

CS2090 11/12

---

---

# Providing **freehold title** in Aboriginal and Torres Strait Islander communities

## Discussion paper

© State of Queensland, 2012.

The Queensland Government supports and encourages the dissemination and exchange of its information. The copyright in this publication is licensed under a Creative Commons Attribution 3.0 Australia (CC BY) licence.



Under this licence you are free, without having to seek our permission, to use this publication in accordance with the licence terms.

You must keep intact the copyright notice and attribute the State of Queensland as the source of the publication.

For more information on this licence visit <http://creativecommons.org/licenses/by/3.0/au/deed.en>

# Contents

<b>Contents</b>	<b>1</b>
<b>Introduction</b>	<b>2</b>
How to use this document	2
<b>Have your say</b>	<b>2</b>
Make a submission	2
<b>1. Existing land ownership arrangements</b>	<b>3</b>
Land ownership arrangements in Queensland	3
Land ownership in Aboriginal and Torres Strait Islander communities	3
Management arrangements in Aboriginal and Torres Strait Islander communities	4
Native title	4
<b>2. Proposed freehold model</b>	<b>6</b>
Where would the freehold model be an option?	6
Who would initiate a freehold option within a community?	6
Who could apply to obtain freehold land?	6
Who would meet the costs of the freehold model?	6
The proposed freehold process	9
Freehold option	10
Freehold schedule	10
Freehold proposal	11
Process to obtain freehold land with a registered interest	12
Process to obtain freehold land with no registered interest	15
Other issues	18
Conflict of interest	18
Joint applications	18
<b>3. Questions to consider</b>	<b>19</b>
<b>Glossary</b>	<b>20</b>

## Introduction

The Queensland Government is committed to providing the same land ownership opportunities for Aboriginal and Torres Strait Islanders as available throughout Queensland. The proposal to make the option of ordinary, individual, freehold land in these communities will help realise this commitment and give community members a better chance to own their home and work towards their economic goals.

The purpose of this discussion paper is to:

- outline the existing land ownership arrangements in Aboriginal and Torres Strait Islander communities
- introduce and explain the **proposed freehold title model** and how it would be implemented
- encourage submissions from the community on the **proposed freehold title model**.

## How to use this document

The discussion paper is divided into three parts:

- Part 1 summarises existing land ownership arrangements.
- Part 2 introduces and summarises the proposed freehold title model.
- Part 3 suggest some questions to consider when commenting on this discussion paper.

There are flowcharts included in this discussion paper to help illustrate key concepts and processes.

There is also a glossary at the end of this document, which defines key terms and process-related information.

## Have your say

### Make a submission

You are invited to make written submissions in response to this discussion paper.

The questions at the end of this discussion paper are a guide only, and submissions can include comments about any matter relevant to the **proposed freehold title model** or provide other options for making freehold available.

You can submit your comments by email, post or fax:

Email: [IndigenousLandServices@dnrm.qld.gov.au](mailto:IndigenousLandServices@dnrm.qld.gov.au)

Post: Director, Policy  
Aboriginal and Torres Strait Islander Land Services  
Department of Natural Resources and Mines  
PO Box 2454  
Brisbane Qld 4001

Fax: (07) 3405 6899

**Please submit your comments by 5 pm, Friday 29 March 2013.**

# 1. Existing land ownership arrangements

## Land ownership arrangements in Queensland

Land ownership in Queensland includes both non-freehold and freehold tenures.

Nearly 80% of the land across Queensland is non-freehold. Non-freehold land is administered by the Queensland Government and may be subject to a lease, permit or licence; reserved for a community purpose such as national park; dedicated as a road; or subject to no conditions at all. Under non-freehold arrangements, the government can grant use of land for a specific purpose and period of time, and may impose restrictions.

Freehold title is the highest and most secure level of land ownership the government can grant. Freehold title means the landowner owns the property outright and has exclusive rights to the land.

Freehold title:

- allows the landowner to sell the land to anyone
- provides exclusive possession of the land, subject to interests such as mortgages
- provides a tenure that financial institutions will lend against
- provides rights to use the land subject to planning and other laws
- allows the landowner to lease (or rent) the land to another person on terms and conditions as they may agree.

Land under freehold title is subject to a statutory land valuation, which is used as the basis for determining local government rates and land tax.

## Land ownership in Aboriginal and Torres Strait Islander communities

Queensland's remote and regional Aboriginal and Torres Strait Islander communities are generally located on a type of land tenure called an Aboriginal or Torres Strait Islander deed of grant in trust. This land is held by a trustee for the benefit of the Aboriginal or Torres Strait Islander inhabitants.

Some exceptions to this are:

- Mer (Murray) Island, which is a reserve held in trust for the benefit of community members
- Aurukun, which is located on a special type of lease called a shire lease for the benefit of the Aboriginal inhabitants
- Mornington Island, which is wholly located on Aboriginal freehold
- Hope Vale, Injinoo and Lockhart River, which are located on both deed of grant in trust and Aboriginal freehold land.

Trusteeship of these community lands—excluding Mer, part of Mornington Island and part of Hope Vale—is held by the Aboriginal shire council or Indigenous regional councils. A Queensland Government Aboriginal and Islander Affairs Corporation is the trustee of the Mer Reserve and the relevant native title prescribed body corporate is trustee of part of Mornington Island and part of Hope Vale.

The different types of land ownership in Aboriginal and Torres Strait Islander communities are administered under the following legislation:

- The *Land Act 1994* established the Aboriginal and Torres Strait Islander deeds of grant in trust and provided for the appointment of the trustees.
- The *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* provided for the granting of Aboriginal and Torres Strait Islander freehold land, the leasing of these lands, and the leasing of Aboriginal and Torres Strait Islander deeds of grant in trust and reserve land.
- The *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* provided for the granting of perpetual leases for home ownership and term leases for commercial purposes to residents of the community.
- The *Aurukun and Mornington Shire Leases Act 1978* continues to provide for the shire lease of Aurukun, with the local government as the lessee. Mornington Island has been transferred to Aboriginal freehold under the *Aboriginal Land Act 1991*.

