

Teacher Housing Authority Property Disposal Policy

1. Purpose of this Policy

This policy identifies how THA 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 THA 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 THA.

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

The THA monitors the condition and status of its portfolio in order to identify properties that have reached the end of their economic life or are otherwise surplus to the THA's needs. The proceeds from the sale of THA properties remain with the THA and fund its activities – including capital works. Sales proceeds and value generated through these programs support asset recycling, investment in line with teacher housing demand, and maintenance works.

This policy supersedes any previous draft or endorsed THA disposal policy.

2. Scope and Application of the Policy

Scope

This policy applies to:

- the disposal of all properties in which THA has a whole or part interest;
- 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 THA governance groups including the THA Board, and followed by all Housing Services staff and contractors.

3. Policy and Operating Context

The THA was established under the *Teacher Housing Authority Act 1975* (THA Act), and is part of the Department of Planning and Environment (DPE) under the portfolio and direction of the Minister for Homes. It is responsible for the delivery and management of housing for teachers across NSW.

THA identifies housing demand and supply needs through its partnerships with Department of Education (DoE), Workforce Planning and Schools Infrastructure.

The overarching governance structure includes the THA Board and LAHC Executive. The THA Board authorises all capital programs and THA executives adhere to THA-specific delegations. The THA Board requires analysis of housing demand, delivery options, financial impacts, and delivery approaches.

THA outsources construction and project delivery to NSW Public Works and undertakes procurement in line with NSW Procurement Guidelines. Delivery of the THA's objects is also governed by the THA Act.

The THA also has a Memorandum of Understanding (MOU) with DoE -sections 7.7 and 7.8 identify the obligations of THA and DoE when disposing of a property.

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
- increasing the proportion of the portfolio which is fit for purpose for teacher housing (eg by disposing of dwellings with heritage requirements or those located in flood, fire-prone or sea level rise areas)
- increasing utilisation, reducing under-occupancy and reducing maintenance costs (eg by disposing of larger properties like cottages or properties on larger land parcels to fund more new teacher housing which is more fit for purpose)
- extracting maximum value from, and/or avoiding, properties becoming land locked or isolated by neighbouring or adjoining development
- extracting maximum value from, and/or avoiding, properties losing value because of changing town dynamics.

5. Principles Guiding Disposals

Disposal strategies, programs and proposals need to have regard to the 3 Principles outlined below. The Principles are intended to be applied flexibly, as best practice guidance rather than being mandatory. There may be instances where disposals are justifiable despite not being able to satisfy all Principles.

In applying this Policy to potential disposal strategies, programs or proposals, it is important to note:

- Demonstration of the merits of any proposed disposal, compared to other options to achieve the same outcome (such as development, renewal or the status quo) is needed.
- The Principles are interrelated and influence one another.

- No Principle is weighted more heavily than another. The Principles are intended to be applied as a whole, with sensible comparison.

Principle 1. Disposals must represent value for money

The overarching consideration for Government procurement is to ensure best value for money.

Ensuring value for money will typically involve seeking a purchase price equivalent to market price.

Principle 2. Disposals will occur where there is a strategic or business need

THA will only sell a property where there is strong reason to do so. In general, THA will always seek to maximise the size of its portfolio to house more teachers.

If teacher demand in a region or suburb decreases, THA will rent out its property in that area to the private market in the first instance. After 3 years if there still no teacher demand, THA will check with Department of Education, advising it of THA’s plans to sell. The DoE may request THA retain the property because of expected future demand, however the decision to sell is at the sole discretion of THA.

Principle 3. Disposals must be effectively governed

Disposals can involve varying degrees of risk. Risk is elevated in situations that involve high value and/or multiple assets, and dealings with the private sector. Risks include the potential for perceived or actual corruption, conflicts of interest or breach of the DPE Code of Conduct, legal and commercial risk, the risk of overcapitalisation and reputational damage.

See section 6 for ethics and probity considerations.

3.1	<p>Transactions must be undertaken ‘at arm’s length’; that is, where both parties are acting independently to achieve value for money, without coercion or collusion.</p> <p>THA will achieve this through:</p> <ul style="list-style-type: none"> • Exercising probity, transparency and integrity in its dealings, including through disclosure and management of conflicts of interest; • Oversight and approval via appropriate exercise of delegations, including through the THA Board; and • Disclosure of contracts with the private sector, in accordance with the <i>Government Information (Public Access) Act 2009</i> (GIPA Act).
3.2	<p>Risks associated with any disposal strategy, program or proposal need to be clearly identified and effectively mitigated, in accordance with DPE’s <u><i>Risk Management Policy</i></u> and LAHC’s <u><i>Risk Management Framework</i></u>.</p>
3.3	<p>Decision making is to be:</p> <ul style="list-style-type: none"> • Undertaken by Director Housing Services, THA Board, or LAHC Executive, independent from the Housing Services transaction team. • Evidence-based and informed by due diligence to demonstrate suitability and value for money, and by the relevant governance committee’s terms of reference.

6. 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 DPE's 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 THA's housing activities (or their families etc) may want to purchase properties THA owns or has an interest in. However, the sale of THA-owned properties to THA representatives or a related party, is not permitted. Related parties are defined as:

- 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
- a "close relative" of the LAHC Representative, as defined in Section 49 of the Property and Stock Agents Act 2002 (NSW)

THA Board members and staff must adhere to the THA's Guidelines and Code of Conduct for Members.

