



Exercising Your First Right of Refusal: Guidelines for Eligible Impacted Properties

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OVERVIEW

These Guidelines have been developed to assist First Right Holders exercise their first right of refusal to repurchase the Eligible Impacted Block they sold to the Territory under the Voluntary Eligible Impacted Property Buyback Program (EIP Buyback Program), including the process to be followed for retaining Improvements on Vacant Blocks where possible.

The ACT Government's Loose Fill Asbestos Insulation Eradication Scheme (the Scheme) provides an enduring solution to the ongoing health, social, practical and financial consequences of the continuing contamination of more than 1,000 Canberra houses with loose fill asbestos insulation.

Under the Scheme the ACT Government offered to acquire all Affected Blocks in the ACT on 28 October 2014 at their full market value, ignoring the presence of asbestos contamination and minor presentation and maintenance issues. The Government has also offered to purchase a small number of properties deemed Eligible Impacted, to facilitate the safe and efficient demolition of associated Affected Properties.

The Scheme includes the opportunity for First Right Holders to purchase back the block they sold to the Territory under the EIP Buyback Program, when it becomes available, at market value without having to compete with other potential purchasers in a public auction process.

Vacant Blocks will be offered for sale in the following order:

- to First Right Holders, then
- to ACT Government agencies (for example Housing ACT or the Suburban Land Agency) for their purposes, then
- by public auction, tender or other method of disposal determined by the Territory.

These Guidelines should be read in conjunction with the following documents which set out the overarching policy framework for the Scheme and EIP Buyback Program and are available on the Asbestos Response Taskforce's website at www.asbestostaskforce.act.gov.au/infosheets:

- *The ACT Government's Preferred Way Forward on Loose Fill Asbestos: Overview;*
- *The ACT Government's Preferred Way Forward on Loose Fill Asbestos: Supporting Detail;*
- *Loose Fill Asbestos Insulation Eradication Scheme Policy: Voluntary Eligible Impacted Property Buyback Program;*
- *Loose Fill Asbestos Insulation Eradication Scheme Guidelines: Implementation of the Voluntary Eligible Impacted Property Buyback Program;* and
- *Policy: Voluntary Unit Buyback Program.*

TERMS USED IN THIS GUIDE

Affected Block: a block listed on the Register.

Availability Date: the indicative date on which a Vacant Block will be available.

Certificate of Occupancy: a certificate of occupancy issued under the *Building Act 2004 (ACT)*.

Contract for Sale: a contract for sale for a Crown Lease in respect of an Eligible Impacted Block being sold to the Territory or a Vacant Block being sold by the Territory.

EIP Buyback Policy: the document titled *Loose Fill Asbestos Insulation Eradication Scheme Policy: Voluntary Eligible Impacted Property Buyback Program*.

EIP Buyback Program: the voluntary Eligible Impacted Property Buyback Program component of the ACT Government's Loose Fill Asbestos Insulation Eradication Scheme.

Eligible Impacted Block: a block that the Territory has offered to purchase under the EIP Buyback Program in order to facilitate the safe and efficient demolition of an associated Affected Block.

Eligible Impacted Homeowner: has the same meaning as set out in the EIP Buyback Policy.

Eligible Impacted Property*: has the same meaning as set out in the EIP Buyback Policy.

First Right Holder: an Eligible Impacted Homeowner who meets the eligibility criteria to hold and exercise a First Right of Refusal in accordance with these Guidelines.

First Right of Refusal: a right granted to Eligible Impacted Homeowners who advised their solicitor at the time of sale of their block to the Territory, that they wished to retain the right to repurchase their former Eligible Impacted Block under the Scheme.

Improvements: a structure, garden, fixture or other enhancement on an Eligible Impacted Block (for example free standing garage, sheds, retaining walls, paving and paths, plants, swimming pools, tennis courts).

Preserved Improvements: an Improvement on an Eligible Impacted Block which the Territory and the First Right Holder have agreed will be retained, if possible.

Register: the Affected Residential Premises Register established under the *Dangerous Substances Act 2004 (ACT)*.

Vacant Block: an Eligible Impacted Block that has been sold to the Territory, undergone demolition works and is ready for sale.

Scheme: the ACT Government's Loose Fill Asbestos Insulation Eradication Scheme.

Taskforce: the ACT Government Asbestos Response Taskforce (being part of the Territory).

Territory: the Australian Capital Territory being the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988 (Cwlth)*.

Units Plan: a units plan established under the *Unit Titles Act 2001*.

