Cape York Regional Organisations submission regarding the Aboriginal and Torres Strait Islander Land Legislation (Providing Freehold) Amendment Bill 2013

Introduction

To help facilitate home ownership and economic development outcomes in Aboriginal towns on Cape York, the Cape York Regional Organisations (CYROs), comprising the Cape York Land Council, Cape York Institute, and Balkanu Cape York Development Corporation, offer in-principle support that Aboriginal land trustees should have an option to convert some areas of Aboriginal land tenures to fee simple freehold tenure. However, the way in which this is provided for in the *Aboriginal and Torres Strait Islander Land (Providing Freehold) Amendment Bill 2013* (Qld) (the Bill) is flawed and CYROs recommend that amendments should be made.

Problems with the Bill reflect a deeper problem in that the Bill has not been prepared as part of an overall system for the development of Aboriginal towns. Because of this, the Bill is not cognisant of, complementary to, or seamlessly integrated with the full scope of land issues and reform processes occurring on Cape York. A clear vision for the overall development system is required before statutory amendments, land reforms and associated public investments can be properly directed and have the desired effect of improving the lives of Aboriginal people as Australian citizens.

The Bill therefore should be reviewed and redrafted within the context of a broader development system agreed between CYROs, the Queensland Government and other stakeholders, and integrated with the land policy reforms that are currently proposed or are being implemented. Particular policy issues include:

1. the transfer provisions of the *Aboriginal Land Act 1991* (Qld) (ALA);
2. the land administration work being undertaken by the Remote Indigenous Land and Infrastructure Program Office (RILIPO);
3. the preparation of Indigenous land use agreements (ILUAs) to authorise future acts under the *Native Title Act 1993* (Cth) within Aboriginal townships, which can provide for the potential surrender of native title to enable conversion to freehold tenure;
4. the replacement of the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* (Qld) (LHA) and resolution of LHA lease issues by the *Aboriginal and Torres Strait Islander Land Holding Act 2013* (Qld); and
5. the land reform "fast track" process that the Premier supports following discussions with CYRO representatives, and proposed to be trialled in two Cape York towns, including Hope Vale and Mapoon.

The completion of the implementation of these policy issues is an essential pre-condition to any process to convert land to freehold tenure. The provisions of the Bill to enable freehold should not be applicable to an Aboriginal town until policy implementation, which will enable a more appropriate freehold process and outcomes, is complete in that area.

Home ownership and economic development in Aboriginal towns on Cape York requires reforms to other parts of the development system in addition to land, including new arrangements to provide collateral to attract capital, and new arrangements to ensure the capacity of all participants in home ownership and economic development processes. These arrangements must also be coordinated and implemented in conjunction with land reforms so that a complete and integrated development system is provided for Aboriginal towns.

CYROs have a well-developed vision for what the overall development system for Aboriginal towns should be. This submission is prepared with reference to the CYRO vision. CYROs would like to discuss this vision with the Queensland Government to identify how all the parts of the system can be developed and brought together in an effective way.

Summary of the development system required for Aboriginal towns

The Bill, in conjunction with implementation of other parts of the development system, should provide for a situation in the near future where:

1. transaction costs associated with freehold land processes are minimised. This will provide for affordable and efficient land dealings;
2. transaction processes are simple, easy and quick. This will provide for successful engagement in land dealings;
3. consultation processes must ensure that communal land owners and native title parties support tenure conversion to freehold. This will provide community support for tenure conversion;
4. proceeds from land dealings provide collateral for mainstream finance. This will ensure mainstream finance is available for development and a secondary market is assured;
5. the tenure pattern in Aboriginal towns is simplified. This will ensure better understanding of and equity in land rights and interests and promote efficient markets in land; and
6. decisions about dealings in land, such as a decision to covert tenure to freehold, are made by a permanent trustee such as a Land Trust or Prescribed Body Corporate whose primary role is to deal in land rights and interests, rather than an Aboriginal Shire Council as DOGIT trustee whose primary role is to deliver local government services.

