



ASCERTAINING THE WISHES OF ABORIGINAL INHABITANTS

PROTOCOL

This draft Protocol document sets out the process the Housing Authority ('the Authority') will use in ascertaining the wishes of Aboriginal inhabitants for the purposes of entering into Housing Management Agreements in respect of Aboriginal land. Housing Management Agreements will be made under the *Housing Act 1980* (as amended by the *Aboriginal Housing Legislation Amendment Act 2010* ["the Amendment Act"], which comes into operation, on 1 July 2010).

Relevant Provisions

The Amendment Act inserts a number of new sections into the *Housing Act 1980*. The following new sections are particularly relevant to this draft Protocol:

- **Section 62B** allows the Authority to enter into Housing Management Agreements with certain Aboriginal entities for the purpose of controlling and managing, on behalf of the Aboriginal entities, the letting and leasing of housing on the Aboriginal land;
- **Section 62C** provides that the Authority cannot enter into a Housing Management Agreement or list in the Agreement the nominated lots or nominated houses which will be let or leased, unless the wishes of the Aboriginal inhabitants of the Aboriginal land have been ascertained;
- **Section 62F(b)** provides that a Housing Management Agreement must provide that the Authority takes into account the wishes of the Aboriginal inhabitants when the Authority decides to whom a nominated lot or nominated house can be rented; and
- **Section 62H** makes clear that the Authority does not own or take any interest in the Aboriginal land when a Housing Management Agreement is signed.

Negotiation Process

In order to determine the wishes of the Aboriginal inhabitants, the Authority will carefully negotiate with communities. The initial question is to ascertain who can speak for country. The Authority will seek to answer this question at all points in the negotiation.

The time between steps one to five will be as short as can be managed while respecting the time frames of the community.

STEP ONE

The Authority respects the role of Native Title bodies and will ensure that the relevant Native Title body will be fully informed about the process by way of an initial letter when the negotiations commence and a final letter informing them of the outcome. Native Title bodies will be welcome to participate in any open meetings.

STEP TWO

On Aboriginal Lands Trust land the Authority will inform the Aboriginal Land Trust of its intention to negotiate Housing Management Agreements with specified communities. Where the Aboriginal Lands Trust is the primary interest holder then the Aboriginal Lands Trust Board may seek to have an officer in attendance throughout the negotiation.

STEP THREE – COMMUNITY MEETINGS

The preferred approach to ascertaining the wishes of Aboriginal inhabitants is to conduct a series of meetings for each Aboriginal community which may wish to enter into a Housing Management Agreement. Each of the meetings will be attended by the Authority. There will be three main meetings as follows:

First Meeting

The first meeting will be a Regional Meeting attended by representatives of communities including at least the Chairperson and CEO of the particular community's Aboriginal Council as well as Traditional Owners. Initially, these meetings will be centred around the first communities to receive new and upgraded housing through the National Partnership Agreement on Remote Indigenous Housing and will occur in locations including Fitzroy Crossing, Halls Creek, Broome and Kununurra. The Authority will seek permission at this meeting to commence negotiations with individual communities. The Authority will request through the Chairperson of each community corporation that a Special or Extraordinary General Meeting be held to commence the negotiation process and ask permission to attend this meeting to address the community as a whole.

Second Meeting

The second meeting will comprise the following parts:

- A. Meeting with community elders to discuss the long term ramifications.
- B. Meeting with Traditional Owner Working Group (where required for nominating lots for new housing)
- C. a Community Forum and/or a Special or Extraordinary General Meeting at which all residents and members of the community are made aware of the effect and consequences of entering into a Housing Management Agreement. The Authority will invite representatives from the Department of Commerce to attend these meetings, if required, to explain the impact of the *Residential Tenancies Act 1987*. At this meeting, the Authority will inform the community that it will seek the community's '*Agreement and Resolution*' at a later Agreement Meeting (the Third Meeting). The community will be informed that if it wishes to enter into a Housing Management Agreement, it will need to:
 1. agree to the forty year period for which the Agreement will operate;
 2. identify the nominated lots and nominated houses to be listed in the Agreement;
 3. identify the process that will be used to identify community person/s who are eligible to be housed and the process to allocate housing in the community;
 4. identify the type of cultural circumstances that may result in houses being left vacant relevant to their community and record these decisions for inclusion in Schedule D of the Agreement;
 5. agree on a transition process to implement the Remote Communities Rental Policy;
 6. agree on the steps to be taken where a tenant is in breach of their tenancy agreement;

