

NSW Land and Housing Corporation

Policy for Small Scale Direct Dealing with Community Housing Providers

APPROVED 3 December 2020

Table of contents

1	Introduction.....	3
	1.1 Direct Dealing Framework	3
	1.2 Purpose of this Policy	4
2	Scope.....	5
	2.1 In Scope	5
	2.2 Out of Scope	6
3	Rationale for considering small scale direct dealing with CHPs	6
	3.1 Supporting Government Policy	6
	3.2 Unique position of CHPs.....	7
	3.3 Value for money	8
4	Guiding Principles.....	8
	4.1 Core Principles for Small Scale Direct Dealing	8
	4.2 Justification for Direct Dealing	9
5	Evaluation process	10
	5.1 Pre-proposal Stage	10
	5.2 Two Stage Submission and Assessment Process.....	10
	5.3 Stage One – Eligibility and Due Diligence.....	11
	5.4 Stage Two – Proposal.....	12
	5.5 Assessment and Decision-making	14
	5.6 Documentation of Actions, Decisions and Reasoning	15
	5.7 Feedback on proposals.....	15
6	Governance.....	15
	6.1 Direct Dealing Register	15
	6.2 Probity	15
7	Communication	17
	7.1 CHP Awareness of this Policy	17
	7.2 Reporting and Public Disclosure	17
8	Monitoring, Evaluation and Review	18
9	Support and Advice	18
	Appendix 1 – Regulatory and Policy Context.....	19
	LAHC Regulatory Framework	19
	LAHC Policy and Operating Context.....	19
	Appendix 2 – Procurement Context.....	21
	NSW Government Procurement Policy Framework 2019.....	21
	Taking a Risk-Based Approach to Direct Negotiations.....	21
	Appendix 3 – Glossary	23
	Definitions	23

1 Introduction

1.1 Direct Dealing Framework

Direct Dealing may be solicited or unsolicited by a Government agency. It refers to exclusive dealings between a Government agency and non-government entity over a proposal that enables achievement of a strategic objective.

For the New South Wales Land and Housing Corporation (LAHC), as the owner of the State’s social housing portfolio, there are circumstances where it may be appropriate for direct dealing in relation to the sale, purchase, lease, or other commercial arrangement involving land.

Three policies or processes provide pathways for effective consideration and management of LAHC direct dealing with Community Housing Providers (CHPs):

1. LAHC Policy for Small Scale Direct Dealing with CHPs – this policy.
2. LAHC Policy on CHP-led Redevelopment of Social and Affordable Housing on LAHC-owned Land (CHRP Policy) – approved October 2020.
3. [NSW Government Unsolicited Proposals Process](#) – outlined in the Unsolicited Proposal Guide 2017.

	<i>Proposal Type</i>	<i>Key Policy</i>	<i>Key criteria</i>
1	<p>Small scale CHP direct approach</p> <ul style="list-style-type: none"> • CHP proposals – can include sale, purchase or redevelopment 	<p>Policy for Small Scale Direct Dealing with CHPs (LAHC)</p>	<ul style="list-style-type: none"> • Tier 1 or 2 CHP – unique position • Below \$5m threshold • Value for money • Aligns to Government housing policies and priorities
2	<p>CHP redevelop on LAHC land</p> <ul style="list-style-type: none"> • CHP redevelopment of properties leased from LAHC 	<p>Policy for CHP-led Redevelopment of Social and Affordable Housing on LAHC-owned Land (LAHC)</p>	<ul style="list-style-type: none"> • Tier 1 or 2 CHP lessee • Below \$25m threshold • Value for money • Aligns to LAHC strategic priorities • Long term lease – up to 49 years
3	<p>Direct approach (Unsolicited Proposal)</p> <ul style="list-style-type: none"> • Private sector • NGOs • CHP proposals > \$5m 	<p>Unsolicited Proposals: Guide for Submission and Assessment (DPC)</p>	<ul style="list-style-type: none"> • Unique and innovative proposal • Value for money • Whole of Government impact • Return on investment • Capability and capacity

These policies or processes ensure that LAHC’s approach to seeking, considering and/or assessing direct dealing proposals is efficient, consistent, transparent and fair, aligns with NSW Government policies, and ultimately provides value for money for the State.

These Policies also ensure that any direct dealing with CHPs supports achievement of NSW Government housing-related policies and priorities (see Appendix 1 for an overview of LAHC's regulatory, policy and operating contexts). Proposals for sale of LAHC properties under this Policy are also covered by the LAHC Disposal Policy (see Appendix 1).

LAHC policies related to direct dealing with CHPs have been developed to align with NSW Government procurement policy and guides published by the NSW Independent Commission Against Corruption (ICAC) relevant to direct dealing (see Appendix 2).

1.2 Purpose of this Policy

This Policy will guide LAHC in small scale direct dealing with not for profit registered Tier 1 and Tier 2 Community Housing Providers (CHPs)¹ on proposals involving land, with a project value for LAHC of up to \$5 million and a positive net financial outcome for LAHC.

The Policy is known as the *LAHC Policy for Small Scale Direct Dealing with Community Housing Providers*. The Policy sets out the rationale, benefits, guiding principles and governance arrangements for small scale direct dealing with eligible registered CHPs.

This Policy allows for a range of proposals to be sought or considered for direct dealing, where they:

- Are clearly justified for direct dealing rather than through other procurement processes; and
- Contribute to achieving NSW Government housing policy objectives and outcomes.

The types of proposals that could be considered for direct dealing may include:

- Lease or redevelopment of LAHC land that the CHP does not currently lease.
- Sale of LAHC land to a CHP, in line with the LAHC Disposal Policy.
- Purchase or acquisition of land by LAHC.
- Other proposals involving land or property.
- A combination of any of the above.