** Eligible Impacted Properties are not Affected Properties. They will not be added to the Register and they will not be subject to current requirements under the Dangerous Substances Act 2004 such as mandatory danger stickers in meter boxes or the requirement to maintain asbestos management plans that apply to Affected Properties.*

FIRST RIGHT OF REFUSAL

Eligibility

The First Right of Refusal component of the Scheme was developed to provide legal certainty to homeowners wanting the opportunity to return to their block and community.

Eligible Impacted Homeowners who wished to retain the First Right of Refusal were required to advise their solicitor at the time of sale of their Eligible Impacted Property to the Territory. Under the Scheme, First Right Holders will be offered the first right to repurchase their former block when it becomes a Vacant Block, without having to compete in a public sales process with other interested parties.

As set out in the *Policy: Voluntary Eligible Impacted Property Buyback Program*, First Right of Refusal is not available in relation to an eligible impacted unit in a Units Plan.

Eligible Impacted Homeowners become First Right Holders if they meet **all** the following eligibility criteria – i.e. they:

- entered the EIP Buyback Program; and
- are eligible to receive a First Right of Refusal under the EIP Buyback Program; and
- advised the Taskforce directly, or through their Solicitor, at the time of entering into a Contract for Sale with the Territory that they wished to retain a First Right of Refusal to repurchase their block following demolition; and
- completed the sale of their Eligible Impacted Block to the Territory in accordance with the Contract for Sale.

Eligible Impacted Homeowners who have an extended settlement specified in the Contract for Sale will be required to complete the sale of the Eligible Impacted Block before entering into a Contract for Sale to purchase the Vacant Block.

First Right of Refusal for owner occupation

Owners seeking to repurchase their block through the First Right of Refusal process, must adhere to the following:

- upon becoming the registered Crown Lessee of the Vacant Block, construct at least one residential dwelling on it in accordance with the purpose clause in the Crown Lease;
- occupy at least one residential dwelling on the Vacant Block as their primary residence for at least six months following issue of Certificate of Occupancy or Units Plan (as applicable) for the Vacant Block; and
- not sell or otherwise dispose of their interest in the occupied residential dwelling until they have occupied it as their primary residence for at least six months following the issue of the Certificate of Occupancy or the registration of the Units Plan (as applicable).

Multiple-unit developments

Where the lease permits and the First Right Holder seeks to build more than one dwelling on the Vacant Block, the owner occupation obligations under the Scheme will apply to only one dwelling. This means the First Right Holder must live in, and may not sell, one of the dwellings until they have occupied it as their primary residence for at least six months from the registration of the Units Plan.

Restrictions on transfer

The Crown Lease will have a clause that prevents the re-sale of the Vacant Block for a period of six months from the issue of the Certificate of Occupancy for the new dwelling(s).

First Right of Refusal – a personal right

The First Right of Refusal is personal to the First Right Holder. Subject to limited exceptions set out below it cannot be sold or otherwise passed to any other person or company. It cannot be converted to a cash value.

In the event of the death of a First Right Holder before the Vacant Block is available for reoccupation, the Taskforce will be guided by the executor of the estate and may, at its discretion, permit the exercise of the First Right of Refusal by a nominated beneficiary in the First Right Holder's Will subject to the same conditions in relation to owner occupation. The intention behind this approach is to facilitate family members maintaining a connection to the neighbourhood of their former family home.

It could be the case, however, that the terms of a particular Will may frustrate the ability of the First Right of Refusal to be passed in this way.

As is the case in relation to other elements of the Scheme, the Taskforce will comply with orders of Courts that affect a First Right of Refusal.

Where a First Right Holder decides not to exercise their First Right of Refusal

At any time before exchange of the Contract for Sale of the Vacant Block, a First Right Holder may decide not to exercise their First Right of Refusal. The Taskforce should be informed of this decision in writing. For this purpose, each First Right Holder must complete and sign the Waiver of First Right of Refusal form provided by the Taskforce and available on its website.

Once this form is provided to the Taskforce, the First Right of Refusal cannot be reinstated.

There is nothing to prevent a former homeowner from bidding at any public auction for the Crown Lease on the Vacant Block in circumstances where they have declined to exercise their First Right of Refusal. In such circumstances, the restrictions in relation to owner occupation and time of residence would not apply.

Where a homeowner decides not to exercise their First Right of Refusal, the Vacant Block will be offered to Territory agencies for purchase at the same market value offered to the First Right Holder. If no agency wishes to purchase it, the Vacant Block will then be sold on the open market through a competitive process such as auction with a reserve price that is no lower than the price originally offered to a former First Right Holder.