However, the Bill in its present form is equivocal as to the need to encourage private land ownership and provides a situation where:

1. Transaction costs may be high and unaffordable for individuals since costs are imposed upon freehold purchasers in Aboriginal towns that would, elsewhere, be borne by the public;
2. Transaction processes may be complicated if land administration issues exist;
3. Consultation processes may be inadequate and tenure conversions not supported by communal land owners and native title parties;
4. Underinvestment in public goods is obscured;
5. Mainstream finance will not be available for development so Aboriginal home owners will not enjoy the same benefits and opportunities as mainstream home owners;
6. Tenure patterns and land rights and interests may (unintentionally) become even more complicated and confused; and
7. Local governments will continue to make decisions about land dealings.

The issues with the Bill are exacerbated by the lack of clarity about, commitment to and investment in an overall development system, so these issues will not be resolved by simply amending the Bill.

To address the historical lack of investment in land administration and other public goods that are part of the development system, the actions that must be implemented in an integrated and compatible manner in each Aboriginal town are:

1. preparation of a *Sustainable Planning Act 2009* (Qld) compliant planning scheme for the relevant local government area;
2. the establishment of proper cadastral infrastructure (survey, subdivision and registration of all lots used for a discrete purpose, building code compliance);
3. resolution of tenure and infrastructure anomalies such as roads off alignment and encroachments;

4. resolution of informal, contentious and unregistered interests in land, including interests or entitlements created under the LHA;
5. negotiation of an ILUA to authorise the creation of leasehold interests in land where native title exists, and the surrender of native title to enable tenure conversion to freehold;
6. cultural heritage clearance of land identified for future development;
7. completion of ALA land transfer processes, including in a way which ensures all levels of government and other interested parties continue to have access to and secure interest in the land and infrastructure they deliver services from;
8. tenure conversion to freehold where agreed;
9. preparation of trustee policies for the lease or sale of communal land and infrastructure to parties of their choice;
10. establishment of trust accounts to underwrite home ownership and economic development investments; and
11. building capacity of the key participants in home ownership and economic development, including local government, trustees, home owners and business operators.

CYROs recognise that some of the parts of the system listed above are being implemented, particularly through the work of the Remote Indigenous Land and Infrastructure Program Office (RILIPO). However other parts of the system are not under development or, as in the case of the Bill, are being developed in isolation, and are not integrated and fully compatible with other parts of the system, such as the ALA transfer processes and ILUA preparations. There is a risk that the Bill will frustrate the development of fair and efficient markets in land within Aboriginal towns, and the land reform aspirations of residents.

Issues with the proposed freehold model outlined in the Bill

1. Freehold process is self-funding

For home ownership and economic development to succeed in Aboriginal towns on Cape York the transaction costs must be minimal. It will simply not be economically viable for individuals to enter into a business or become home owners if they are faced with significant costs beyond the price of the land and improvements associated with taking up an interest in land, such as the cost of creating a lot or addressing native title. Therefore the proposed self-funding model whereby costs incurred by the trustee are recovered through the sale price is unviable and unreasonable. Such a model amounts to the imposition of the costs of public goods on intending purchasers of land.

The proposal for a self-funding process is a reflection of, and continuation of, the historical underinvestment by government in land administration in Aboriginal towns. As proposed above, if a holistic and integrated approach was taken to the development system for Aboriginal towns then transaction costs would be minimised and it would be much more simple, appealing and affordable for individuals to take up an interest in land for home ownership and business purposes.