These land tenure types are transferable. This means that the Minister responsible for the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991* has an obligation to transfer the land potentially to a new trustee. The new trustee is generally the native title body established as a result of a successful native title claim under the Commonwealth *Native Title Act 1993*.

This transferred land tenure is known as Aboriginal or Torres Strait Islander freehold. This type of land ownership has some of the characteristics associated with freehold land. However, Aboriginal or Torres Strait Islander freehold land cannot be further sold, and is held in trust either for the benefit of the Aboriginal people or Torres Strait Islanders particularly concerned with the land (and includes taking account of their ancestors and descendents) or is held for the benefit of the native title holders of the land.

Due to the number of different land ownership arrangements in Aboriginal and Torres Strait Islander communities, the trustee's administration of land tenure is complex. The existing arrangements do not provide ordinary, individual, freehold title as an option to Aboriginal people and Torres Strait Islanders wishing to own their homes and pursue commercial interests in their communities. Currently these aspirations can only be addressed by leasing.

## **Management arrangements in Aboriginal and Torres Strait Islander communities**

Where the land **has not** yet been transferred to Aboriginal or Torres Strait Islander freehold, the Aboriginal shire council or Indigenous regional council (with the exception of Mer) is the trustee for the trust area and undertakes the land administration role (e.g. granting leases and subleasing the shire lease).

However in some cases, the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* direct the land administration decisions trustees can make. In some limited cases there is Ministerial supervision.

The land administration role for land that **has** been transferred to Aboriginal or Torres Strait Islander freehold is taken on by the new trustee (which is now generally the native title body).

## **Native title**

Aboriginal and Torres Strait Islander communities are already, or most likely will be, the subject of native title determinations by the Federal Court of Australia that native title exists. However, there will be some areas where native title is extinguished by the historical construction of valid public works (e.g. social housing, roads, council and state infrastructure) and some leases.

Trustees must consider native title issues as part of their current land administration decisions, in the same way the state government must in its administration of non-freehold land in other parts of the state. The process depends on a number of things, including the land tenure and the purpose of the lease to be granted.

In some cases the native title party has to provide consent in a special type of contract called a registered Indigenous land use agreement (ILUA), and has an effective legal veto.

In a community, tension can arise between the trustee who wants to grant a lease and the native title party who may not agree, or may give their consent subject to conditions that the trustee considers unnecessary or unreasonable.

Negotiating and obtaining an ILUA includes a transaction cost to get an agreement and involves agreeing on native title compensation amounts. Collectively, these costs may be more than the value of the lease.

In order to grant freehold native title must be extinguished or surrendered under an ILUA.

## 2. Proposed freehold model

The proposed freehold title model has been developed to introduce in Aboriginal and Torres Strait Islander communities the same freehold title that is available in other areas of Queensland. If the option is not exercised then the ability to lease the land would continue.

Under the proposed freehold title model below there are a number of steps that the trustee, local government and the community would need to complete to apply.

### Where would the freehold model be an option?

The freehold model would be an option for the 34 Aboriginal and Torres Strait Islander communities which are part of an Aboriginal Shire Council or an Indigenous Regional Council. These are—Aurukun, Badu, Bamaga, Boigu, Cherbourg, Darnley, Dauan, Doomadgee, Hammond Island, Hope Vale, 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, Yam and Yarrabah. Figure 1 on the following page shows the location of these Aboriginal and Torres Strait Islander communities.

### Who would initiate a freehold option within a community?

The trustee of the community land would decide whether to pursue the freehold option. The trustee would need to consult with their community, the local government and the native title party about the freehold option, including the land that could be made available for freehold and the terms and conditions before making a decision (e.g. the eligibility criteria, land allocation process and area of land where freehold will be an option). These terms and conditions would eventually form the basis of a freehold schedule, to be attached to the local government planning scheme for that particular community.

### Who could apply to obtain freehold land?

The initial grant of freehold land could only be made to a person who is:

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

This can be further narrowed down by the trustee to reflect, for example, the existing land allocation under Torres Strait Ailan Kastom or Aboriginal lore—the trustee may decide to only make freehold land available in specific areas to a particular family who have a connection to that area of land. However, once the land is granted as freehold, the landowner could sell the land to anyone in an open market, the same way as any other landowner with freehold title can sell their land.

### Who would meet the costs of the freehold model?

The freehold model is based on a cost recovery approach that uses the sale price received for the land to reimburse any costs incurred by the trustee and the Queensland Government in granting the freehold.

Where native title exists on land identified to be freehold, it is the trustee's responsibility to meet any costs involved in negotiating and obtaining the ILUA for the surrender of native title over the

land. The Queensland Government will not contribute to any compensation that a trustee agrees to pay to a native title party under an ILUA.

The local government is responsible for meeting the costs of including the freehold schedule in their planning scheme.

