehold, native title must be extinguished or otherwise surrendered under an Indigenous Land Use Agreement (ILUA). You are responsible for ensuring an ILUA is completed.
- Costs associated with conducting the freehold process, including obtaining an ILUA, may apply. These costs are your responsibility, and may be recovered from the sale price for the freehold.

Part 2: Eligibility requirements

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

Additional eligibility criteria can be applied to the allocation of this land for freehold (such as traditional owners or a particular family group).

No additional eligibility criteria.

Are there any other details for the eligibility criteria that apply to specific areas of available land identified in the freehold schedule?

No additional eligibility criteria.

Part 3: Social and financial implications

Freehold title means the landowner owns the land outright and has exclusive rights to the land (such as being able to sell or lease the land and use the land subject to planning and other laws).

Providing freehold in Aboriginal and Torres Strait Islander communities aims to provide opportunities for social and economic development.

What are the social and financial implications for your community overall in providing the option of freehold and for any eligible persons granted freehold?

Native Title and Trustee approval not required for future development or leasing (planning approval may be required).
Legal certainty of land ownership (no native title disputes).
Can be used as a tool to 'cement' traditional boundaries via formal Survey to avoid future boundary dispute.
Exclusive control of your own land (as long as you comply with the law).
Potential for economic independence (leasing and mortgaging land available).
Land/house becomes an asset with a market value on the property market: potential for investment income or to make money from selling the land to anyone.
Ability to transfer freehold title to loved ones (e.g. to your children) under a Will.
Ability to hold land with others as co-owners, and decide who will own the land when the registered owner dies.
Up-front purchase cost (land price, house price, legal fees, registration fees, stamp duty, survey if necessary).
Ongoing costs of home ownership (mortgage repayments, rates, insurance, bills, repairs & maintenance).
Legally responsible for use of the land (and misuse).
Traditional rights no longer legally recognised over the land.
Could weaken Traditional Law and Ailan Kastom in the community (dependent on the owner).
Potential sale to non-community members (loss of traditional land).
Risk of losing traditional land if unable to afford ongoing costs of home ownership (mortgagee sale).
Could make land management in Torres Strait more complicated by adding another type of land holding ("the Neapolitan Ice Cream effect" of limited freehold).

What are the potential opportunities available to attract investment into your community through providing freehold?

Potential for economic independence (leasing and mortgaging land available).
Land/house becomes an asset with a market value on the property market: potential for investment income or to make money from selling the land to anyone.

Part 4: Consultation process

As the trustee, you are required to provide details about how you will consult on making freehold available in your community. In deciding on the consultation process, you must consider the decision-making process set out in the *Aboriginal Land Act 1991* or *Torres Strait Islander Land Act 1991* as applicable. Ensure you keep a record of all consultation you undertake.

How will consultation be undertaken in the community on making land available for freehold? Who will this include?
<p>Two (2) public consultations (open community meetings) in community, facilitated by Council and attended by DNRM. Dates for public consultations will be advertised on community noticeboards.</p> <p>Following consultations, a draft Freehold Instrument will be uploaded onto Council's website and available for collection at Divisional Council offices and written submissions will be called for by the Trustee and received submissions considered in finalising the Freehold Instrument.</p>
How will native title holders be consulted about the land being made available for freehold?
<p>Two (2) consultations with Poruma RNTBC. Consultations of 1–2 days on-island are anticipated for each native title consultation. These native title consultations could be run simultaneously with beneficiary consultations (on consecutive days).</p> <p>The Trustee shall liaise with the Torres Strait Regional Authority Native Title Office and Poruma RNTBC about the Freehold process and to arrange consultation dates. A Native Title consultation schedule shall be drawn up with the TSRA NTO and attended by representatives from TSRA NTO, DNRM and TSIRC. Possible involvement by the National Native Title Tribunal as facilitator of discussions.</p>
How will the community be notified about the freehold instrument?
<p>Final Freehold Instrument to be placed on Council's website for download.</p> <p>Poruma RNTBC to be notified directly.</p>

Note: Any native title prescribed bodies corporate or registered native title claimants for the land covered by the freehold schedule should be notified about the freehold instrument, including when it is attached to the planning scheme.

Part 5: Sale price and costs

Costs associated with conducting the freehold process, including obtaining an Indigenous Land Use Agreement, may be incurred. As the trustee, these costs are your responsibility. You can recover any costs incurred from the sale price for the freehold. Additionally if an application is approved over a social housing dwelling, then the dwelling must be purchased.

Are there any costs to be recovered from the sale price of the land, and who will bear these costs?