To achieve this, the State with the support of Commonwealth funding, should for all Aboriginal town areas (where the town area is defined as the existing developed footprint plus additional areas identified in a planning scheme as suitable for future urban development):

- establish mainstream cadastral infrastructure (survey, subdivide and register all lots used for a discrete purpose);
- resolve tenure and infrastructure anomalies such as roads off alignment and encroachments;
- resolve informal, contentious and unregistered interests in land, including interests or entitlements created under the LHA;

- negotiate an ILUA to provide processes for native title parties to consider and provide their consent for the creation of leasehold interests in land where native title exists, and the surrender of native title to enable tenure conversion to freehold;
- undertake cultural heritage clearance of land identified for future development, and
- address any other issues which need to be addressed prior to tenure conversion.

CYROs are aware that some of these actions are being implemented in some communities, particularly through the work of RILIPO, and fully supports that these actions continue. However, the Queensland Government is yet to commit to all of these actions such as the negotiation of ILUAs in every township area, or the provision of cultural heritage clearance for areas planned to be developed in the future, or the addressing of any other land administration issue which could create costs for individuals. CYROs are willing to work with the Queensland Government to ensure that necessary actions are identified and implemented to enable home ownership and economic development outcomes which do not require individual proponents to self-fund significant land administration costs.

2. Native title

One of the most significant transaction costs associated with a process to freehold land will be to address native title if it continues to exist in land proposed to be converted to freehold. Although native title has been extinguished to varying extents in Aboriginal towns it continues to exist over significant areas, particularly areas proposed for new development. As outlined above, an ILUA must be negotiated for every Aboriginal town area to provide a process for the surrender of native title to enable tenure conversion to freehold. These ILUAs should be resourced by the State and negotiated with the assistance of CYLC for all Aboriginal towns on Cape York. To integrate the freehold process with the ILUA process the Queensland Government should ensure that negotiation of these ILUAs identifies the land where native title parties would be prepared to consider the surrender of native title, and therefore the freehold schedule should align with this identified land.

The process for the of surrender native title will not be concluded successfully if native title holders are not offered adequate incentives (including monetary and/or other forms of compensation) for surrender of their native title rights and interests. This compensation cost must be met by the State, not passed onto individuals seeking to take up a freehold interest in land. To provide for this the State should establish a fund to provide compensation, and/or identify other forms of incentive for the surrender of native title.

If native title surrender incentives are not made available the most likely outcome will be that freehold will only be pursued on land where native title has been previously extinguished. This will result in entrenching a patchwork of tenures and native title status across land within Aboriginal towns, and eventually reach the point where these towns become landlocked as the availability of extinguished land is exhausted and additional land cannot be made available for development unless incentives for surrender of native title are made available.

The pursuit of freehold only on land where native title has previously been extinguished will also lead to adverse selection problems. The State has an existing public policy goal to encourage the optimal use of land for its economic, cultural and environment values. However, optimal land use will be adversely affected because land relatively less optimal for certain purposes will be used merely because native title has been extinguished on that land.

If freehold is desired for land where native title continues to exist, and an ILUA or compensation does not exist to enable the freehold process, it will only be those parties with access to significant resources who will be able to pursue freehold on this land. This is because only well-resourced

parties will have the resources required for negotiation of an ILUA and provision of compensation. This presents an inequitable situation where local Aboriginal people are unlikely to have sufficient resources so only external non-Aboriginal people will be able to acquire a freehold interest over land where native title continues to exist. This is a perverse outcome and should not be facilitated by the Bill.

These issues also highlight that improvement of ALA leasing provisions are necessary since the surrender of native title is not necessary for the grant of a lease, and compensation for the grant of a lease is likely to be less than compensation for the surrender of native title. Therefore development could still occur based on a lease if native title parties were not prepared to surrender native title over an area, or if compensation was not available for surrender, where native title parties were otherwise agreeable. Improvements necessary to the ALA leasing regime are discussed later in this submission.

3. Consultation process

The Bill does not prescribe the consultation process that should be followed by the trustee with the owners of the land, that is, the community, in the making of the freehold instrument (the freehold schedule and freehold policy). Instead, the trustee is empowered to decide on a consultation process that it considers is suitable and appropriate for the community.

