

ACT Property Group

Department of Territory and Municipal Services

Community and Other Tenancies

Application and Allocation Policy

18 June 2007

Reviewed and updated 14 March 2008

Part A Guiding Policy Principles

The purpose of this paper is to describe the policy regarding eligibility and application for and allocation of selected former surplus properties for community or commercial tenancing having regard to the following principles –

- consistency with strategic asset management planning;
- meeting community needs for access to affordable accommodation; and
- providing an opportunity, where appropriate, to align community and other tenancies with Government policy objectives.

Properties declared surplus by Government agencies are transferred (either tenanted or vacant) to ACT Property Group which evaluates their suitability for alternative Government use in accordance with strategic asset management principles as contained in the approved Surplus Properties Policy.

Properties not required for other Government use may be considered by ACT Property Group for sale, redevelopment or tenancing by community or other groups. Such properties consequently tenanted by community or other groups shall continue to be made available for those purposes until and unless needed by Government for re-use or the Government decides to sell, dispose or redevelop the properties

Application of this Policy

- This Policy Statement does not apply to the Resource Recovery Estates which ACT Property Group operates and which are the subject of separate operating policies.
- This Policy Statement also does not apply to other ACT Property Group properties (in whole or in part) that Government decides not to make available through the Community and Other Tenancies application and allocation process.
- This policy will apply to new tenancies (only) granted on and from the date of approval of this policy – and will not apply to existing tenancies but may be used by ACT Property Group as a policy guideline where it is not inconsistent with the previous policy.
- Appeals against this policy and decisions made pursuant to it rest in administrative rather than statutory processes.

Part B Policy Framework

Issue B.1 Eligibility Criteria

Government will make available its surplus properties for community or other tenancing based on the following definitions of organisations:

B.1.1 Community Group Defined

A ‘community group’ is defined as:

- i. an association incorporated under the *Associations Incorporation Act 1991 (ACT)*; or
- ii. An Australian Public Company Limited by Guarantee registered in the ACT under the *Corporations Act 2001 (Cwth)* with the main point of business located in the ACT;
- iii. Which has income tax exempt status as a non-profit entity as determined pursuant to the *Income Tax Assessment Act 1936(Cth)*, and
- iv. Entities fall into one of the exempt categories outlined in the list of Exempt entities issued by the ATO (ref ‘Income Tax Guide for Non-Profit Organisations’, Type of Exempt Entity - List, March 2007).
- v. Notwithstanding iv. where the Community Group is a Public Company Limited by Guarantee it must also be endorsed by the Australian Taxation Office as a Tax Concession Charity.

B.1.2 Other Groups Defined

Groups which do need satisfy the eligibility requirements for ‘community group’ as defined above shall be deemed to be ‘other groups’ for the purpose of this policy and comprise:

- (a) Associations incorporated under the *Associations Incorporation Act 1991* which do not meet the eligibility criteria for ‘Community Group’;
- (b) Companies registered in the ACT which do not meet the eligibility for ‘Community Group’; and
- (c) Other organisational structures such as Trusts.

Issue B.2 Application Arrangements

Government re-use of surplus properties shall at all times be paramount before community and other tenancing policy and processes are applied to ensure the most effective use of Government properties occurs in the broader public interest.

B.2.1 Preference of allocation to community groups before other groups

Available accommodation will be firstly offered to community groups – upon terms and conditions based on cost-recovery rental principles

After exhausting all registered community needs, accommodation can be offered to other groups registered – upon terms and conditions based on commercial rental principles

B.2.2 Application Register

ACT Property Group will maintain a single Application Register for all applications from community and other groups. Applications shall be registered in order of date and time of lodgement with ACT Property Group

Interested parties must obtain, complete and submit the prescribed application form along with any necessary supporting information. An application form and checklist, along with information guidelines including the definition of community group are available from ACT Property Group's website and office.

Before an application can be accepted for registration in the Applications Register and thus gain a date of priority based on the date of registration, an applicant must submit evidence that it has obtained any necessary approvals from ACT agencies, to conduct the particular activity proposed, the subject of application for use of surplus Government accommodation.

B.2.3 Application Priority

Upon registration, applications will be allocated a sequential priority number based on date and time of registration. Offers of accommodation will be made as properties or space becomes available (and is not required for Government re-use) on the following basis:

- 1 Community Groups approved for Accelerated Priority (see below)
- 2 Community Groups in order of date and time of registration
- 3 Other Groups approved for Accelerated Priority (see below)
- 4 Other Groups in order of date and time of registration

(NB: In some circumstances, such as larger or special-purpose facilities, it may be appropriate for ACT Property Group to invite public tenders for their use rather than make direct allocations from the Applications Register. If this occurs, the public tender process will be separately determined and advised.)