7. note the methods the Authority will use to provide employment and contracting opportunities for community members,

And

- D. A Council Meeting to restate the information given at the Community Forum and the requirements of the Housing Management Agreement.

Third Meeting

The third meeting will comprise two parts:

- A. the seeking of a *'Motion and Resolution'* by the community agreeing to enter into the Housing Management Agreement and to the listing of any lot or house as a lot or house to which the Agreement will apply; and to the processes outlined in Schedule D;

And

- B. a final meeting, at which the Community Corporation signs the Housing Management Agreement where the Corporation is the Aboriginal entity with an interest in land or signs a letter to the Aboriginal Lands Trust stating that the community requests the Aboriginal Lands Trust to sign a Housing Management Agreement on their behalf.

STEP FOUR

Where the Aboriginal Lands Trust is the primary interest holder in the land, copies of the agreed Schedules to the Housing Management Agreement for each community, a checklist outlining the steps and outcomes, specific documentation and the letter requesting the Aboriginal Lands Trust to sign a Housing Management Agreement on behalf of the community will be forwarded to the Aboriginal Lands Trust for their consideration and signature.

On Aboriginal Lands Trust land leased to a Community Corporation, advice will be provided to the Aboriginal Lands Trust of the Community Corporations who have agreed to sign Housing Management Agreements.

STEP FIVE

The Authority will write to the relevant Native Title body, enclosing a copy of the agreed and signed Housing Management Agreement.

NEGOTIATION PROCESS – VARIATIONS TO THE HOUSING MANAGEMENT AGREEMENT

A. Adding or removing nominated houses and nominated lots.

Where the lots and houses have been included in the initial scope during the negotiation for the Housing Management Agreement the Housing Authority will seek Council approval to add the nominated house and/or nominated lot.

Where the lots and houses have not been previously discussed the process will be:

1. The Housing Authority asks the Community Corporation to hold a Community Forum and/or a Special or Extraordinary General Meeting to discuss their addition or removal with a recommendation to Council.

2. Where housing lots are being added for the purpose of new construction, the Housing Authority informs Traditional Owners to discuss the additional lots. Additional lots will be cleared for Heritage impact prior to being added where possible.
3. Community Corporation Meeting to endorse the decision and sign the variation.
4. If the ALT is the primary interest holder, then a letter informing the ALT of the Community Corporation decision will be sent to the ALT.
5. The ALT will formally sign the variation.

B. Eligibility for the waiting list and the allocation of housing

The process will be:

1. Housing Authority asks to meet with the Community Corporation.
2. Community Corporation meeting considers applicants and provides advice to the Housing Authority – endorse/change/refuse.

C. Where a tenancy is at risk the process will be:

1. Housing Authority asks to meet with the Community Corporation.
2. Issues discussed either at a Community Corporation meeting or with nominated representatives.
3. Community Corporation - endorse/change/refuse Housing Authority recommendations.

D. Other variations

All significant variations such as to the term, termination, extension or review will require agreement between the Housing Authority and the Community Corporation. On these occasions there will need to be both a community meeting and a meeting of the Community Corporation.

Where the Community Corporation chooses not to have the Housing Authority in attendance, the Housing Authority will seek verification of the decision making process prior to considering the request for variation.

Where both parties agree to the variation, documents will be signed.

Where the ALT is the primary interest holder, the ALT will consider the variation and sign any appropriate documentation.