

Native Title Town Lands Policy – Information for Prospective Purchasers

Introduction

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

Native title holders can now apply to convert exclusive native title land within towns to freehold title, without extinguishing their native title rights.

An agreement must be signed by the Registered Native Title Body Corporate (RNTBC) and relevant Land Council, as well as the NT Government. This agreement is an Indigenous Land Use Agreement and must be registered to allow a grant of a freehold title.

For more information about the purpose and benefits of the Policy, a copy of the Policy can be viewed at: <https://aboriginalaffairs.nt.gov.au/aboriginal-land-and-sea>

What Is Exclusive Native Title?

Aboriginal people can apply to the Federal Court to have their native title rights recognised over an area of land or water. Native title rights come from Aboriginal people's pre-existing ownership of land under their traditional laws and customs.

Upon receiving an application, the Federal Court will decide what, if any, native title rights exist, and who holds those rights.

Native title rights are recognised through a Federal Court judgment, known as a 'determination'. Each determination will state whether the native title rights and interests are exclusive rights or whether they co-exist alongside other non-indigenous property rights, such as a pastoral lease.

Exclusive native title rights are stronger than non-exclusive native title rights:

- These rights are akin to the rights held under a freehold title, but are not an issued title under the Land Title Act 2000.
- Just like the holder of a freehold title, exclusive native title holders have the right to allow any person access for any reason or no reason, and to refuse access for any reason or no reason (subject to the general laws of the Northern Territory and the Commonwealth).
- In the Territory, exclusive native title is often determined to exist over vacant Crown land in towns.
- Basically, exclusive native title holders own their land, without actually holding a Northern Territory land title to it.

The Native Title Town Lands Policy will allow exclusive native title holders to convert their land to a freehold title under the Land Titles Act 2000 without extinguishing the native title.

However, there must be a registered agreement that the exclusive native title is wholly suppressed and of no effect during the life of the freehold title and any of its successor or derivative titles.

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.

Stamp Duty on Grants

Grants are exempt from stamp duty pursuant to Item 12, Schedule 2 of the *Stamp Duty Act 1978*. However, this exemption does not apply to subsequent transactions, such as where a native title holder on-sells the whole or part of the Granted 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.

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

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 be achieved 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.