B.2.4 Application Accelerated Priority

ACT Property Group may approve, or in certain circumstances may recommend to the Minister, the granting of accelerated priority to registered applications and existing tenancies. There are two categories of justification for accelerated priority:

B.2.4(a) Defined Circumstances

Where an existing tenant is forced to move premises due to circumstances such as destruction or damage by fire, or as a requirement of Government to resume use of the existing accommodation, or at the request of ACT Property Group to move to another location for asset or tenancy management reasons, Accelerated Priority may be granted by ACT Property Group if/when accommodation is available.

B.2.4(b) Discretionary Circumstances

In circumstances where a community group or other group has an application registered in the Application Register and considers it has an urgent need aligned with priority Government social or business policies (eg health related or small business incubation), it may apply to ACT Property Group for accelerated priority.

ACT Property Group will consult with the Minister before granting Accelerated Priority. In certain circumstances, ACT Property Group may recommend to the Minister that Accelerated Priority should be granted. The Minister and ACT Property Group shall have regard to the approved Guidelines for Exercising Discretion to Grant Accelerated Priority.

ACT Property Group shall maintain an order of priority for applications granted Accelerated Priority based on each individual decision to grant Accelerated Priority.

B.2.5 Application Information required:

- Full name of association or company and key people plus contact details
- Evidence of incorporation or creation in the ACT plus purposes, objectives and activities eg. Constituent documents
- Evidence of Income Tax Exemption status and relevant clauses in Constituent documents if applying for consideration as ‘Community Group’
- Details of any previous ACT Government tenancies
- Details of any current ACT or Commonwealth Government assistance – financial or otherwise
- Intended use of the premises – full details including car parking needs
- Indicative commencement date and desired duration of tenancy
- Location options – applicants to be advised that the greater the flexibility of location the more likely to be assisted sooner rather than later
- Type of accommodation needed and area required (square metres)
- Any special building requirements
- Any other special requirements particular to the organisation eg collocation preferences or issues.

B.2.6 Maintaining Currency of Applications

Applications that have not been disallowed (i.e. not meeting eligibility requirements) or satisfied must be verified every twelve months to ensure that application details are still correct. ACT Property Group will send annual reminders to applicants seeking to maintain registration. If a satisfactory response is not received within 28 calendar days it will be assumed that accommodation is no longer required. ACT Property Group may exercise discretion and not remove an application if a satisfactory response (and corroborative evidence) is received after 28 calendar days. Removal of an application will not preclude a fresh application being lodged at any time but it will gain priority only from the date of registration of the fresh application.

In addition, it is the responsibility of applicants to ensure information in their applications is both correct and current at all times – with details of material changes being notified to ACT Property Group in writing as they occur.

If an applicant requests a substantial or significant change to a registered application such as requesting 1,000 square metres instead of 100 for an expanded or quite different operation, a fresh application will be needed which will obtain priority from the date of registration of that fresh application.

B.2.7 Existing Tenants requiring additional space in the same facility

Existing tenants must lodge a new application if they wish to obtain additional space in their current location once suitable space becomes vacant. Any such application will normally be treated the same as all other applications. The only exception would be situations in which physical circumstances may allow the tenant and ACT Property Group to adjust an existing tenancy as a result for example of either under utilised space or space being freed up by new fit out work.

B.2.8 Mutual Application Service Obligations

- Applicants will provide and maintain full and accurate information
- Applicants will accept a reasonable offer of accommodation
- ACT Property Group will comply with its *Quality of Service Charter*
- ACT Property Group will provide timely and courteous service
- ACT Property Group will endeavour to meet applicants' needs at the earliest possible opportunity having regard to the availability of properties or space.

Issue B.3 Allocation Arrangements

Surplus property may be withdrawn from availability for allocation to community or other groups at any time if required by Government for re-use

B.3.1 Offer of accommodation

When part or all of a former surplus property is vacant or a former surplus property is added to ACT Property Group's portfolio and has vacant space, the vacant space will be assessed for tenancy having regard to the application criteria above. The first eligible and entitled applicant will be offered accommodation in the vacant space.

ACT Property Group will have regard to the nature of existing tenancies and applicants' proposed activities when allocating space to ensure maximum compatibility among tenancies.

B.3.2 Refusal of offer of accommodation

Applicants who do not accept two offers of accommodation that meet their stated requirements will have any Accelerated Priority granted reviewed and possibly cancelled and their applications moved to the bottom of the Applications Register

