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Policy: Disposal of LAHC Properties

Land and Housing Corporation (LAHC)

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1 Purpose

This policy identifies how LAHC will dispose of property, including through sales programs, redevelopment programs, sales to tenants, dealings with Government agencies, direct negotiations, vesting and dedication including through voluntary planning agreements.

The policy identifies how LAHC will respond to requests from organisations, Government agencies (including local councils), community housing providers (CHPs) and other not for profit organisations, developers and members of the public interested in purchasing property owned by LAHC.

This policy aims to ensure property disposal occurs in line with legislation and LAHC strategic objectives.

LAHC's Business Plan and the LAHC Portfolio Strategy highlight LAHC's dependence on property sales to support capital expenditure including funding for new social housing. They also signal LAHC's long-term objectives to reduce or change the portfolio's profile, which will drive strategic sales programs. Sales proceeds and value generated through these programs support:

- asset recycling
- investment in line with the strategic priorities of *Future Directions for Social Housing in NSW (Future Directions)*
- capital maintenance.

This policy supersedes any previous draft or endorsed LAHC/FACS/DCJ disposal policy.

2 Scope and application

Scope:

This policy applies to:

- the disposal of all properties in which LAHC has a whole or part interest including:
 - properties managed by the Department of Communities and Justice (DCJ)
 - properties managed by, or leased to, other parties, including CHPs
 - properties that are part of redevelopment projects.
- vesting of LAHC land without fee in CHPs.
- the grant of interests in land through easements, boundary adjustments and other measures (noting easements and some boundary adjustments require different considerations and a straight market approach is not appropriate).

Application:

The policy is to be applied by LAHC governance groups and followed by all LAHC officers and contractors (who have no delegate approvals to act for LAHC).

3 Legal and policy framework

Under the *Housing Act 2001* LAHC has statutory powers to enter into contracts in connection with carrying out its functions.

This includes entering into an arrangement, with persons or bodies by agreement or by compulsory process for the acquisition, development, leasing, management, accepting gifts of, dedications,

easements, subdivision or dealing or disposal of land for residential, business, public or other purposes.

As LAHC is a Public Trading Enterprise, LAHC's preference is for cash, rather than non-cash equity transfers for property exchanged between Government agencies.

A range of NSW Government policies and guidelines apply to the disposal of Government assets, including:

- [*Asset Management Policy for the NSW Public Sector – TPP19-07*](#)
- [*Direct Negotiations: Guidelines for Managing Risks \(2018\) ICAC*](#)
- [*Market Approaches Guide \(April 2015\) DFSI*](#)
- [*Unsolicited Proposals: Guide for Submissions and Assessment \(2017\) DPC \(USP Guide\)*](#)
- [*Treasurer's Directions \(TD92/2\) Sale or lease of Government Assets*](#)
- [*Strategic Land and Property Framework \(C2019-0148\) \(which includes LAHC\) \(not yet published\).*](#)
- [*Community Use Policy June 2020* \(which now includes LAHC, updated from the \[January 2019\]\(#\) policy which excluded LAHC\).](#)

The key principles outlined in the above policies and guidelines are:

- The disposal of assets should maximise value (and where “market value” is not achievable exceptions are permissible, with the Treasurer’s approval)
- A market-based approach is preferred as a first priority
- Direct negotiations should be avoided and the risk of corruption be carefully managed. Direct negotiations should only be considered when it is clear they will result in the best value for money outcome, and/or all other options have been exhausted or are impractical or not appropriate
- Transfers to other Government agencies (excluding State Owned Corporations) for delivery of election commitments or ERC approved projects should be undertaken via a non-cash equity transfer at book value with compensation to be realised at market value through a capital grant. Given LAHC is a Public Trading Enterprise, LAHC requires cash, rather than non-cash equity transfers for property exchanged between Government agencies.

Other principles which align to policy objectives are relevant – for example:

- Increasing home ownership among social housing tenants and their families is desirable and in line with the *Future Directions* and *Strong Family, Strong Communities* policies
- Increasing the number and proportion of Government-owned social housing dwellings by the Aboriginal Housing Office – so more Aboriginal families are serviced by an Aboriginal organisation is in line with the *Strong Family, Strong Communities* policy
- Participating in land swaps may be desirable in support of other strategic policy objectives for example in relation to the Greater Sydney Commission, Strategic Land and Property Framework or Local Council Affordable Housing strategies and support an increase or change of profile in social housing but may not result in market based arrangements or market value being achieved.

LAHC Finance maintains a fixed asset register and in all circumstances, liaison is to occur with Finance.