This provides too much discretion for the trustee, especially if the trustee (which, currently, is usually the local government) holds a subjective view about freehold tenure or seeks to influence the outcome of the process by developing a consultation process that favours a particular outcome. For example, a minimal consultation process may result in some people being unaware of the freehold instrument or its implications, and subsequently tenure conversions may occur without the awareness of or support by the community and traditional owners.

The Bill should be amended to include a specified and detailed consultation process to ensure that all community members and traditional owners are meaningfully involved in consultation and the decision making process. As described above, consultation should include reference to the town ILUA and the land it identifies as an area where the native title parties would consider the surrender of native title. The consultation decision making process should require that a majority of people from the community must support the freehold proposals in the freehold instrument before it could be approved. A lack of alignment between the surrender of native title under a town ILUA, and the inclusion of areas where native title has not been extinguished in a freehold schedule would be a wasted effort.

At the very least the Bill should be amended to include minimum requirements for the consultation process, perhaps leaving some elements of the process to trustee discretion. A mandatory requirement of any consultation process should be that the trustee must determine and demonstrate to the Minister majority community support for the freehold instrument.

4. Land that may be available for tenure conversion

The Bill provides that the land that may be identified as freehold option land, and therefore potentially available for conversion to freehold tenure, includes all DOGIT and Aboriginal freehold tenured land regardless of where it is located. CYROs support that land within Aboriginal town areas could be identified as freehold option land, but providing this option for the unimproved balance of DOGIT or Aboriginal freehold is not appropriate. Leasing provisions available under the ALA should continue to be improved, as detailed later in this submission, and used to create secure interests in land for development outside of town areas.

The Bill therefore should be amended to provide that the land available to be included in the freehold instrument as freehold option land should be restricted to improved town area (where the town area is defined as the existing developed footprint plus additional areas identified in a planning scheme as suitable for future urban development).

If the area potentially available for conversion to freehold is limited to improved town areas, then only a model freehold schedule would be required. The Bill's Pathway 2 for preparing an expanded freehold schedule would not be required.

5. Freehold's place in the sequence of land reforms

The Bill provides that freeholding processes may potentially commence at any time after the Bill is passed regardless of the point that other land reforms are at. The Bill should be amended to provide that in addition to the completion of land use planning, ILUAs and other land administration improvements, freeholding processes may only commence after ALA land transfer processes have been completed. Under this scenario PBCs / Land Trusts will be the trustees and a more appropriate entity to be making decisions about dealings with communal land and impacts to native title.

The Bill provides that the tenures that may be potentially freeholded include DOGIT and Aboriginal freehold. However, because any process to freehold land should only occur after transfer of DOGIT to Aboriginal freehold has occurred the Bill should be amended to identify that Aboriginal freehold and LHA lease are the only tenures that may be converted to freehold tenure. (LHA leases should also be convertible to ALA freehold with a lease if the ALA lease conditions are amended to provide rights at least equivalent to a LHA lease.) In other words, DOGIT should not be a form of tenure that may be converted to freehold.

Placing the option for tenure conversion to freehold in sequence after land transfer to Aboriginal freehold under the trusteeship of a Land Trust / PBC also provides for the simplification of the land tenure pattern since a Land Trust / PBC has the option to convert Aboriginal freehold land to freehold land and hold the freehold interest in this land. This means that a PBC / Land Trust would have an option, if supported by the community, to retain Aboriginal freehold as the primary tenure in town areas and follow a development path based on creating leasehold interests in land (provided the ALA leasing regime in amended as proposed later in this submission). Alternatively, the PBC / Land Trust would also have the option, if supported by the community, to convert the town area to freehold land tenure and follow a development path based on the sale or lease of freehold land.