B.3.3 Fundamental tenancy terms and conditions

- **Applicants will be offered tenancies on the following basis:**
 - Firstly, an 'administrative licence' issued by ACT Property Group which is non-registrable at the Lands Titles Office and does not allow sub-letting nor assignment;

unless
 - Secondly, a 'statutory licence' must be issued by ACTPLA pursuant to the *Land (Planning and Environment) Act 1991* – which involves payment of the gazetted fee. ACT Property Group will pay the fee for community groups and recover the fee through the rent. Other groups will pay the fee before the licence commences;

or
 - Thirdly, an applicant or tenant requests a sub-lease where a Crown Lease is held. Sub-leases will normally be unregistered unless registration is requested by an applicant or tenant and will in all cases prohibit assignment and only allow sub-letting with prior written approval by ACT Property Group.
- All tenancies will be offered on the basis of either gross floor area for whole premises or net lettable area for rooms and part-premises – and will be offered for a **maximum fixed period of five years** without an option for renewal (which will be clearly stated in sub-leases and licences).
- Neither warranty nor guarantee will be given that any **renewal** beyond the initial tenancy period will be possible
- It is **not possible to assign** licences. Sub-leases will contain a provision prohibiting assignment and any requests for approval to assign sub-leases will be refused.
- Licences and sub-leases will contain provisions **prohibiting the under-letting** (sub-letting) of tenancies in whole or part.

- Licences and sub-leases will contain a provision prohibiting tenants from **encumbering** or pledging their licences or sub-leases without written approval from ACT Property Group
- Tenancy purposes must comply with the **Territory Plan** at all times, however, in special circumstances ACT Property Group may allow, based on legal advice, an activity which is inconsistent with the Territory Plan but such tenancies shall be restricted to an absolute maximum period of three years with no option to renew either specified in the sub-lease or licence nor subsequently granted.
- **Penalty clauses** will be included in sub-leases and licences in respect of both compliance and breaches of tenancy obligations
- ACT Property Group shall only use a **standard sub-lease or licence** approved by the Government Solicitor's Office based on a registered Memorandum of Provisions prepared by that Office, except where a standalone administrative (and non-registrable) licence (also prepared by that Office) is deemed appropriate.
- Government may decide from time to time to allocate **names** to surplus properties which are made available for long-term periods for community and other tenancing eg Mt Rogers Community Centre.
- **Termination** of a tenancy for breach of sub-lease or licence provisions will not preclude the former tenant from lodging a fresh application for accommodation but that application will not be registered in the Applications register until such time as any outstanding matters in relation the former tenancy are satisfied, e.g. payment of outstanding rent.
- Community tenancies will be offered at **cost-recovery rental rates** as determined by ACT Property Group;
- Other groups will be offered at **commercial, market based, rental rates**;
- **No reduction in either community cost-recovery or commercial, market based rental rates** will be given – as both rates are specifically calculated to adequately maintain the Government's portfolio of surplus properties used by community or other groups. Any reduction would threaten ACT Property Group's ability to maintain the availability, condition and safety of the community property portfolio;
- Any community or other group which wishes to seek **financial support** for rental obligations would need to pursue another sources such as an appropriate ACT or Commonwealth agency or private sector benefactor which may provide funds for the activity in question or alternatively raise funds itself;
- **Cost recovery rental rates are reviewed annually** by ACT Property Group and applied from 1 July for those community tenants that have subleases or licences that provide for rent review;
- All new subleases and licences issued will contain a provision for **rent to be reviewed annually** and applied from 1 July each year. Where a

sublease or licence commences on a date other than 1 July, its first rental period will end on 30 June;

- Where it is necessary to increase rental rates to align with the cost-recovery model or commercial rates, ACT Property Group may exercise **discretion in hardship situations** and for example allow an incremental approach over the term of the tenancy
- Tenants will be encouraged to pay rent through **direct debit** arrangements wherever possible
- **Bad debts** owed to ACT Property Group by community or other groups in relation to unpaid rent or repairs and maintenance where a liability attributes to the tenant shall constitute a fundamental breach of the tenancy and give right to ACT Property Group to terminate the tenancy.

B3.3.1 Other ACT Government Agency Property Waitlist transfers

Where pursuant to the centralisation of Territory property management responsibilities into ACT Property Group, an agency transfers its community group and/or other group waiting lists for accommodation to ACT Property Group, ACT Property Group will merge that agency's waiting list(s) with its Application Register on a strict date-of-original registration basis (that is, date of registration with that other agency). If the applicant is registered on both an agency's waiting list and the Application Register, the earlier valid application will be placed or remain on the Application Register and the other application will be deleted.

Merger of an agency's waiting list(s) will not, however, affect cases within ACT Property Group's Application Register that have been granted Accelerated Priority. Any applicant registered on that other agency's waiting list must follow the processes outlined above in this policy document should the applicant wish to seek consideration of Accelerated Priority within ACT Property Group's Application Register.

B3.3.2 Mutual Allocation and Tenancy Service Obligations

- Applicants will notify ACT Property Group of changed circumstances including any change in legal status e.g. from an incorporated association to a company
- Tenants will comply with rental terms and other conditions
- Tenants must obtain written approval from ACT Property Group to carry out any alterations to premises
- Tenants must maintain public liability insurance at all times and should maintain contents insurance – ACT Property Group is responsible for building repair and maintenance only
- ACT Property Group will comply with its *Quality of Service Charter*
- ACT Property Group will provide timely and courteous service