7. Delegation to approve disposals

The THA Act requires all property disposals to be approved by the Minister.¹

THA is to adhere to the Instrument of Delegation dated 25/5/2021, and other instruments of delegation as amended from time to time. Nothing in this policy is intended to vary any instrument of delegation.

8. Requests to purchase properties owned by THA

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

Refer to Section 9: Disposal method below.

¹ section 13(2)(j)(ii).

9. Disposal method

When disposing of a property, THA will obtain an independent valuation to determine the property's 'market price'. THA's properties may be disposed of by one of the following methods (in order of preference but noting this can be changed at the discretion of the Director, Housing Services):

No.	Potential buyer	Disposal approach (further detail in Annexure A)
1	The Land and Housing Corporation or the Aboriginal Housing Office	THA will provide the Head of Policy & Innovation, Land and Housing Corporation and the Chief Executive of the Aboriginal Housing Office with a list of properties to be disposed. The sale price is at an agreed market price.
2	Another state government agency	Sale occurs after THA has received an expression of interest for a property from a NSW state government agency. The sale price is at an agreed market price. See section 9.1 below.
3	A tenant in occupation	A tenant occupying a dwelling that is to be sold will be offered the opportunity to purchase the property if they wish.
4	A local or federal government agency	Sale occurs after the THA has received an expression of interest for a property from a local or federal government agency. The sale price is at an agreed market price. See section 9.1 below.
5	A not-for-profit NGO	Sale occurs after THA has received an expression of interest for a property from an NGO. The sale price is at an agreed market price. See section 9.1 below.
6	Member of the public - By public auction, through a real estate agent that has been appointed by the Director, Housing Services	The Director, Housing Services may determine (in exceptional circumstances) that a property is to be publicly listed with a real estate agent and sold under auction conditions, with the market price set as a reserve. See section 8.1 'direct negotiations' below.
7	Member of the public - If not sold at auction, public listing through a real estate agent appointed by the Director, Housing Services at market price	The Director, Housing Services may determine (in exceptional circumstances) that a property is to be publicly listed with a real estate agent and sold without going to auction, at market price.
8	Member of the public - Sale by private treaty without public auction or listing	The THA Board may approve (in exceptional circumstances) a sale by private treaty without public auction or public listing at a price determined by the Board.
9	Co-owner - Where there is a joint venture or shared financial/ownership arrangement	See section 9.1 below.

Annexure A to this policy, the *THA Property Disposal Process*, outlines the detailed steps for Housing Services employees to follow when undertaking a property disposal. This process may be updated subject to the approval of the Director, Housing Services.

9.1 Direct negotiations

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

A decision to undertake direct negotiations should be approved by the THA Board and otherwise as per the NSW Government policy framework (relating to financial thresholds, Treasurer's Policy [TPP 18-05](#) and the [INSW Investor Assurance Framework](#), if relevant).

The decision (and reasons for the decision) must be documented, and THA must consider the following elements:

- ensure the unique solution offered is the most appropriate to THA's requirements (if applicable);
- have regard to THA'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 after the fact);
- explain why other approaches are not viable and/or appropriate.

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 [NSW Unsolicited Proposals Guide \(USP Guide\)](#);
- 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 and value for money;
- approval to commence should be confirmed by delegated authority;
- due diligence of the counter party should be conducted for capability, capacity, risk assessment and conflicts of interest;
- a negotiation protocol should be executed that includes: objectives, evaluation criteria, budget considerations, commercial framework and risk allocation;
- approval to enter a binding transaction should be confirmed by delegated authority, supported by probity and legal considerations.

9.1.1 Unsolicited proposals from non-government entities

Direct approaches from a private person or entity, community organisation, NGO or any other entity should be made via the NSW Government's unsolicited proposals process and be consistent with the applicable 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 THA by the Department of Premier and Cabinet (DPC) may 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.

9.1.2 Disposal to other Government entities

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

- there is a documented request initiated by the other entity/agency, 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);
- other government guidelines permit the sale (or require it); and
- pathways for funds being paid to THA are clearly documented and approved, including in related Cabinet and ERC minutes where appropriate.

All disposals to government agencies will occur at market value, within a range identified by an independent valuer.

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

THA may sell its interest in a property where there is a shared financial interest/ownership arrangement and the shared equity deed/agreement allows the sale. The sale value should be proportionate to THA's interest in the property as per the duly executed shared equity agreement between parties.

In reaching a final agreed sale price, THA will consider the process set out in the shared equity agreement, any long-term liabilities associated with the property (such as condition) and all other relevant circumstances of the property, including location.

Despite anything in this policy, THA must comply with any agreement with other joint owners which provides a mechanism for determination of the sale price.

Where THA initiates the disposal of a property where it shares interests with another party, it will follow the process set out in the shared equity agreement, and where practical, offer the other party/parties the opportunity to purchase, at market value, THA'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, THA 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.

THA 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.

10. Monitoring and Review

THA is responsible for maintaining this policy. This includes:

- monitoring the correct functioning of the policy;
- reviewing this policy no later than three years from the date the document is approved. The document may be reviewed earlier in response to post-implementation feedback, changes to legislation, or as necessary; and
- Progressing changes and updates as required, with approval from the THA Board.

Annexure A: THA Property Disposal Process