Yes, there is a land price and a house price. These costs are payable by the successful applicant. The house price has been agreed between the Trustee and the Department of Housing and Public Works. A copy of the valuation methodology for social housing is available on request from the Trustee.

For land being made available for freehold, how will the sale price be determined?

Land price: \$4,000 for 2,000 square metres plus \$100 for each additional 100 square metres.

Proposed house (building only) sale price:

House Type	New Condition	Good Condition	Fair Condition
2 bed detached house	\$130,000	\$100,000	\$70,000
3 bed detached house	\$150,000	\$120,000	\$90,000
4 bed detached house	\$180,000	\$150,000	\$120,000
5 bed detached house	\$200,000	\$170,000	\$135,000
6 bed detached house	\$220,000	\$190,000	\$150,000

Note: Insert a link here to the agreed social housing price. Including information about how a copy of the valuation methodology can be obtained by anyone interested in seeing it.

Guidance information about the allocation process

There are two allocation processes that may be applied to the allocation of available land for freehold.

1. Allocation process for interest holders

This process applies where there is an interest holder in the available land. An interest holder is an eligible person who has any of the following 'interests' in the available land:

- a registered lease granted under the *Aboriginal Land Act 1991*, the *Torres Strait Islander Land Act 1991* or the *Land Act 1994*, other than a townsite lease
- a lease entitlement under the *Aboriginal and Torres Strait Islander Land Holding Act 2013*
- a granted lease under either the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* or *Aboriginal and Torres Strait Islander Land Holding Act 2013*
- a registered sublease, including a registered townsite sublease
- a residential tenancy agreement for a social housing dwelling on the available land.

2. Allocation process where there is no interest holder

This process applies where there are no interest holders for the available land. In this situation the allocation is done by competition through either:

- auction
- ballot
- tender

Unless you are utilising a model freehold schedule which restricts the allocation processes available either one or both allocation processes can be used (but not over the same land).

Part 6: Allocation process for interest holders

Are there any conditions that apply to the available land? (E.g. resolving native title; ensuring the available land is surveyed if required; providing dedicated road access; providing services such as water, waste, power; payment of the purchase price of the land and social housing dwelling (if applicable); and costs of any subdivision required).

If there are, who will be responsible for addressing these issues? Are there any costs associated with meeting these conditions?

1. The successful applicant must satisfy the trustee that native title has been resolved either:
 - a. through previous extinguishment; or
 - b. through extinguishment by consent registered in an Indigenous Land Use Agreement to which the Trustee and the State of Queensland are parties. (Note: The ILUA may include a requirement for the successful applicant to pay compensation to the Poruma RNTBC.)
2. The available land is required to be surveyed, must have dedicated road access and must have access to essential services (water, waste and power).
3. Payment of the purchase price of the land (payable to the Trustee).
4. Where there is a house on the land, consent from the Trustee and (for a social housing dwelling) from the Department of Housing and Public Works to the sale of the house.
5. Payment of the purchase price of any house/social housing dwelling on the land (if applicable) (payable to the Trustee).
6. Payment of application fee to Trustee.
7. Payment of State-imposed fees including but not limited to title registration fees.

Part 7: Allocation process where there is no interest holder

Which allocation method will be used to select an eligible person to be granted freehold? (E.g. auction, ballot or tender).

How will this allocation method be run?

If you are using a model freehold schedule can these allocation processes be used?

Not applicable: this is a Model Freehold Instrument.

Are there any conditions that apply to the available land? (E.g. resolving native title; ensuring the available land is surveyed if required; providing dedicated road access; providing services such as water, waste, power; payment of the purchase price of the land and social housing dwelling (if applicable); and costs of any subdivision required).

If there are, who will be responsible for addressing these issues? Are there any costs associated with meeting these conditions?

Not applicable: this is a Model Freehold Instrument.



Part 8: Other information

The following section may be used to provide additional information about providing freehold for the available land identified in the freehold schedule.

Include any other information in relation to this freehold proposal below, including any additional consultation or and other conditions that apply to the available land being offered for freehold.

E.g. Is there a maximum size for blocks, or a limit on how many blocks a person can apply for at one time?

The lots included in the Freehold Schedule are all those marked as "LHA Lease Entitlement", "LHA Granted Lease" and "Residential Tenancy Agreement".

Trustee contact details:

Name:	
Address:	
Phone:	
Fax:	
Mobile:	
Email address:	

Further information

The information included in this section should be referred to by trustees when completing the freehold policy template.

Consultation

Before consulting on the freehold instrument, as the trustee, you must decide how this consultation will be undertaken. This decision must comply with the decision making process set out in either section 179 of the *Aboriginal Land Act 1991*, or section 135 of the *Torres Strait Islander Land Act 1991* as applicable.