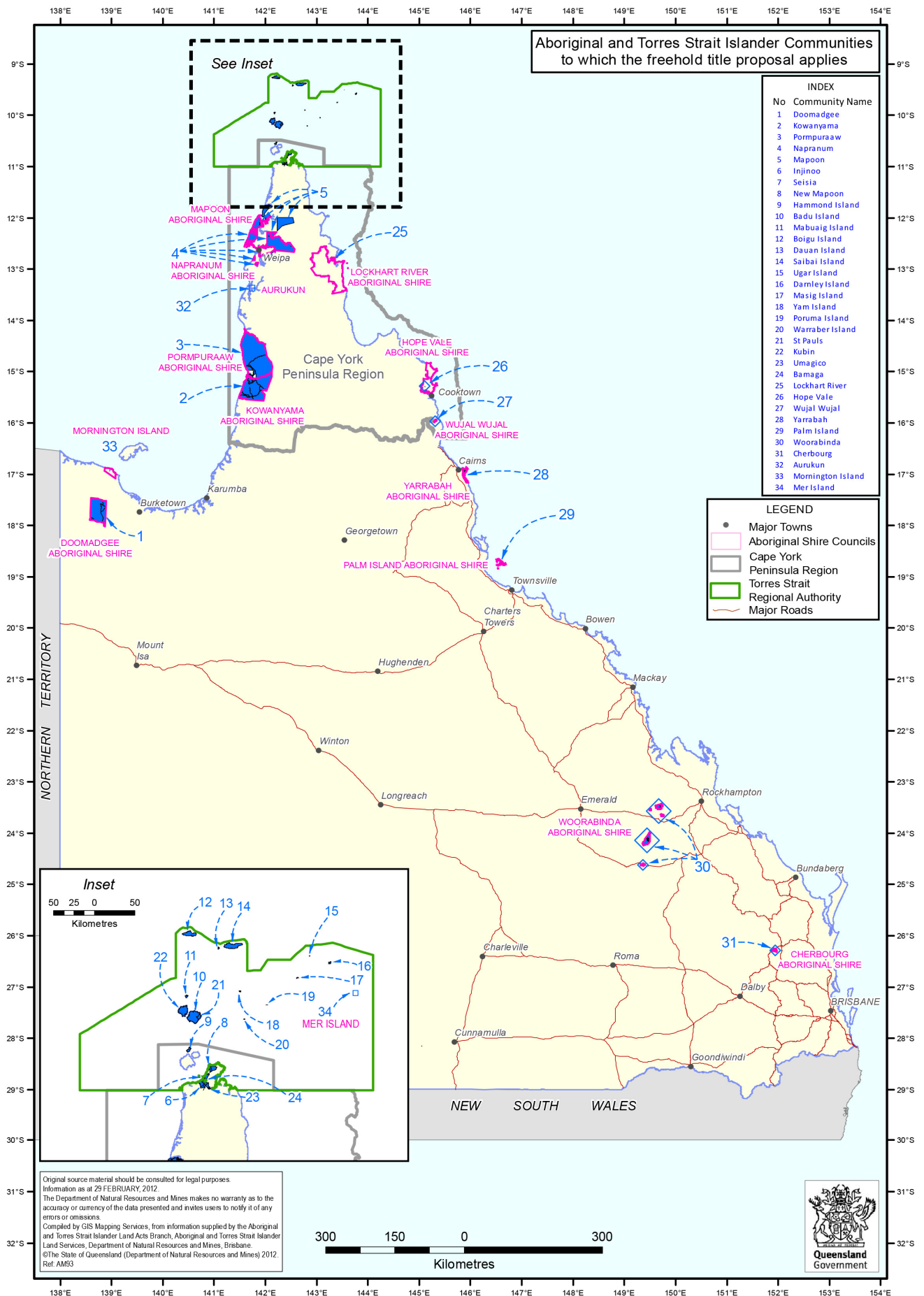


Figure 1: Aboriginal and Torres Strait Islander communities where the freehold model applies

## The proposed freehold process

The proposed freehold model has a number of key steps that would need to be carried out before freehold could be granted:

- The trustee must consult the community, the native title party and local government about possibly making freehold available and the terms and conditions that would apply. If the community supports the **freehold option**, then the eligibility criteria, allocation process and area of land (where freehold would be an option) would form the **freehold schedule**.
- The trustee must submit a request to the relevant local government to attach the freehold schedule to the planning scheme for that particular community and to run the necessary consultation process with the community.
- Following consultation on the freehold schedule, the local government must submit a request to the Minister responsible for the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991* to approve the freehold schedule.
- The trustee must prepare a **freehold proposal**, which will establish the specific details of the land to be made available for freehold, including that native title is extinguished or surrendered. This will be submitted to the Minister for approval.

Once these steps have been completed, the land can be allocated for ordinary freehold title under a freehold proposal.

See Figure 2 for an overview of the proposed freehold model process, and refer to the information following Figure 2 for more details on each step in the process.