The Bill primarily provides for freeholding to occur on a lot by lot basis over time either before or after the ALA transfer. CYROs are concerned this will create a patchwork of confusing and inequitable tenures across town areas where some lots are DOGIT or Aboriginal freehold, some leased DOGIT or Aboriginal freehold, some LHA lease, some freehold, some leased freehold, etc, all creating a different set of rights and interests for people using the land for the same purpose, such as home ownership. Aboriginal Reserves, USL, *Land Act 1994* (Qld) reserves and various other tenures add to the complexity (with corresponding costs).

CYROs maintain that the tenure mix in town areas should be simplified so that as much land as possible is under the single tenure of Aboriginal freehold or freehold, with some leases on these tenures. This will involve the implementation of a development system that rationalises (and incentivises) tenures such as LHA lease, USL, DOGIT, Aboriginal reserve and perhaps some *Land Act 1994* (Qld) reserves to be converted to Aboriginal freehold or freehold tenure. The Bill can provide for some of these outcomes but the greater system will need to resolve issues with simplifying the tenure mix as well.

Although CYROs do not support freeholding processes prior to land transfer processes, if the Bill is not amended to reflect this position then the Bill should be amended to at least provide that a process, equivalent to that under the ALA for declaring particular land to be not transferable, should apply to the freeholding process. This is because tenure conversion to freehold has the effect of making land not available under the ALA, so an ALA-equivalent process of consultation, notification, appeals and Ministerial decision should also apply.

6. Freehold sale versus leasehold interest

After land tenure is converted to freehold, except for the first transaction, the trustee/community will have no control over transactions or who may take up an interest in that land. Sale of land titles will be open to any person, subject to regulations that control fee simple freehold title anywhere else in Queensland and Australia.

However, some Aboriginal communities may wish their land trustees to continue to control who may take up an interest in land. If so, this would best be achieved through issuing a lease with limited transferability rather than creating a freehold interest and attempting to place limits on its transferability. Therefore ALA leasing provisions require amendment to allow trustees full discretion to determine the level of transferability of leases and the parties who are eligible to be granted a lease. (See comments below regarding amendment of the ALA leasing provisions.)

7. Use of proceeds from sale of freehold land.

The Bill is silent on how the proceeds from the sale of freehold land are to be used by the trustee, apart from the trustee using proceeds to reimburse their costs incurred in granting the freehold. CYROs are concerned that this creates an opportunity for Councils, as trustees, to sell land as freehold tenure and then use the proceeds to support the delivery of local government services or for other purposes.

CYROs maintain that this is not an appropriate use for the proceeds of sale, and that the Queensland Government should be properly resourcing Councils administering Aboriginal Local Government Areas to provide local government services, including by implementing reforms to establish a rates base.

The Bill should be amended to provide that the proceeds of land sale are initially deposited into a trust account (see below), but then may be withdrawn over time as the requirement for funds in the trust account diminish. The Bill should require that as funds are withdrawn the trustee must allocate this resource to the management of the land that the trustee continues to hold. A similar requirement exists for the trustees of reserves under s.63(3) of the *Land Act 1994* (Qld) for the expenditure of rents received.

8. Establish trust accounts to support secondary markets

CYROs consider that Cape York Aboriginal home owners must have the same access to equity and other wealth creation opportunities as mainstream mortgage holders and home owners. However, IBA loans are currently the only realistic option for a home ownership loan in a Cape York Aboriginal town, but access to equity and other wealth creation mechanisms are not available through IBA loans. If IBA loans of the current type remain the only option for people seeking to become home owners in Aboriginal towns then the objective for economic independence and providing Indigenous Australians with the same opportunities as other Australians, such as wealth creation founded on property ownership, will not be achieved.

To address this, CYROs strongly advocate the use of trust accounts to underwrite home ownership in remote Aboriginal communities. Even if the Bill is passed and its provisions implemented so that

home ownership is based on fee simple freehold title there is still a critical role for trusts to hold a minimum tranche of the proceeds of sales to support resales given the uncertainty surrounding the development of secondary markets in Aboriginal townships.