Finance is to be an approver for briefing notes seeking approval for a disposal to ensure the register is accurately maintained.

Legal should be consulted as part of the due diligence for disposal of LAHC’s land.

4 Strategic Considerations

There are a range of strategic reasons why disposal may be desirable. These include:

- generating funding for other better quality or more homes (for example by disposing of properties generally, properties of higher value, or after renovations have been made to increase incomes from sales, or to leverage land value to fund redevelopment projects)
- increasing the proportion of the portfolio which is fit for purpose for social housing and an older tenant cohort (for example by disposing of dwellings with heritage requirements or located in flood, fire-prone or sea level rise areas)
- increasing utilisation, reducing under-occupancy and reducing maintenance costs (for example by disposing of larger properties such as cottages or properties on larger land parcels to fund new social housing which is more fit for purpose)
- deconcentrating social housing (for example by disposing of properties on or near estates)
- extracting maximum value from, and/or avoiding properties becoming land locked or isolated by, neighbouring or adjoining development
- consolidating the LAHC asset portfolio (for example by disposing of commercial properties or when appropriate community facilities which are no longer needed)
- supporting other policy objectives to be achieved (for example vesting to increase the proportion of Aboriginal families whose housing needs are met by an Aboriginal organisation, or future arrangements which incentivise social housing development by community housing providers where particular properties may transfer to a provider after certain time periods and/or other conditions are met).

Properties can be occupied and identified for strategic disposal. A tenant profile and relocation risk rating assessment should be included in the disposal request put to CAPS, and on-forwarded to the final approver in accordance with the relevant delegation.

From time to time, community housing providers managing LAHC properties may propose properties to LAHC for disposal, for example due to them being beyond economic repair.

Depending on the type of property and disposal method, the decision-making considerations for property disposal are outlined in LAHC's strategic and governance documents, including:

- for individual property sales: the CAPS terms of reference and CAPS documentation, Portfolio Strategy and LGA Strategies
- for clustered property sales (for example selling properties in a precinct to reduce concentration), strategic sales, disposal programs, and developer/CHP sales: the Property and Investment Committee terms of reference, Portfolio Strategy and LGA Strategies and finally through CAPS for endorsement.

5 Code of Ethics and Conduct

Public officials are expected to act ethically and in the public interest.

Part 2 of the *Government Sector Employment Act 2013* establishes the ethical framework for the government sector. This is reinforced through the DPIE Code of Ethics and Conduct.

Corrupt conduct is defined in Sections 8 and 9 of the *Independent Commission Against Corruption Act 1988*.

People who work in roles or organisations related to social housing (or their families etc) may want to purchase properties LAHC owns or has an interest in. For example, this could include market properties sold as part of mixed tenure developments.

The sale of LAHC-owned properties to LAHC Representatives and their related parties, is generally not permitted.

There are certain exemptions set out in the *Appendix to the Policy: Disposal of LAHC Properties and Addendum to the DPIE Code of Conduct*.

The exemptions permit LAHC representatives to purchase LAHC properties if they are occupying the property as a social housing tenant, or if the properties have been developed or sold through third parties, with the approval of the LAHC Chief Executive or DPIE Secretary (in the case of purchases by the LAHC Chief Executive).

The Policy: Disposal of LAHC Properties includes the process for applications to purchase LAHC properties.

6 Delegation to approve disposals

The LAHC delegation framework determines who can approve the disposal of LAHC properties.

The disposal of a LAHC property is required to be approved as follows:

- for individual property sales including sales to tenants: referred to CAPS for consideration and endorsed in accordance with its Terms of Reference before submission to the relevant delegate for approval.
- for clustered property sales, strategic sales, disposal programs, and developer/CHP sales under the Communities Plus program: referred to the Property and Investment Committee and endorsed in accordance with its Terms of Reference (then to CAPS for final endorsement, if referred by PIC) then submission to the relevant delegate for approval.
- for property sales facilitated by a third party under a PDA (or similar redevelopment contract): a specific approval is not required, provided that the property is sold in line with the provisions in the PDA (which itself is approved), noting that PDAs generally require the developer to agree a sales and marketing strategy with LAHC before undertaking sales.
- for dedication of land to a public authority as required by a VPA: the approval of the relevant delegate is required, however a separate approval is not required if the property is dedicated in line with the provisions of a VPA (which itself is approved).
- for other dedication or transfer of land to a public authority: referred to CAPS for consideration and endorsed in accordance with its Terms of Reference before submission to the relevant delegate for approval.
- for all other disposals: referred to CAPS for consideration and endorsed in accordance with its Terms of Reference before submission to the relevant delegate for approval for vesting of properties: vesting orders are to be prepared for appropriate LAHC and Treasurer approval.