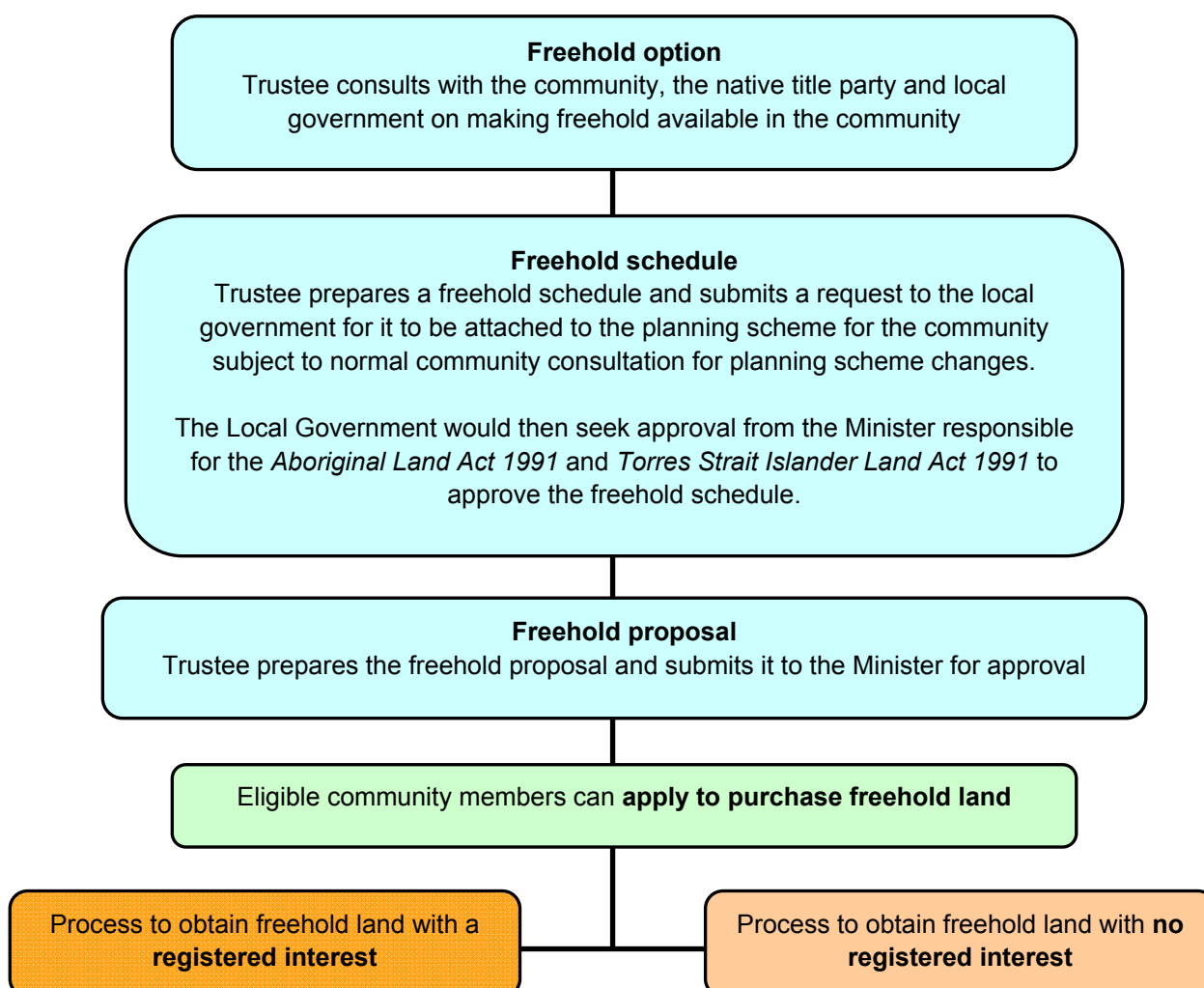


Figure 2: Overview of the freehold model process

## **Freehold option**

The trustee must consult with community members, the native title party and the relevant local government on making freehold available in the community. The Minister will also produce guidelines to help trustees undertake this consultation. This will include an obligation to hold at least one public meeting.

The trustee must consult on the:

- description of the area(s) where the freehold option will be made available
- eligibility criteria for a community member to participate in the allocation process
- allocation process for each freehold area
- proposed sale price of the land, or the costs that will need to be recovered through the sale price
- social and financial implications of community members being granted a freehold title
- potential to attract investment and 'new' residents into the community.

The trustee must ensure that community members, the native title party and the relevant local government are given a suitable and sufficient opportunity to express their views on the freehold option.

The trustee must also invite registered interest holders interested in obtaining freehold title to express their interest.

Following consultation, the trustee must:

- finalise consideration of whether to pursue the freehold option (if necessary)
- document evidence from the community consultation that proves there was support to pursue the freehold option in the community.

## **Freehold schedule**

After the community consultation, the trustee must submit a request to the local government to attach their freehold option as a schedule to the local government planning scheme. The freehold schedule must include:

- a map showing the area(s) proposed to be available for freehold
- the eligibility criteria for a community member to participate in a proposed allocation process for each proposed freehold area
- the specific allocation process proposed for each area (ballot or auction), where relevant.

Attaching a freehold schedule to a new local government planning scheme, or to an existing planning scheme, requires the local government to also undertake a public consultation process as set out in the *Sustainable Planning Act 2009*.

This Act requires the local government to:

- publish a notice in a local newspaper (at least once) about the proposed freehold schedule
- carry out a public notification process for a period of at least 30 business days
- make a copy of the proposed freehold schedule available for inspection and purchase, which must include information about the possible impacts on the community
- invite members of the public to make submissions about the freehold schedule
- review comments and issues received from the community

- respond to any issues or comments raised by a community member and advise them about how the issues raised will be dealt with
- provide a notice to the responsible Minister advising how the issues raised have been dealt with.

When this public consultation process is complete, the local government will review the submissions relating to the freehold schedule. These will also be passed onto the trustee for response. The trustee will also be required to provide a notice to the Minister responsible for the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991*, advising how the issues raised have been dealt with.

At the end of the planning scheme consultation process, it is proposed that:

- the local government must refer a copy of the trustee's freehold option (as well as any specific issues or comments received relating to the freehold schedule) to the Minister responsible for the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991*
- the Minister will review the local government and trustees responses to the issues raised
- the Minister, if satisfied with the responses and processes undertaken, will approve the freehold schedule to be attached to the local government planning scheme.
- the freehold schedule will then become a statutory instrument made under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

It is proposed that there will be a requirement for a review of the freehold schedule, to occur when the local government is required to review its planning scheme at least every 10 years. This review must include an assessment of the achievement of the outcomes stated in the planning scheme and the freehold schedule.

Once this review has been completed, the local government must:

- propose to prepare a new scheme with a new or amended freehold schedule  
or
- propose to amend the existing scheme with an amended freehold schedule  
or
- decide to take no further action (if the local government is satisfied the scheme is suitable to continue without amendment).

### **Freehold proposal**

The trustee must prepare a freehold proposal that details how specific land will be made freehold within a community. Only land included in the freehold schedule attached to a local government planning scheme can be included in a freehold proposal.

The freehold proposal must then be submitted to the Minister for approval.

