



Exercising Your First Right of Refusal: Guidelines for Affected Properties

LOOSE FILL ASBESTOS INSULATION ERADICATION SCHEME

July 2022

OVERVIEW

These Guidelines have been developed to assist First Right Holders exercise their First Right of Refusal to repurchase the Affected Block surrendered to the Territory under the Voluntary Buyback Program (Buyback Program), including the process to be followed for retaining Improvements on Remediated 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 historical contamination of more than 1,000 Canberra houses with loose fill asbestos insulation.

Under the Scheme's Buyback Program, the ACT Government offers to acquire all Affected Blocks in the ACT at full market value as at the date added to the Affected Residential Premises Register (Register), ignoring the presence of asbestos contamination and minor presentation and maintenance issues. All Affected Blocks surrendered to the Territory under the Scheme are subject to demolition and remediation works.

The Scheme includes the opportunity for First Right Holders to purchase the Remediated Block they surrendered to the Territory under the Buyback Program when it becomes available: the Buyback Guide indicates the Scheme provides for "a first right of refusal to purchase the affected block **(at full market value, to be determined at the time of purchase)** after it is remediated".

Remediated Blocks are offered for sale in the following order:

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

After demolition and remediation works are complete and blocks have been removed from the Register, Remediated Blocks will be issued with a new Crown Lease to enable them to be sold. The new Crown Lease will permit uses consistent with the relevant zoning under the Territory Plan.

Special provisions under the Territory Plan, such as Variation 343, allow dual occupancy and unit titling rights for some Remediated Blocks surrendered as part of the Buyback Program where it may not normally be allowed. Find out more about block eligibility for dual occupancy and unit titling at www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/before-you-start/mr-fluffy-blocks or contact Environment, Planning and Sustainable Development Directorate (EPSDD) Planning Enquiries by email at planningenquiries@act.gov.au or by calling 02 6205 2888.

These Guidelines should be read in conjunction with the following documents which set out the overarching policy framework for the Scheme and Buyback Program, and are available on the Loose Fill Asbestos Coordination Team (Coordination Team) website at www.loosefillasbestos.act.gov.au:

- *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;*
- *Voluntary Buyback Program Guidelines; and*
- *Voluntary Unit Buyback Program Guidelines.*

FIRST RIGHT OF REFUSAL

Eligibility

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

Eligible Homeowners who wish to retain the First Right of Refusal are required to indicate this in their Deed of Surrender. Under the Scheme, First Right Holders will be offered the first right to repurchase their former block when it becomes a Remediated Block, without having to compete in a public auction with other interested parties.

As set out in the *Voluntary Unit Buyback Program Guidelines*, **First Right of Refusal is not available in relation to an affected unit within a Units Plan.**

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

- entered the Buyback Program;
- are eligible to receive a First Right of Refusal under the Buyback Program;
- elected to receive a First Right of Refusal in their Deed of Surrender; and
- surrendered the Crown Lease for their Affected Block in accordance with the Deed of Surrender.

Eligible Homeowners will be required to surrender the Crown Lease for the Affected Block, before entering a Contract for Sale to repurchase the Remediated Block.

First Right of Refusal for Owner Occupation

At the time of entering a Contract for Sale for the Remediated Block, the First Right Holder will be required to sign a statutory declaration confirming they will:

- upon becoming the registered Crown Lessee of the Remediated 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 Remediated Block as their primary residence for at least six months following issue of Certificate of Occupancy or Units Plan (as applicable) for the Remediated 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 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 Remediated Block (e.g. a unit-titled dual occupancy) 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 Remediated 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 Remediated Block is available for reoccupation, the Coordination Team 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 Coordination Team 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 Remediated Block, a First Right Holder may decide not to exercise their First Right of Refusal. The Coordination Team 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 Coordination Team and available on its website.

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

There is nothing to prevent a former homeowner from bidding at any public auction for the new Crown Lease on the Remediated 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 Remediated 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 Remediated 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 Affected Blocks were surrendered to the Territory by Eligible Homeowners in exchange for their independently assessed market value ignoring the presence of asbestos contamination and minor presentation or maintenance issues.

The sale of Remediated Blocks to First Right Holders or 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 Indicative Demolition Schedule and Block Availability

Information regarding indicative timing of the demolition of the Affected Property and the subsequent Availability Date will be provided to the First Right Holder by the Coordination Team.

The Coordination Team will contact Eligible Homeowners once properties are scheduled for demolition to provide more detailed timing information.

Step 3: Assessment of Affected Blocks and Improvements

In preparing to hand over Affected Blocks for demolition works, the Coordination Team will consult with contractors and asbestos assessors to settle the scope of demolition works for a particular block. In undertaking this assessment, the Coordination Team will identify the Improvements to be demolished or removed in addition to the contaminated dwelling(s), and the Improvements to be retained.

This decision will be based on:

- 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 (e.g. retaining walls, paths and vegetation) to prevent soil erosion or to ensure adequate drainage);
- assessment of the highest and best use of the Remediated Block – consideration will be given to retaining Improvements that add value to Remediated Blocks on the open market (e.g. driveways, gates, unaffected structures and landscaping) and removing Improvements that detract from the value on the open market (e.g. 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 Remediated 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 Remediated Block).

Step 4: Valuation of blocks and determination of price

As part of demolition scheduling, the Coordination Team will determine the Availability Date for a Remediated Block.

Following surrender, the Territory will commence the process to determine the sale price for the Remediated Block. The sale price will be set as at the date of the valuation. This is consistent with the position outlined in the Buyback Guide that the Scheme provides for “a first right of refusal to purchase the affected block (**at full market value, to be determined at the time of purchase**) after it is remediated.”

