

Town Lands Native Title Policy – Information for native title holders, PBCs and RATSIBs

Purpose

The Northern Territory Government (the NT Government) has approved the Northern Territory Town Lands Native Title Policy.

If you are a native title holder with a Federal Court determination of exclusive native title over vacant Crown land within a Northern Territory town, this policy can apply to you.

Without extinguishing your native title rights you can apply to the NT Government to have a freehold title granted over any vacant Crown land lots covered by your exclusive native title determination. The freehold grants will suppress but not extinguish the exclusive native title rights and interests.

An agreement must be signed by the native title holder's Registered Native Title Body Corporate (RNTBC, also known as a PBC) and the Land Council (Recognised Aboriginal and Torres Strait Islander Body, or RATSIB) for the area, as well as the NT Government. This agreement is an Indigenous Land Use Agreement (ILUA).

Once the ILUA is registered the NT Government will process the freehold land grant, allowing the land to be developed or sold, leased or mortgaged to another person.

For more information about the purpose and benefits of the Policy please visit:

<https://aboriginalaffairs.nt.gov.au/aboriginal-land-and-sea>

How to apply

RNTBCs wanting to apply should first seek independent legal and financial advice, including about whether the land is eligible under the Policy, the land's value, and the ongoing costs of owning the land. RNTBCs and native title holders should make sure they are fully informed about their decision.

Agreeing to apply for a grant and entering into the required ILUA will be a native title decision, and RNTBCs must consult with and obtain the consent of relevant native title holders.

Once advice has been given, RNTBCs can contact Anthony Shelley, Executive Director Department of the Chief Minister and Cabinet, by phone on 08 8999 8839 or email at Anthony.Shelley@nt.gov.au.

The key conditions of the freehold land grant are:

- There must be a Federal Court determination of exclusive native title within a Northern Territory town.
- An ILUA must be reached and signed by the RNTBC, RATSIB and the NT Government. You can find a template within the Policy document available at: <https://aboriginalaffairs.nt.gov.au/aboriginal-land-and-sea>

- The ILUA is registered on the National Native Title Tribunal's Register of Indigenous Land Use Agreements.
- A grant must be subject to the non-extinguishment principle of the *Native Title Act 1993* (Cth) (section 238), so that native title rights are fully suppressed and of no effect, but not extinguished for all time.
- Compensation under the *Native Title Act 1993* (Cth) is limited to the grant of freehold title, and costs involved in making and processing the grant.

Important Information

Buying, selling, leasing and lending against Granted land

Granted freehold land is still subject to exclusive native title rights, but those rights are fully suppressed and of no force or effect for the life of the freehold grant and any subsequent, successor or derivative titles.

The suppressed native title rights can only be revived if the granted land:

- is acquired by the Crown (the Northern Territory or Commonwealth governments)
- is surrendered to the Crown and becomes vacant Crown land.

There is no bigger risk associated with purchasing, selling, leasing or lending against this land than already exists for normal freehold titles. Similarly, there are no additional costs associated with purchasing or leasing land granted under the Policy.

Government land release vs private development

When the NT Government is negotiating with native title holders with a view to achieving release of new residential or industry used land, government assistance to develop the land may be available in a similar way to proposals negotiated under the old policy where land releases had to be based on complete extinguishment of native title.

However, as with other private sector land developments the NT Government will not generally assist with funding the costs of private land developments, such as providing survey and other assistance with subdivision approvals, or providing essential service connections.

If native title holders are already in negotiations with government regarding land release, there is flexibility for existing negotiations to utilise the Policy.

Rates, fees and charges

Land granted through the Policy is subject to the general laws of the Northern Territory and the Commonwealth that apply to freehold land, such as local government rates, fees and charges, and maintenance obligations such as those relating to weeds, litter and fire breaks.

Native title holders should consider whether they are in a position to meet such liabilities before applying for a grant of freehold land.

What can be done with the land once it is granted?

Subject to zoning and other planning approvals, granted freehold titles can be used for residential, commercial or industrial purposes, or a mixture of each.

Granted freehold titles can be sold, leased or mortgaged in the same way as any other freehold title. This will not be a native title decision, and will not require an RNTBC to seek further consent from relevant native title holders.

If native title holders sell their granted freehold land, the new owner can on-sell or transfer the freehold title to whomever they wish.

Native title holders should obtain independent legal and financial advice before they decide to sell any land, as it may be that long term leasing, joint ventures or partnering arrangements can deliver the desired economic outcomes.

Example 1

A native title holding group would like to use their land for a mixed use development, with some lots set aside for community housing and others for sale or lease for residential and commercial purposes as a source of income and / or to fund the construction of the community housing.

This can happen by subdividing the freehold title after grant or providing in the relevant ILUA for the grant of the desired number of individual titles.

Example 2

A developer would like to build an industrial complex on land subject to exclusive native title rights on the outskirts of a Territory town. Accordingly, he commences negotiations with the native title holders to request a grant under the Policy and then sell it to him.

The native title holders may agree to sell or lease the subject land, or they could seek to become partners or joint venturers in the development through negotiated commercial arrangements. The native title holders could also agree for the land to be granted directly to the developer, in exchange for a fee negotiated on commercial terms.