Table 1: Matters to be included in a freehold proposal

Matter	Details
Land identification	<ul style="list-style-type: none"> <li>• A description of the area identified for the freehold proposal</li> <li>• The size and number of lots to be made available</li> </ul>
Land allocation process	<ul style="list-style-type: none"> <li>• Description of the land allocation process</li> <li>• Decision regarding whether a community member may participate in an allocation process for more than one block of land</li> </ul>
Land development	<ul style="list-style-type: none"> <li>• Confirmation of dedicated road access to the land</li> <li>• Details of whether the land has been surveyed</li> </ul>
Land development application	<ul style="list-style-type: none"> <li>• If subdivision is required, a development application will be needed in accordance with the Integrated Development Assessment System process under the <i>Sustainable Planning Act 2009</i> and, where necessary, the Minister responsible for administering Aboriginal and Torres Strait Islander lands must approve the subdivision</li> </ul>
Existing interest on the land	<ul style="list-style-type: none"> <li>• Details of any houses or other improvements located on the land and who owns, or has a claim to them</li> </ul>
Native title	<ul style="list-style-type: none"> <li>• If native title exists over the lot, details of how and when native title will be addressed and who will be responsible for the costs</li> </ul>
Cost estimates	<ul style="list-style-type: none"> <li>• Details of anticipated trustee costs for ensuring the land is in a condition suitable for sale as freehold (e.g. developing the land with the provision of services)</li> <li>• Details of the relevant Queensland Government fees and charges for developing the land or running the land allocation process</li> </ul>
Payment of deposit	<ul style="list-style-type: none"> <li>• Details of whether freehold applicants will be required to pay a deposit</li> </ul>
Settlement period	<ul style="list-style-type: none"> <li>• Details of the proposed settlement period for the purchase of the land</li> </ul>

Once the trustee has submitted the freehold proposal and the Minister has approved it, the land can be allocated for ordinary freehold title and eligible community members can apply to purchase the freehold land. There are two application processes—one to obtain land with a registered interest and one to obtain land with no registered interest.

### Process to obtain freehold land with a registered interest

A registered interest holder (RIH) is an eligible community member who has an ‘interest’ in the land, which has been included in the freehold schedule.

A registered interest in the land includes a:

- registered lease granted under the *Aboriginal Land Act 1991*, *Torres Strait Islander Land Act 1991* or *Land Act 1994*
- valid lease entitlement or registered lease under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* or under the proposed *Aboriginal and Torres Strait Islander Land Holding Act 2012*
- registered sublease under the *Aurukun and Mornington Shire Leases Act 1978*
- residential tenancy agreement over a social housing dwelling located on the trust land.

An RIH must apply to the trustee for freehold over that land using the RIH application form.

Figure 3 provides an overview of the RIH process.

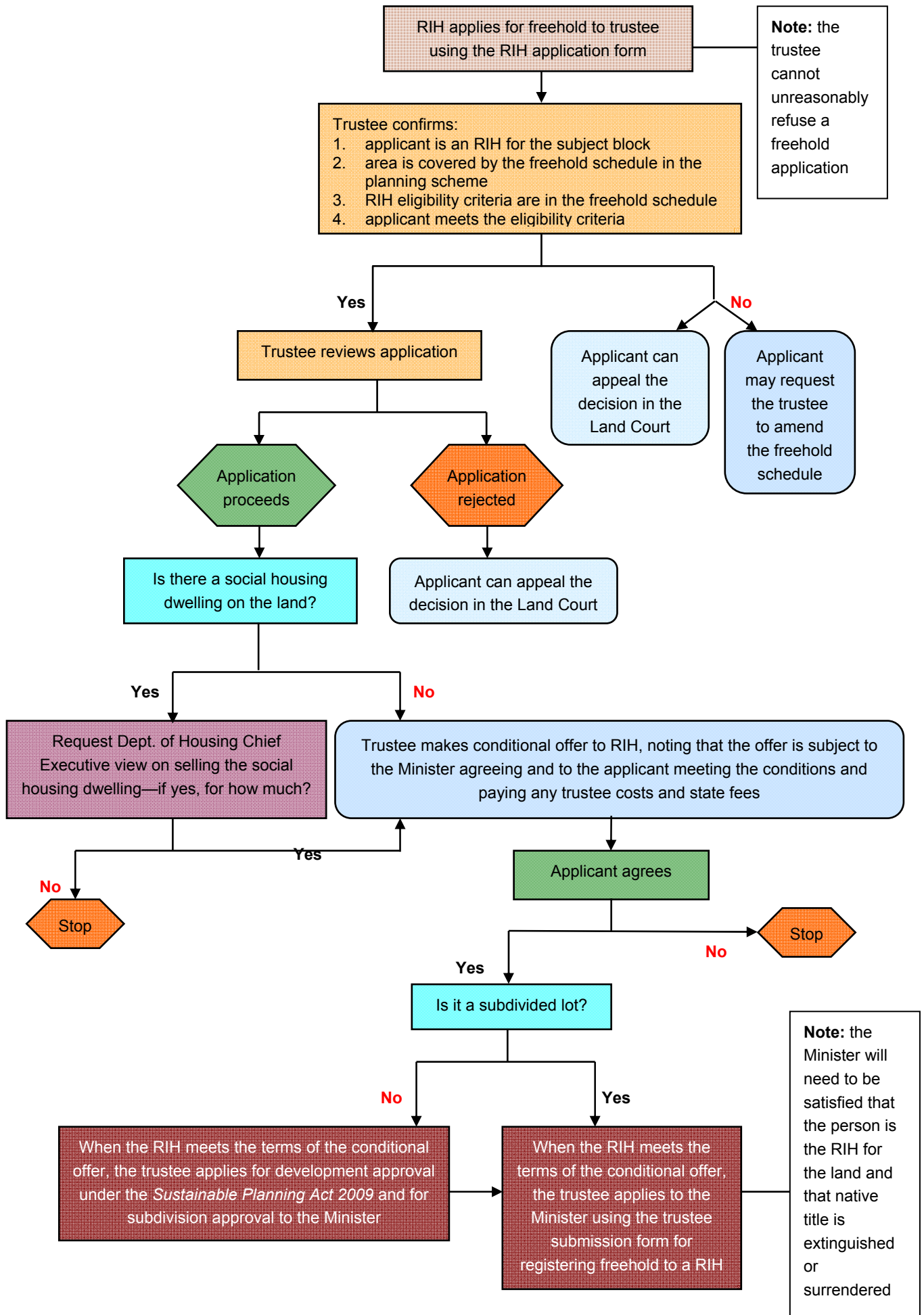


Figure 3: Overview of the RIH process

The trustee can **only** prepare a freehold proposal for land identified in the freehold schedule attached to the local government planning scheme.