PROCESS

The process for exercising a First Right of Refusal takes account of the fact that Eligible Impacted Blocks were sold to the Territory by Eligible Impacted Homeowners in exchange for their independently assessed market value ignoring the presence of an associated Affected Property contaminated with loose fill asbestos insulation.

The sale of Vacant Blocks to First Right Holders on the open market constitutes a second and separate market value transaction.

Step 1: Eligibility requirements

The First Right Holder must continue to meet the eligibility requirements set out in these Guidelines if they are to exercise those rights.

Step 2: Notification of demolition timing and block availability

Information regarding indicative timing of the demolition of the Eligible Impacted Property and the subsequent Availability Date will be provided to the First Right Holder by the Taskforce.

Demolition will be undertaken – subject to an overarching commitment to worker and community safety – with a view to:

- maximising efficiency for the Territory, and
- minimising community disruption.

The demolition schedule determined by the Taskforce in light of those key criteria takes account of a range of factors including:

- First Right of Refusal status
- title considerations
- clustering of affected properties
- industry capacity, and
- location specific issues such as bushfire risk, site access and transportation considerations.

Eligible Impacted Homeowners will initially be given a six month window during which the demolition works for the Eligible Impacted Property are expected to be completed. They will subsequently be informed if the timing moves outside this window. As the timeline gets closer the Taskforce will make contact with them in relation to improvement retention and more finely detailed timing estimates.

Step 3: Assessment of Eligible Impacted Blocks

In preparing to hand over Eligible Impacted Blocks for demolition works, the Taskforce will consult with contractors and asbestos assessors to settle the scope of demolition works for a particular block. In undertaking this assessment the Taskforce will identify the Improvements that **must** be demolished or removed in addition to the primary dwelling(s).

This decision will be based on:

- potential contamination – any Improvements that are, or are likely to be, affected by loose fill asbestos contamination will be removed;
- demolition logistics – it may be necessary to remove some Improvements that cannot be protected or retained during the demolition works;
- site integrity – to maintain site integrity it may be necessary to retain some Improvements (for example retaining walls, paths and vegetation) to prevent soil erosion or to ensure adequate drainage;
- assessment of the highest and best use of the Vacant Block – consideration will be given to retaining Improvements that add value to Vacant Blocks on the open market (for example driveways, gates, unaffected structures and landscaping) and removing Improvements that detract from the value on the open market (for example some swimming pools, dilapidated separate garages);
- legality – any unapproved building structures that should have approval will be removed. Unapproved retaining walls may be retained if the structural integrity of the Vacant Block or an adjoining property would be compromised by their removal (in which case the nature and status of those retained structures would be an explicit term in the Contract for Sale for the Vacant Block).

Step 4: Valuation of blocks and determination of prices

As part of demolition scheduling, the Taskforce will determine the Availability Date for a Vacant Block.

Six months before demolition, the Territory will commence the process to determine the sale price for the Vacant Block. The sale price will be set as at the date of the valuation. The sale price will be determined by the Suburban Land Agency (SLA) taking account of independent market valuations in keeping with its normal land sale practices.

The sale price offered to First Right Holders for Vacant Blocks will not be negotiable.

Step 5: Offer to purchase Vacant Block

Once the SLA has set the sale price, the First Right Holder will receive a letter from the Taskforce offering to sell them the Vacant Block.

The First Right Holder will then be required to notify the Taskforce within 30 working days whether they would like to purchase the Vacant Block.

Step 6: Identification of Preserved Improvements

Following the Taskforce's completion of the demolition scoping assessment and determination of the sale price, the Taskforce will work with the First Right Holder to identify possible Preserved Improvements. Preserved Improvements are those Improvements that the Taskforce would remove if the Vacant Block was being prepared for public sale but which the First Right Holder wishes to retain.

It is important to note that discussions about Preserved Improvements will not canvass retention of Improvements that the Taskforce has determined must be removed due to contamination, approval status or logistical factors.

Agreement to retention of one or more Preserved Improvements will not change the sale price. This recognises the Territory's stated intention that Vacant Blocks be sold at market value reflecting their highest and best use. This means, in effect, that Preserved Improvements are provided to the First Right Holder at no cost (notwithstanding they were also factored into the amount paid to Eligible Impacted Homeowners under the EIP Buyback Program).

The Taskforce will not agree to requests from First Right Holders to conduct works beyond those it would undertake if the property was being prepared for public auction (for example earthworks such as site cutting or filling for a future house; removing trees, or removing an Improvement that the First Right Holder wants removed but which would be retained if the Vacant Block were being prepared for sale on the market).