As the trustee, you are required to provide details about how consultation will be undertaken about making freehold available in your community. Consultation should cover the following matters:

- a description of the area(s) being made available for freehold
- the eligibility criteria for applying for freehold
- the allocation process for each freehold area
- the proposed sale price and costs to be recovered
- any social and financial implications of being granted freehold
- the potential to attract investment and ‘new’ residents into the community.

Records must be kept of all consultation undertaken to show the way the consultation was conducted was consistent with the consultation process as set out in this policy.

As the trustee, you must consult with the native title holders for the land proposed to be made available for freehold. You must also consult with your community more broadly so you can be sure that it is appropriate for the option of freehold to be taken up in your community.

Each person consulted (including community members, native title parties and the relevant local government) must have suitable and sufficient opportunity to express their views about the freehold instrument.

The allocation process

Where there is an interest holder

The following allocation process applies where there is an interest holder in the available land being offered for freehold. This process will only be applied to the land over which the interest applies. A tenant of social housing with a residential tenancy agreement is considered an interest holder.

Application for available land

A qualified interest holder that meets all the eligibility criteria set out in this freehold policy, can apply (on the approved form) to you (as the trustee) to be allocated freehold over their interest area. This means that an application can also be made over social housing by an eligible tenant.

Dwelling on available land

If an application is made over land with a social housing dwelling, the application is subject to two conditions. The Department of Housing and Public Works must approve the sale of the house and the applicant purchasing the house at the purchase price using an agreed methodology between yourself as the trustee, and the Department of Housing and Public Works.

Decision made on the application

As the trustee, you must approve the application if satisfied the applicant is an eligible interest holder.

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

You must also be satisfied that if there is a mortgage over the available land, the mortgagee has agreed to the applicant making the application.

If a decision is made to refuse the application, you must give the applicant an information notice about the decision.

Offer

The offer must be made in writing.

If there is a social housing dwelling on the available land, the offer must include the condition that the applicant purchases the dwelling at the price agreed between yourself as the trustee and the Chief Executive of the Department of Housing and Public Works.

If the offer is to be subject to other conditions, then these conditions must be included in the offer and addressed before freehold is granted.

Acceptance of offer and cooling off period

Once a person receives an offer, they have 45 days to accept or refuse the offer. If the offer is refused, as the trustee you must notify the Chief Executive of the Department of Housing and Public Works as the land will then revert to being transferable land.

A five day cooling off period applies to the acceptance of the offer. If a person has not waived the cooling off period, they may terminate their acceptance at any time during this period and be refunded any deposit.

Allocation of the land

Once the applicant has complied with any conditions of the offer, as the trustee you will allocate the land to the applicant.

The allocation process

Where there is no interest holder

The following allocation process can be used where there is no interest holder in the available land being offered for freehold. These processes may not be available if a model freehold schedule is being used.

Public notice of intention to allocate available land

As the trustee, you must advertise your intention to allocate the available land through an allocation notice.

The Chief Executive of the Department of Housing and Public Works must also be notified of your intention to allocate the available land.

Probity advisor

As the trustee, you must appoint an independent person as a probity advisor to monitor and report on the allocation process.

Exclusion from participating in the allocation process

After the closing day, in your role as the trustee, you must notify each applicant about whether they are eligible to participate in the allocation process. This decision may be appealed to the Land Court.



Notice about allocating the land

After the appeal period expires, as the trustee you must provide each person that is continuing to participate in the allocation process with a notice of the details of when and where the allocation will occur and when any deposit must be paid.

How available land may be allocated

As the trustee, you can proceed with allocating the available land after the appeal period and any appeals are finalised.

Available land must be allocated using the allocation method (ballot, tender or auction) detailed in the freehold policy, the allocation notice and consistent with the probity advisor's advice.

Allocation of the available land

Available land must be allocated to the eligible person that wins the allocation process.

After the land is allocated, as the trustee, you must refund the deposit of each unsuccessful applicant.

Model freehold schedule

Where a trustee adopts a model freehold schedule

A model freehold schedule is a freehold schedule that has been prepared by the Queensland Government. Trustees can simply adopt a model freehold schedule; this will help reduce costs in making freehold available and speed the process up.

Model freehold schedules will limit what land can be made available for freehold, if a trustee wants full control over what land is made available, then they should develop their own freehold schedule rather than adopting a model freehold schedule.

The freehold policy can cover either a model freehold schedule or a freehold schedule that the trustee develops. However, certain parts of the freehold policy may not be relevant for a model freehold schedule and that should be noted in the freehold policy, for example the interest holder allocation process may be the only allocation process that can be followed with a model freehold schedule.