The trustee cannot unreasonably refuse to progress an RIH application. The trustee will confirm the RIH application for freehold and decide to either:

- accept the application and make a conditional offer—the trustee reviews the application against a number of matters to establish its feasibility  
or
- reject the application if it does not meet the terms and conditions set out in the freehold schedule—the RIH applicant may decide to either appeal the trustee’s decision in the Land Court or ask the trustee to submit a request to the local government to amend the freehold schedule.

Some of the matters the trustee must consider as part of reviewing the RIH application include:

- the status of the land or lot, such as whether the land or lot is suitably surveyed, and if the land or lot have dedicated road access and services (water, waste, power, telecommunications etc)
- how and when native title matters will be addressed
- the anticipated trustee costs and Queensland Government fees and charges to ensure the land is in a suitable condition for sale as freehold
- whether there are any other RIH interests or other interests on the land (such as a dwelling or other improvements located on the land) and, if there are other RIH interests, whether they have agreed to the application
- whether there is a mortgage and has the mortgagee agreed to the application
- whether there is a social housing dwelling on the land.

### ***Social housing dwelling***

If there is a social housing dwelling on the land, the trustee will request the Chief Executive of the Department of Housing to decide whether the dwelling could be sold to the RIH applicant. The trustee must decide the value before the house is sold, using a valuation methodology agreed between the trustee and the Chief Executive. If the Chief Executive does not agree to the sale of the social housing dwelling, the trustee must reject the application. If the Chief Executive agrees to sell the dwelling, the application can proceed.

### ***Conditional offer***

The trustee may make a conditional offer of a freehold proposal in response to the RIH application. The trustee must advise the RIH applicant that the offer will only go ahead if the Minister approves it, and that the RIH applicant must address the trustee review matters (at least the critical matters listed below) and pay any trustee costs and fees associated with the proposed granting of freehold title.

The critical matters to be addressed may include:

- provision of a survey of the lot (if required)
- provision of dedicated road access to the lot (if required)
- provision of services such as water, waste, power etc
- payment of the purchase price of the land and the social housing dwelling (if applicable)
- costs of any subdivision (if required)
- how and when the surrender of native title will be addressed (if applicable).

The RIH applicant must agree to address these matters and meet any associated costs before the application can proceed further.

Once the RIH applicant accepts the terms of the conditional offer (and meets the costs of a subdivision if required), the trustee will apply for development approval under the *Sustainable Planning Act 2009*.

When the RIH applicant satisfies all the terms under the conditional approval, the trustee will make a submission to the Minister requesting the grant of freehold to the RIH applicant.

The trustee's submission on behalf of the RIH will include:

- a separate subdivision application if the area is not already a lot
- the lot description
- evidence that native title is extinguished or surrendered)
- proposed settlement timeframes
- confirmation that there are no other interests or improvements on the land
- payment of any fees and charges to the Queensland Government.

The RIH process is complete when the Governor in Council, on the recommendation of the Minister, issues the freehold title to the RIH applicant.

### **Process to obtain freehold land with no registered interest**

If there are no registered interests on the land, the trustee must begin the process by inviting expressions of interest from community members.

The trustee must hire a qualified probity adviser to ensure the expression of interest process is run transparently and fairly, and to ensure any conflicts of interest are appropriately dealt with.

If applicable, the trustee will talk with the native title party first about areas identified in the freehold proposal. The trustee may then ask for an agreement in-principle from the native title party to determine their willingness to surrender native title and allow the land to be sold as freehold. If a native title party is unwilling to do this, the trustee may wish to reconsider the freehold proposal and address any concerns raised by the native title party.

Figure 4 on the following page provides an overview of the process for obtaining freehold land where there is no registered interest.

#### ***Expression of interest***

The trustee must invite community members to express their interest in obtaining a freehold lot. The expression of interest process will continue until at least 30 business days before the start of the land allocation process.

On receipt of an expression of interest, the trustee will confirm that the community member meets the eligibility criteria that apply to the land, as detailed in the freehold schedule.

If the trustee reviews the expression of interest and confirms that the community member does not meet the eligibility criteria, the trustee must reject the expression of interest and the community member is unable to participate in the land allocation process.

A community member whose expression of interest is rejected by the trustee may appeal the decision in the Land Court.