The sale price will be determined by the Suburban Land Agency (SLA). In keeping with normal land sales practices, the SLA seeks two independent valuations to inform the market value of Remediated Blocks. A formula is in place to inform the block’s market value in the case of variations:

- If the difference between the two valuations is 10% or less – the selling price is at least the higher valuation;
- If the difference is between 10% and 15% – the selling price is at least 10% above the lowest valuation; and
- If the difference is greater than 15%, a third valuation will be ordered and the selling price will be at least the average of the three valuations and not less than 10% above the lowest valuation.

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

Step 5: Offer to purchase Remediated Block

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

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

It remains possible for owners of Affected Blocks to reside in their houses, subject to the completion and continuation of mandatory Asbestos Management Plans, until close to the demolition occurring (and therefore be in possession of the sale price for the Remediated Block before they settle on the Deed of Surrender).

Step 6 – Issue of Contract for Sale

Offer to Sell

The terms of the Territory's offer to sell the Remediated 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);
- a date for completion provision (i.e. a mechanism to set the final settlement date); and
- a schedule of Preserved Improvements (if applicable).

Exercise of First Right of Refusal – Crown Lease not surrendered

If at the time the Coordination Team issues the Contract for Sale, the Crown Lease for the Affected Block has not been surrendered it will be a precondition of entering into the Contract for Sale that the First Right Holder simultaneously surrenders the Crown Lease on exchange of the Contract for Sale in accordance with the Deed of Surrender.

This will require the First Right Holder and all other occupants of the Affected Block to vacate the affected house before it is possible to enter into the Contract for Sale.

Loss of First Right of Refusal

If the First Right Holder does not exchange contracts within 30 working days of receiving the Contract for Sale of the Remediated Block the First Right of Refusal will lapse.

Where an Eligible Homeowner participating in the Buyback Program decides not to exercise their First Right of Refusal (or where the First Right of Refusal lapses as set out above) they must still proceed to surrender their Crown Lease in accordance with the Deed of Surrender.

In the event the Contract for Sale for the Remediated 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 Affected Block has been removed from the Register (and becomes a Remediated Block), a new Crown Lease will be issued enabling the Contract for Sale to be completed. Settlement on that contract will generally take place within 30 working days of notification from the Territory of that fact.

FURTHER INFORMATION

Maintaining contact details with the Coordination Team

It is essential that First Right Holders provide and maintain current contact details with the Coordination Team 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 Coordination Team may deem the First Right Holder to have forfeited their First Right of Refusal.

Land Rent leases

The ACT Government's Land Rent Scheme permits eligible First Right Holders to take up a Land Rent lease on a Remediated Block in accordance with land rent eligibility criteria.

This allows First Right Holders to rent the land to build a home, with the option to purchase the land at a later date based on the market value of the block at the time the land rent lease is converted to a Crown Lease.

The valuation of the Remediated Block that will be a Land Rent lease is no different from the valuation of a block for a standard Crown Lease.

For more information, visit:

www.revenue.act.gov.au/home-buyer-assistance/land-rent-scheme

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 Remediated 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 Coordination Team 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 Remediated 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 an Improvement has been damaged or destroyed.

Maintenance

The Territory will not maintain Improvements on surrendered blocks 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 if Improvements or Preserved Improvements are not maintained or are otherwise defective. Any Improvements on the Remediated 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.

Rebuilding

The Coordination Team will be the land custodian until the new title is registered at the Land Titles Office, which generally takes two weeks from settlement.

All residential buildings are subject to the approvals processes overseen by EPSDD.

The Coordination Team will be able to provide written authority for someone exercising their First Right of Refusal, to lodge a Development Application on a block still in its possession. Noting some development can be exempt from requiring development approval where certain requirements are met.

What you plan to build will determine what process you need to follow and whether you will need to lodge a Development Application in addition to getting your Building Approval. A builder and building certifier will be able to assist you with these processes.

More information can be found on the EPSDD website :

www.planning.act.gov.au/build-buy-renovate, by emailing EPSDD Planning Enquiries at planningenquiries@act.gov.au or calling 02 6205 2888.

TERMS USED IN THIS GUIDE

Affected Block: a block listed on the Register.

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

Buyback Guide: the document titled Voluntary Buyback Program Guidelines.

Buyback Program: the Voluntary Buyback Program component of the ACT Government's Loose Fill Asbestos Insulation Eradication Scheme.

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 a Remediated Block.

Deed of Surrender: Deed between an Eligible Homeowner and the Territory providing for the surrender of the Crown Lease in respect of an Affected Block under the Buyback Program.

Eligible Homeowner: has the same meaning as set out in the Buyback Guide.

First Right Holder: an Eligible 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 Homeowners who elected in their Deed of Surrender to be offered the opportunity to repurchase their former Affected Block under the Scheme.

Improvements: a structure, garden, fixture or other enhancement on an Affected Block (e.g. free-standing garage, sheds, retaining walls, paving and paths, plants, swimming pools, tennis courts).

Preserved Improvements: an Improvement on an Affected 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).

Remediated Block: an Affected Block which has been surrendered, has undergone demolition and remediation works and has been removed from the Register.

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

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*.

ENQUIRIES

Call Access Canberra on 13 22 81 and ask to speak with the Loose Fill Asbestos Coordination Team, or email loosefillasbestos@act.gov.au

ACCESSIBILITY

The ACT Government is committed to making its information, services, events and venues as accessible as possible. If you have difficulty reading a standard printed publication and would like to receive this publication in an alternative format, such as large print, please phone 13 22 81 or email loosefillasbestos@act.gov.au



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