7 Requests to purchase properties owned by LAHC

While most disposals are LAHC-initiated, LAHC sometimes receives requests from a range of organisations, Government agencies (including local councils), CHPs and other not for profit organisations, developers and members of the public interested in purchasing property owned by LAHC.

Refer to Section 3 Legal and policy framework.

Refer to Section 8 Disposal method.

All enquiries are referred to CAPS for consideration as required.

8 Disposal method

Outlined below are the usual methods of disposal for LAHC properties.

In locations or circumstances where, auctions or competitive tenders are unusual or have a history as a less successful sales methodology, alternative disposal methods will be considered, subject to the relevant approval. Examples could include where a property is fire-damaged or requires demolition, but these circumstances don't automatically mean an alternate disposal method should be used.

8.1 Sale by public process – individual properties

Sale of properties will generally be via a public process, usually a public auction in the first instance and via private treaty if passed in at auction.

Alternative methods may be recommended dependent on the asset type and may include sale by expressions of interest and/or tender.

The sale price will be determined by the market and must at least exceed the independent market valuation.

Properties are generally vacant and listed with a local real estate agent for a minimum 4 week auction campaign with Contract for Sale of Land documents issued by LAHC Legal for marketing.

At all times, any disposal will conform to the Treasurer's Directions (TD92/2) Sale or lease of Government Assets, unless an exemption is received.

8.2 Sales to tenants of social housing

LAHC supports the Future Directions objective of tenants moving through the housing continuum into private rental or home ownership.

This policy guides decisions about whether any particular property should be disposed of via sale to a tenant.

The *Sale of Homes* policy guides how tenants can apply to purchase the LAHC home they rent and the information required from a tenant before the disposal will be considered.

[The *Sale of Homes* policy will be reviewed and refreshed to reflect this policy later in 2020.]

Details are at:

<https://www.facs.nsw.gov.au/housing/policies/sale-homes-policy>

<https://housinghub.intranet.facs.nsw.gov.au/processes-and-procedures/managing-facs-assets/sale-of-property/sale-of-property>

8.3 Strategic and redevelopment programs

Programs for the disposal of strategic and clustered properties, and properties sold as part of redevelopment or renewal programs, always follow a market-based approach.

A business case and procurement strategy will be developed and approved as part of the overall program, which outlines the disposal method and program-specific governance arrangements.

8.4 Direct negotiations

Direct negotiations may be considered in certain circumstances, including:

- if a market-based approach has failed (and direct negotiations are pursued within 12 months)
- if it can be clearly shown that no other purchasers exist and/or it will result in the best value for money outcome
- a competitive process is too expensive relative to the value of the property
- in response to an unsolicited proposal referred to LAHC by DPC
- in relation to arrangements which incentivise community housing providers to develop or maintain homes on LAHC land (noting ICAC Guidelines for Managing Risks in Direct Negotiations)
- to implement Ministerial announcements where a direct arrangement is justified and approved (noting ICAC Guidelines for Managing Risks in Direct Negotiations).

Further examples of permissible instances of direct negotiations are set out in the ICAC Guidelines for Managing Risks in Direct Negotiations.

Examples of circumstances where direct arrangements are considered are outlined in the sections below.

A decision to undertake direct negotiations should be approved by the Chief Executive and otherwise as per the LAHC delegations and Government policy framework (relating to financial thresholds, TPP 18-05 and the INSW Investor Assurance Framework (if relevant).

The decision must be documented, and consider the following elements:

- ensure the unique solution offered is the most appropriate to LAHC's requirements (if applicable)
- have regard to LAHC's core functions, as well as the overall strategic direction and stated priorities of the NSW Government
- ensure reasoning is supported by evidence
- apply reasoning before the decision (not as a post-hoc device)
- explain why other approaches are not viable and/or appropriate
- if relevant, publish a notice of intention to enter into direct negotiations.

All direct negotiations, whether referred through an unsolicited proposal or otherwise, should follow a consistent, documented and robust framework including:

- negotiations should be handled in line with ICAC Guidelines for Managing Risks in Direct Negotiations and, if relevant the USP Guide
- value should be maximised
- a probity advisor to oversee the process should be appointed, if required.
- probity principles should govern all decisions: fairness, impartiality, accountability, transparency, value for money
- confirm approval to commence by delegated authority
- conduct due diligence of the counter party for capability, capacity, risk assessment, conflicts of interest
- execute a negotiation protocol, including: objectives, evaluation criteria, budget considerations, commercial framework and risk allocation
- confirm approval to enter binding transaction documents by delegated authority, supported by probity and legal considerations.