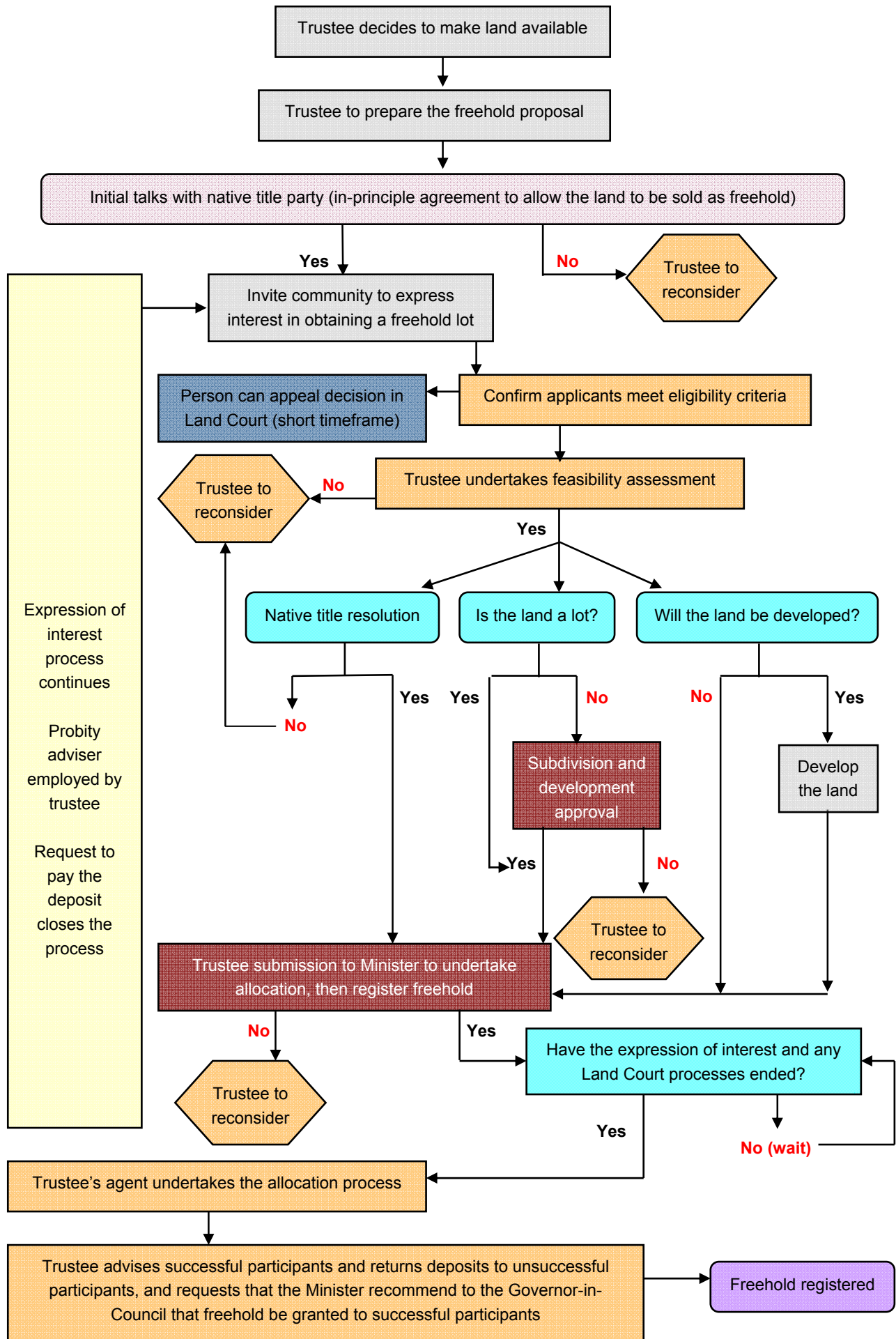


Figure 4: Overview of the process for obtaining freehold land where there is no registered interest

### ***Feasibility assessment***

The trustee will review and assess the freehold proposal in terms of the costs associated with land development and native title.

This assessment requires the trustee to make a number of decisions in regards to:

- native title
- making an application to subdivide the land into lots
- undertaking any development of the land and the provision of any services to the lots.

The trustee may decide to either:

- proceed with the freehold proposal  
or
- reconsider the proposal to make freehold available in the community if the costs associated with land development and native title are more than the proposed sale price of the land.

If the trustee decides to proceed with the freehold proposal, they must advise the community of the date the expressions of interest will close and the date for payment of any deposit.

The trustee will then prepare and provide the Minister with a land allocation submission.

### ***Land allocation submission***

The trustee must submit a land allocation submission to the Minister, which must include:

- lot description(s)
- evidence that native title is extinguished or surrendered
- names of community members participating in the allocation process based on the expression of interests received and the payment of any deposit
- proposed settlement timeframes
- payment of any fees and charges to the Queensland Government.

The trustee cannot provide the Minister with its land allocation submission until at least 30 business days after the closure of the expressions of interest process, or before the Land Court provides decisions on any appeals about the eligibility of community members to participate in the land allocation process.

The Minister reviews the submission and, if satisfied, approves the submission.

The Minister advises the trustee, and the trustee can then arrange for the land allocation process (ballot or auction) to take place in the community. The trustee then tells the participating community members.

### ***Land allocation process***

The land allocation process will be conducted by the trustee or its agent.

After the completion of the allocation process, the trustee will advise the Minister of the names of successful participants and the trustee will refund deposits to unsuccessful participants.

The land allocation process ends once the successful person pays the sale price to the Queensland Government (less their deposit) and when the freehold title is registered in their name.

The sum received by the Queensland Government, less government costs associated with the land allocation process, will be provided to the trustee.

## **Other issues**

### **Conflict of interest**

It is recognised that conflicts of interest may arise in some cases—the trustee and the local government representatives are composed of the same people, and those people may also qualify as community members eligible to take part in a freehold land allocation.

Specifically, these conflicts may arise when deciding the eligibility criteria and the area of land to which the freehold option or proposal would apply. It is important to recognise that these notions of ‘conflict’ may not be considered a conflict by community members where the trustee and local government councillors are operating under Ailan Kastom or Aboriginal lore.

As such, the proposed freehold model includes a number of ways to address these issues, including:

- a requirement for the trustee to engage a qualified probity adviser to help assess non-RIH allocation proposals
- clear community consultation processes
- decision processes being made public
- appropriate review, and the availability, of appeal processes for trustee decision-making
- the crucial decisions of attaching the freehold schedule to the planning scheme and recommending the grant of freehold to the Governor-in-Council are made by the Minister, not the trustee.

### **Joint applications**

The freehold schedule may restrict the ability of some community members to participate by specifying particular eligibility criteria for an area of land.

Those eligible community members may, however, choose to join together to make a joint application.

### 3. Questions to consider

The following questions have been provided to help you provide comments on this discussion paper. These questions are a guide only, and your submission can include comments about any matter relevant to the proposed freehold title model or other options for making freehold available.

1. Do you have any suggested changes to the proposed freehold model?
2. Is a minimum of 30 business days for public consultation long enough to develop a freehold schedule?  
  
If not, what should the minimum period be?
3. Do you agree with the definition of a registered interest holder?  
  
If not, are there any other registered interests that should be included?
4. Do you have any suggestions about how the probity adviser could ensure the expression of interest process is run transparently and fairly, and that any conflicts of interest that arise during the land allocation process are dealt with appropriately?
5. Should the Minister have the power to provide further guidelines or directions to the trustee or local government?  
  