If agreement cannot be reached on the identification of Preserved Improvements within 60 working days of the Taskforce providing a letter to the First Right Holder outlining the possible Preserved Improvements, the Taskforce will issue a Contract for Sale based on its scope of demolition works.

Step 7: Issue of Contract for Sale

Offer to sell

The terms of the Territory's offer to sell the Vacant Block will be set out in a Contract for Sale which will be provided to the First Right Holder or their nominated solicitor. The Contract for Sale will include standard terms addressing:

- Price;
- warranties and indemnities;
- deposit arrangements (the Territory will accept a 5% part deposit on exchange, with 10% of the purchase price at risk of default by the First Right Holder);
- indicative Availability Date (indicated through a date range for expected settlement); and
- a date for completion provision (i.e. a mechanism to set the final settlement date).

Forfeit or loss of First Right of Refusal

The signed election form, provided with the First Right of Refusal offer, must be returned to the Taskforce and be electronically time stamped or post marked on or before the expiry date advised in the formal offer letter. If an election form is not received dated on or before the expiry date, the Taskforce will deem that the First Right Holder has forfeited their First Right of Refusal.

The Taskforce will support the First Right Holder to meet the expiry deadline by making contact via post, email and phone. Should the First Right of Refusal be forfeited, the homeowner will be advised in writing.

Where a First Right Holder has accepted the First Right of Refusal Offer, but does not exchange contracts within 60 working days of receiving the Contract for Sale of the Vacant Block the First Right of Refusal will lapse.

Where an Eligible Impacted Homeowner residing in an Eligible Impacted Property under a delayed settlement decides not to exercise their First Right of Refusal (or where the First Right of Refusal is forfeited or lapses as set out above) they must at that stage either:

- proceed to sell the Eligible Impacted Property in accordance with the exchanged Contract for Sale (which may as late as June 2020); or
- rescind the Contract for Sale of the Eligible Impacted Property and leave the Scheme entirely.

In the event the Contract for Sale of the Vacant Block is rescinded or terminated for any reason, the First Right Holder will forfeit the First Right of Refusal.

Notice to complete

Once demolition has been completed and the Crown Lease title ready to be transferred, the Contract for Sale of the Vacant Block can be completed. Settlement on that contract will generally take place within 30 working days of notification from the Territory of that fact.

Notification of sales prices and issue of draft Contracts for Sale

The Taskforce will not provide indicative sale prices or issue draft contracts for sale for Vacant Blocks where:

- a Contract for Sale for the Eligible Impacted Block has not been exchanged, or
- the Availability Date is more than six months into the future.

ADDITIONAL INFORMATION

Maintaining contact details with the Taskforce

It is essential that First Right Holders provide and maintain current contact details with the Taskforce in order to ensure they can be notified of the proposed demolition and sales process scheduling and have the opportunity to exercise their First Right of Refusal. This includes temporary changes of address such as long holidays.

If three attempts to make contact using the last provided contact details are unsuccessful, the Taskforce may deem the First Right Holder to have forfeited their First Right of Refusal.

Warranties and liability for Improvements

The Territory will instruct demolition contractors to take due care and exercise due diligence with all works, but there is no guarantee that Improvements will not be accidentally damaged during the demolition process.

For Improvements identified by the Territory to be retained, as well as Preserved Improvements, the Contract for Sale of the Vacant Block will require the First Right Holder to indemnify the Territory against any liability for maintenance or damage at any time (including by the action of its contractors).

Damage

Where an Improvement (retained by the Territory or as a Preserved Improvement) is damaged or destroyed, the Taskforce will advise the First Right Holder of the extent of the damage. The First Right Holder will then be required to either:

- a. accept the Vacant Block in its current state; or
- b. rescind the Contract for Sale and recover any deposit paid.

In keeping with procedures outlined above, there will be no reduction in the sale price where a Preserved Improvement has been damaged or destroyed.

Maintenance

The Territory will not maintain Improvements on Eligible Impacted Blocks sold to the Territory, and will generally disconnect utility supplies and empty swimming pools and other water features. The Contract for Sale will set out that the First Right Holder will have no claim against the Territory in the event that Improvements or Preserved Improvements are not maintained or are otherwise defective. Any Improvements on the Vacant Block will be transferred on an “as is, where is” basis, and buyers will have no recourse against the Territory in relation to the condition of any Improvements.

Legal advice

First Right Holders are encouraged to engage a conveyancing solicitor to facilitate this transaction.

FURTHER INFORMATION

Call Access Canberra on 13 22 81 and ask to speak with the Asbestos Response Taskforce, or email asbestostaskforce@act.gov.au.

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