8.4.1 Unsolicited proposals

Direct approaches from a private person or entity, community organisation, NGO or any other entity should be made via the NSW Government's Unsolicited Proposal process and be consistent with the unsolicited proposal policy which states:

'Proposals must ... be considered in light of the wider benefits and strategic outcomes that may be derived. In order to proceed ..., proposals must be broadly consistent with State objectives and plans, and offer some unique attributes that justify departing from a competitive tender process.'

All Unsolicited Proposals must be handled in accordance with the USP Guide.

Unsolicited proposals referred to LAHC by the Department of Premier and Cabinet (DPC) will be considered where both the proposal and proponent have unique attributes that others could not deliver in a similar proposal with the same value for money outcome.

An unsolicited proposal will be initially assessed for uniqueness; value for money; whole of government impact; return on investment; capability and capacity; affordability; and risk allocation.

After the initial assessment DPC may refer the proposal to LAHC to investigate. These proposals will be handled by LAHC as outlined in section 8.4.1.

8.4.2 Disposal of neighbourhood facilities

Where a property is leased to an organisation for use as a neighbourhood facility and the target client group is predominantly LAHC tenants and/or clients of DCJ services or funded programs (ie vulnerable children, people or families), direct sale to that organisation may be considered.

Sale will be at market value and may take into consideration a current valuation of LAHC approved past capital improvements, funded by the organisation.

If the property is sold at market value, no restriction will be placed on the property.

A restriction will be placed on the property title requiring the property to continue to be used as a neighbourhood facility for a period of five years after the sale or vesting from LAHC if the transaction occurs for less than market value.

This restriction does not prevent the purchaser from selling or transferring the property within five years.

The new owner of the property which has a restriction must continue to use the property for the same purpose until five years is complete. It is not intended that LAHC would dispose of a property for community use and the property would then be left vacant.

Section 88D of the *Conveyancing Act 1919* allows LAHC to place a restriction on the title of a property.

8.4.3 Disposal to a registered community housing provider

In recognition of the limited supply of properties in locations which support the achievement of social housing client outcomes, registered Aboriginal or mainstream Community Housing Providers (A/CHPs) may be offered the opportunity to purchase properties directly from LAHC in the limited circumstances set out below.

Proposed sales to A/CHPs may be as a response to an approach from an A/CHP or initiated by LAHC. The USP process at 8.4.1 will apply in this event and in addition, all four criteria must be met:

1. the location is suitable for social housing but further investment in the location by LAHC is not consistent with the Portfolio Strategy or the relevant LGA Strategy
2. sale of the property or parcel of properties to a registered community housing provider is not likely to:
 - maintain, or create, undue concentration of social housing in the neighbourhood; or
 - undermine the intent of strategies to reduce the overall proportion of social housing in the neighbourhood/site
3. there is a demonstrated opportunity for the community housing provider to apply government incentives or grants or otherwise deliver a direct benefit to the social housing system
4. the community housing provider has a service delivery presence in the location of, or in an area proximate to, the property or parcel of properties being considered for sale.

If the above requirements are met, the property may be offered by direct sale to the CHP. If the circumstances warrant, LAHC may require a covenant to be registered on title for up to 10 years, restricting the use of the property as social or affordable housing.

The property must be offered for sale at market value, and where justified may be discounted by taking into consideration the present value of previous LAHC approved capital improvements funded by the A/CHP (unless this conflicts with the Treasurer's Directions ([TD92/2](#)) Sale or lease of Government Assets, the terms of the lease or LAHC's prior conditions of approval are inconsistent with this position).

8.4.4 Disposal to other Government entities

Sale by private treaty, dedication or vesting of LAHC owned property to another Government entity, including a local council, is permissible under this policy in any one or more of the following circumstances:

- there is a documented request initiated by the other agency (the NSW Strategic Land and Property Framework requires this to happen via the Government Property Exchange), and the transfer occurs in accordance with the *Treasurer's Directions (TD92/2) Sale or lease of Government Assets*
- approval is given by a Minister (for example in the form of a vesting order, briefing note or a public Ministerial announcement)
- the dedication is contemplated under an approved voluntary planning agreement (if relevant)
- the requirements of any relevant government guidelines are met
- pathways for funds being returned to LAHC are clearly documented and approved, including in related Cabinet and ERC minutes where appropriate.