Home ownership trust accounts would be funded from the proceeds of house and land sales and would:

- enable trustees to provide home owners with a guaranteed resale option by being the buyer of last resort where secondary markets are slow to establish or have low levels of activity;
- provide mainstream banks with cash collateral and therefore the security to offer mortgages in remote Aboriginal communities because the mortgage would be underwritten by the trust account whereby the bank would have access to funds in the trust account in the case of mortgage default; and
- provide the home owner with access to the equity in their home (because they would have a mainstream mortgage) and the opportunity to use this as the basis for wealth creation.

CYROs are developing a model for the trust account which has received initial support from the Queensland Government, so this mechanism should be further developed and incorporated into the development system for Aboriginal towns and the Bill amended to require that the proceeds of sale of land and improvements be deposited in the trust account.

Amendment of the Aboriginal land leasing regime under the *Aboriginal Land Act 1991* (Qld)

CYROs consider that home ownership and economic development in Aboriginal towns in Cape York will be achieved to the fullest extent if the fullest range of options for creating interests in land is available, including the sale of freehold land and the grant of leases on Aboriginal land. Therefore both the freehold regime and the leasehold regime must be fully functional and able to provide development proponents with flexible options for interests in land.

The leasing regime under the ALA has improved in recent years as a result of statutory amendments. However leasing outcomes for home ownership and economic development have been disappointing, due in part to systematic land administration, capital and capacity inadequacies continuing to obstruct proponents from being granted a lease. The most significant leasing outcome has been the grant of social housing leases. The massive land use planning, land administration improvements, addressing of native title and other actions that have been required to enable the grant of these leases demonstrates the need for a systematic approach to the resolution of these issues, as outlined above, for other forms of development in Aboriginal towns.

Despite statutory amendments, potential home owners and economic developers have also been discouraged from seeking leases because the leasing provisions of the ALA still do not establish a regime that is sufficiently attractive. Further reform of the ALA leasing regime is required. CYROs note that a powerpoint presentation used recently by DNRM for consultation during the Bill's preparation, titled *"Supporting economic development of land in Aboriginal and Torres Strait Islander communities through land tenure reform"*, included two initiatives to deliver the government's commitment to economic development.

The two initiatives are 1. The Freehold Option and 2. Leasing Simplification. The leasing simplification initiative described in the presentation included some positive proposals, although CYROs note that none of the proposed amendments to simplify leasing are included in the Bill.

The actions described in the Leasing Simplification initiative should proceed and the Bill should be amended to provide for the proposed changes, including to remove:

- restrictions on whom leases may be granted to;
- restrictions on the terms of leases;
- Ministerial approval for the trustee to grant leases;
- additional consultation under the ALA; and
- the requirement to do a business plan for certain leases.

However, the legislative changes proposed in the Leasing Simplification initiative were limited to only apply to non-home ownership leases. It is critical that similar legislative changes are also made for home ownership (ie private residential) leases. The most important of these changes is to remove the restriction that only an Aboriginal person or their spouse is eligible to be granted a private residential lease. This restriction on eligibility for a home ownership lease limits who may enter the home ownership market, and this limit on demand significantly dampens the market and causes the Aboriginal people who are eligible for a home ownership lease to also be reluctant to enter the market because of concerns about demand in the secondary market and their potential for capital growth and resale.

Some communities may still desire to limit who is eligible to hold a home ownership lease. However these limits should be imposed by trustee policy and appropriate lease condition according to community sentiment rather than by legislative requirement. Setting eligibility criteria by trustee policy also allows flexibility for different eligibility criteria to apply within a town, and for changes in policy over time to reflect community sentiment. For example, a 2014 trustee policy could be that 25% of house lots in town are available for any person to lease, but only local Aboriginal people are eligible to lease the other 75%. By 2020 community sentiment may support a more open home ownership market so the trustee policy may change to provide that 50% of house lots could be leased by any person.