If so, what types of guidelines or directions should be provided?
6. How could the trustee's costs associated with community consultation, land development, native title and land allocation be minimised or reduced?
7. To help the trustee reduce costs, should the Minister produce a standard Indigenous land use agreement that could be used by the trustee to address surrender of native title?

## Glossary

<b>Aboriginal or Torres Strait Islander freehold</b>	This is community-held freehold under the trusteeship of a land trust or Aboriginal or Torres Strait Islander corporation.
<b>Agreement in-principle</b>	An agreement between parties that identifies the fundamental terms that are intended to be, or are agreed upon.
<b>Allocation process</b>	This is the process used to select the successful community member to be granted freehold title—the processes available are ballot, auction or registered interest holder application.
<b>Community member</b>	A community member is a person who is: <ul style="list-style-type: none"> <li>• an Aboriginal or Torres Strait Islander or</li> <li>• the spouse of an Aboriginal or Torres Strait Islander or</li> <li>• a former spouse of an Aboriginal or Torres Strait Islander or</li> <li>• a widow or widower of an Aboriginal or Torres Strait Islander.</li> </ul>
<b>Deed of grant in trust</b>	A deed of grant in trust (or DOGIT) is the land tenure under the <i>Land Act 1994</i> supporting a community-level land trust established over former reserves and missions.
<b>Eligibility criteria</b>	These are the criteria a community member must meet to apply for land to be made available for freehold—at a minimum, the criteria will be that the person is a community member. The trustee can further restrict the criteria through the freehold schedule.
<b>Expression of interest process</b>	This is the process for obtaining freehold land where there are no registered interests. The trustee invites community members to participate in the expression of interest process.  The trustee will confirm that the community member meets the particular eligibility criteria that apply to that parcel of land. Where the community member does not meet the eligibility criteria, the applicant will not be permitted to participate in the land allocation process.
<b>Freehold option</b>	This is the option the trustee presents to the community following its decision to pursue freehold in the community.  The trustee's freehold option will identify areas where freehold could be made available and the terms and conditions. Details of a freehold option would be set out in the freehold schedule, which is attached to the local government planning scheme for the community.  In order for an Aboriginal and Torres Strait Islander community to participate in the freehold option, the appropriate local government is required to have a planning scheme that has a freehold schedule attached.
<b>Freehold proposal</b>	The freehold proposal will set out the details such as number of lots on offer, their sizes and the anticipated sale prices.  The trustee can only prepare a freehold proposal for land identified in the freehold schedule.
<b>Freehold schedule</b>	The freehold schedule sets out the areas that may be subject to freehold, the eligibility criteria and the land allocation process.
<b>Governor in Council</b>	The term 'Governor in Council' means the Governor acting with the advice of the Executive Council (the Ministers). The combination of the

	Governor and the Executive Councillors gives legal authority to actions to be taken or actions or decisions made under Acts of Parliament (as requested by these Acts).
<b>Indigenous land use agreement (ILUA)</b>	An ILUA is a voluntary agreement between a native title group and others about the use and management of land and waters that allows people to negotiate flexible, pragmatic agreements to suit their particular circumstances.
<b>Lot</b>	A separate parcel of land that has a survey plan and lot description.
<b>Minister</b>	Unless otherwise stated, this means the Minister responsible for the <i>Aboriginal Land Act 1991</i> and the <i>Torres Strait Islander Land Act 1991</i> .
<b>Non-registered interest holder process</b>	This is the process for obtaining freehold where there is no registered interest.
<b>Local government planning scheme</b>	This is a local government planning instrument as prescribed under section 79 of the <i>Sustainable Planning Act 2009</i> .
<b>Probity adviser</b>	A probity adviser is hired by the trustee to ensure the expression of interest process is run transparently and fairly.
<b>Registered interest</b>	A registered interest is a: <ul style="list-style-type: none"> <li>• registered lease granted under the <i>Aboriginal Land Act 1991</i>, <i>Torres Strait Islander Land Act 1991</i> or <i>Land Act 1994</i>;</li> <li>• valid lease entitlement or registered lease under the <i>Aborigines and Torres Strait Islanders (Land Holding) Act 1985</i> or under the proposed <i>Aboriginal and Torres Strait Islander Land Holding Act</i></li> <li>• registered sublease under the <i>Aurukun and Mornington Shire Leases Act 1978</i></li> <li>• residential tenancy agreement over a social housing dwelling located on the trust land.</li> </ul>
<b>Registered interest holder (RIH)</b>	This is a community member who holds an 'interest' in the land that has been included in the freehold schedule. For these purposes, an interest must be a registered interest.
<b>Registered interest holder application form</b>	This is the form used by a registered interest holder to apply for freehold land for which they hold an interest. The application is made to the trustee.
<b>Registered interest holder process</b>	This is the process for obtaining freehold over land where there is a registered interest.
<b>Shire lease</b>	The lease granted to Aurukun Shire Council under the then <i>Local Government (Aboriginal Lands) Act 1978</i> .
<b>Statutory instrument</b>	A document that satisfies the requirements of the <i>Statutory Instruments Act 1992</i>
<b>Tenure</b>	The conditions under which property is owned.
<b>Trustee</b>	The trustee is the person(s) or entity who holds the land for the benefit of another. In the case of a DOGIT - for the benefit of the Aboriginal or Torres Strait Islander inhabitants. In the case of transferred land - for the benefit of either Aboriginal people or Torres Strait Islanders concerned with the land and taking account of their ancestors and descendents, or for the benefit of the native title holders
<b>Trustee non-registered interest holder submission</b>	This is the form the trustee uses to obtain the Minister's approval to subdivide the land (if required) and to request the freehold grant in the name of the successful applicant.
<b>Trustee registered interest holder submission</b>	This is the form the trustee submits to the Minister to request the freehold grant in the name of a registered interest holder.
<b>Trustee review matters</b>	These are the matters the trustee must consider when reviewing a registered interest holder application.