The NSW Strategic Land and Property Framework:

- guides the identification of opportunities for alternate use, intra-government transfer, consolidation and/or divestment of all assets, including assets not considered surplus or underutilised.
- provides for an incentive structure that compensates and rewards Clusters where they identify land and property in their portfolio that could be used to deliver wider Government objectives and uses a methodology to identify properties that recognises broader non-financial outcomes including social, economic and environmental impacts. Compensation for such transfers may include credits towards particular sales targets or

alternate capital funding. [As noted in section 3, given LAHC is a Public Trading Enterprise, LAHC requires cash, rather than non-cash equity transfers and in some circumstances may not be covered by, or may be exempted from, particular whole of Government sales targets.]

- requires transfers to other NSW Government agencies (excluding State Owned Corporations) for delivery of election commitments or ERC approved projects to be undertaken via a non-cash equity transfer at book value with compensation to be realised at market value through a capital grant. [As noted in section 3, given LAHC is a Public Trading Enterprise, LAHC's preference is for cash, rather than non-cash equity transfers.]
- requires the endorsement of the NSW Property Strategy Collaboration Committee (PSCC), and the Property Board of Secretaries (PBS) where a property's market value is greater than \$5 million within Sydney or \$3 million outside Sydney.

8.4.5 Disposal where there is a joint venture or shared financial/ownership interest arrangement

LAHC may sell its interest in a property where there is a shared financial interest/ownership arrangement and the shared equity deed allows the sale

The sale value should be proportionate to LAHC's interest in the property as per a duly executed shared equity agreement between parties.

In reaching a final agreed sale price, LAHC will consider the process set out in the shared equity agreement, any long term liabilities associated with the property (such as condition) and other relevant circumstances of the property, including location. Notwithstanding this policy, LAHC must comply with any agreement with other joint owners which provides a mechanism for determination of the sale price.

Where LAHC initiates the disposal of a property where it shares interest with another party, it will follow the process set out in the shared equity agreement, and where practical, offer the other party/parties with which ownership is shared the opportunity to purchase, at market value, LAHC's share in the property before seeking an alternative purchaser or resuming full ownership of the property itself.

Where the co-owner party initiates disposal of a shared interest property, LAHC will consider objectives for the location in its portfolio strategy and any other relevant matters (such as the condition of the property) in reaching a decision about whether to dispose of its share in the property or negotiate to purchase the remaining share.

LAHC must comply with any agreement with other equity owners as to the procedure to be followed where either owner wishes to dispose of its interest in the jointly owned property.

9 Definitions

Term	Definition
AHO	Aboriginal Housing Office, Department of Planning, Industry and Environment
CAPS	Committee for the Approval of Property Sales
A/CHP	Registered Community Housing Provider or Aboriginal Community Housing Provider. An entity that provides community housing and is part of the NSW Local Scheme or is listed on the National Provider Register of the National Regulatory System for Community Housing (established under the provisions of the <i>Community Housing Providers (Adoption of National Law) Act 2012</i>).
DCJ	Department of Communities and Justice (formerly known as Department of Family and Community Services)
DPC	Department of Premier and Cabinet
General social housing	Social housing includes public housing (LAHC owned and DCJ managed), social housing (LAHC owned and CHP managed, and CHP owned and managed) or Aboriginal housing (AHO owned and DCJ managed, AHO owned and ACHP managed, and ACHP owned and managed)
ICAC	Independent Commission Against Corruption
LAHC	New South Wales Land and Housing Corporation, Department of Planning Industry and Environment
LAHC Representative	An officer of the Department or other Government Agency involved in performing the functions of LAHC.
PDA	Project Delivery Agreement (or similar contract or deed)
P&I Committee	LAHC Property and Investment Committee
Related parties	<ul style="list-style-type: none"> i) a person who has a relationship with the LAHC Representative which would fall within the examples of relationships referred to in Section 47(1) of the Property and Stock Agents Act 2002 (NSW); or ii) a "close relative" of the LAHC Representative, as defined in Section 49 of the Property and Stock Agents Act 2002 (NSW).
Shared interest/ownership arrangements	Shared interest/ownership reflects arrangements whereby LAHC has partial ownership and/or interest in a housing or other asset
Special purpose properties	Properties owned or acquired for a specific purpose such as group homes, crisis accommodation/refuges, transitional and/or other supported accommodation
USP Guide	Unsolicited Proposals: Guide for Submissions and Assessments (2017)
VPA	Voluntary Planning Agreement

10 Review

This policy is to be reviewed when there is any significant new information, legislative or organisational change, and at least every two years.

11 Appendix

See the attached *Appendix to the Policy: Disposal of LAHC Properties and Addendum to the DPIE Code of Conduct*.