ALA restrictions on home ownership lease eligibility also create pressure on trustees to move towards freehold tenure for home ownership and the unrestricted sale eligibility this tenure provides. Whilst CYROs support the option to convert housing land to freehold tenure, the driver for this change should not be to circumvent the restrictions of the ALA home ownership eligibility criteria.

CYROs therefore urge that the Bill be amended to also include amendments to the ALA to simplify and strengthen leasing options for home ownership and economic development, as described above.

Questions posed in Explanatory material for the Consultation draft

1. *Should the State, Commonwealth or local government also be included in the class of qualified persons under the Bill who can be allocated freehold by the trustee?*

Where the trustee, in consultation with the community, seeks to simplify the tenure arrangements in their town by moving to freehold, they are still restricted by the Bill. The Bill limits those who may apply for or receive freehold to "qualified persons". For example the local government could not be allocated freehold over their infrastructure and this area remains under the existing trustee tenure arrangements. It could be argued this delivers freehold in a piecemeal way that in fact further adds to, and does not reduce, the existing complex tenure arrangements in Indigenous communities which remain out of step with that enjoyed in non-Indigenous communities.

CYROs support that government entities, whether local, State or Commonwealth, should have secure tenure over the land they deliver services from. Secure tenure could take the form of a long term, registered lease of Aboriginal freehold, or title to freehold land. However the area held by a government entity must be limited to only that area required for the delivery of service.

The Bill should not provide that local governments, as the current trustees of most DOGIT and Aboriginal reserve land on Cape York, can allocate themselves freehold land interests over this land.

As described above, ALA land transfer processes should precede processes for tenure conversion to freehold. If this approach was adopted the transfer process would ensure that local governments are provided with secure long term tenure over the land they use for service delivery, which could include the grant of freehold from the Land Trust / PBC. This approach would mitigate the risk of Councils as trustees inappropriately, and with conflicts of interest, allocating freehold land to themselves as local governments. The land of a DOGIT is trust property.

2. *Does the Bill offer sufficient flexibility to a trustee wishing to introduce the option of ordinary freehold for their community? Alternately, should further restrictions be included in the Bill?*

For example, do the processes under the Bill for the trustee in developing or adopting the freehold schedule and for the trustee to make the freehold policy provide sufficient confidence that decisions about granting freehold are appropriate for that community or alternatively do they impose unnecessary processes and transaction costs?

The Bill offers too much flexibility and discretion to the trustee for freehold processes and decision making by providing that the trustee determines the appropriate consultation process and can decide freehold applications without any recourse for community stakeholders to appeal decisions.

As described above, the Bill should provide more prescriptive requirements for the consultation process that the trustee must implement in getting community and traditional owner feedback on the preparation of the freehold instrument.

3. *Should a trustee be able to allocate land to itself?*

For example where a local government or a registered native title body corporate is the trustee (the land having been transferred under the ALA or TSILA) should there be a restriction in the Bill so that as trustee it is no longer a "qualified person" and therefore cannot allocate freehold to itself?

If the land has not been transferred under the ALA the trustee should not be able to allocate land to itself. However if the land has been transferred to a PBC or land trust then the option to convert Aboriginal freehold tenure to freehold held by the PBC or land trust should be available.

4. *Should the Bill require the trustee undertake a different or additional processes where the land to be included in the freehold schedule is outside of the town area?*

The Bill, through the freehold schedule sets out the land that may be allocated – called available land. The trustee in the freehold schedule can include all or any parts of the community trust land, for example, just the town area, part of the town area; the entire trust area, or parts of the trust area.

As the town area is already being used for town purposes and the subject of development it may be appropriate that there are simpler processes for the town area than for areas outside of the town.

Land outside of town areas, except for limited areas identified in the planning scheme as suitable for future urban development, should not be available for freehold conversion processes. Interests in land outside town areas should be created through leases granted under the ALA.