



Exercising Your First Right of Refusal: Guidelines for Eligible Impacted 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 Eligible Impacted Block surrendered 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 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 their 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. 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 the Vacant Block they surrendered 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 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.

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 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 Eligible Impacted Property 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 Impacted Homeowners wanting the opportunity to return to their block and community.

Eligible Impacted Homeowners who wish to retain the First Right of Refusal are 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 *Voluntary Unit Buyback Program Guidelines*, **First Right of Refusal is not available in relation to an eligible impacted unit within 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;
- are eligible to receive a First Right of Refusal under the EIP Buyback Program;
- advised their Solicitor at the time of entering 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 a new Contract for Sale to repurchase the Vacant Block.

First Right of Refusal for Owner Occupation

Eligible Homeowners 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 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.

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 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 Vacant 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 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 Indicative Demolition Schedule 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 Coordination Team.

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

Step 3: Assessment of Eligible Impacted Blocks and Improvements

In preparing to hand over Eligible Impacted 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 that to be demolished or removed in addition to the primary 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 Vacant Block – consideration will be given to retaining Improvements that add value to Vacant 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 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 price

As part of demolition scheduling, the Coordination Team 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. This is consistent with the position outlined in the EIP Buyback Guide that the Scheme provides for “a first right of refusal to purchase the Eligible Impacted Property (**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 Vacant 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 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 Coordination Team offering to sell them the Vacant 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 Vacant Block.

Step 6 – 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);
- a date for completion provision (i.e. a mechanism to set the final settlement date); and
- a schedule of Preserved Improvements (if applicable).

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 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 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; 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 is 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.

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.

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 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 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 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 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.

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 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 Guide: the document titled Voluntary Eligible Impacted Property Buyback Program Guidelines.

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 Eligible Impacted Property 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 Eligible Impacted Property Buyback Guide.

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

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 (e.g. 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)*.

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*.

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

** 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 warning stickers in meter boxes or the requirement to maintain Asbestos Management Plans that apply to Affected Properties.*

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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