This Policy allows for small scale direct dealing with any registered Tier 1 or Tier 2 CHP, including Aboriginal CHPs in these Tiers of Registration.

This Policy provides a streamlined approach so that small scale proposals can be sought and/or considered more efficiently and at a reduced cost for both government and the community housing sector.

Specifically this Policy aims to:

¹ Registered in Tier 1 or Tier 2 of the National Regulatory System for Community Housing or the NSW Local Scheme.

- Support achievement of NSW Government objectives and outcomes for housing, in particular, growing and changing social housing to meet the needs of vulnerable people and families.
- Grow the social housing sector in collaboration with CHP partners to deliver more, better quality housing for people and families that need it.
- Ensure a fair and transparent process for CHPs in solicited or unsolicited small scale commercial proposals.
- Leverage the capacity and capability of registered CHPs in achieving the NSW Government housing policy objectives and outcomes.
- Minimise bid costs for registered CHPs that are associated with traditional tender processes so that money is directed to growing the supply of fit for modern use social housing.
- Minimise financial and other risks to government with a robust two stage assessment process that is integrated with LAHC's investment decision making processes.

2 Scope

2.1 In Scope

This Policy provides guidance on the process for seeking, considering and assessing direct dealing proposals from registered Tier 1 or Tier 2 CHPs in relation to the sale, purchase, lease, or other commercial arrangement involving land.

Under this Policy, LAHC may choose to commence preliminary discussions with a CHP with respect to a proposal, after which the CHP would need to make a direct approach. This would occur where:

- That CHP is uniquely positioned to offer a solution to government that cannot be offered by another CHP and/or the private sector; or
- There is another clear rationale for direct dealing instead of using a market based procurement method.

This Policy is restricted to direct dealing with registered CHPs on proposals with a project value of up to \$5 million and which result in a positive net financial outcome for LAHC.

A proposal with a project value above \$5 million may be considered by LAHC under this Policy, in LAHC's absolute discretion, where there is a strong evidence-based rationale in support, having regard to the considerations outlined in this Policy.

Under this Policy there is no requirement for a CHP to have an existing lease or other interest in any land or property that is being considered for direct dealing.

This Policy covers all considerations and processes up to the decision making stage in relation to a direct dealing proposals. A decision to proceed/not proceed may be taken by LAHC or a CHP at any stage in the process covered by this policy, without recourse. Any decision to not proceed will be confirmed in writing, in the same way that decisions to proceed to a further stage are made in writing.

Under this Policy, LAHC has discretion to seek or consider proposals that require LAHC to enter into arrangements with a consortium of CHPs and potentially financiers. Where a consortia of CHPs is involved in a proposal, LAHC will only contract with the lead CHP, which must be an eligible CHP under this Policy.

2.2 Out of Scope

2.2.1 Direct Deal Proposals that are Out of Scope

This Policy does not apply to commercial proposals with a project value greater than \$5 million (except where there is a strong rationale to consider a proposal with a project value of more than \$5 million).

This Policy does not apply to allocation of management of properties to CHPs, as this is covered by the *LAHC CHP Asset Management Allocation Policy 2020*.

This Policy does not apply to direct approach proposals from:

- Unregistered CHPs.
- Tier 3 CHPs.
- Tier 1 or Tier 2 CHPs seeking to redevelop LAHC-owned land that they currently lease. These types of proposals are covered by the *LAHC Policy on CHP-led Redevelopment of Social and Affordable Housing on LAHC-owned land* (October 2020).

This Policy also does not apply to proposals to purchase or redevelop actively utilised community facilities or commercial properties that are LAHC-owned properties.

2.2.2 Negotiation/Contracting/Agreement Stage is Out of Scope

This Policy does not cover the negotiation stage or the contracting/agreement stage that would follow on from a decision to approve direct negotiation of a proposal.

3 Rationale for considering small scale direct dealing with CHPs

3.1 Supporting Government Policy

The NSW social housing system requires innovative, efficient and effective measures to:

- Meet the increasing demand for additional social housing supply.
- Change and grow social housing with more, better quality, fit for modern use social housing, which is a key objective of *Future Directions* and the *LAHC Portfolio Strategy 2020*².

² The LAHC Portfolio Strategy (2020) sets out the vision and priorities to grow and change the LAHC portfolio over the next 20 years.

- Maximise the portion of the limited resources available in the social and affordable housing system that can be allocated to delivering more, better quality, fit for modern use homes for vulnerable people and families.

LAHC invests in strengthening partnerships with private and non-government entities to change and grow social housing and to achieve the NSW Government's objectives and outcomes for housing in NSW.

Greater involvement of CHPs in financing, owning and managing a significantly expanded stock of social and affordable housing assets is part of the vision of *Future Directions* for 2025.

Small scale direct dealing with CHPs can reduce the amount of funds and resources that are spent on the delivery of additional social and affordable housing through competitive tendering processes. It can also accelerate and bring forward the delivery of fit for purpose homes to reduce increasing unmet demand.

Circumstances that may justify LAHC direct dealing with CHPs can include:

- a) Where a CHP is in a unique position to offer a solution that cannot be offered by other CHPs or the private sector.
- b) When it is beyond doubt that there is only one CHP that can meet LAHC's well-defined needs.
- c) If a CHP owns or leases a parcel of real property that is on, or near, the site of a proposed project, and the land is necessary to the project.
- d) Transactions that derive from an earlier competitive process.
- e) When the value of the contract or transaction is very low relative to the cost of conducting a competitive process.
- f) When a legitimate and recently completed competitive process has failed to produce an advantageous or satisfactory offer and LAHC does not expect a repeat of the process to produce a better result.
- g) Where a CHP has some form of legal right to direct negotiations.

3.2 Unique position of CHPs

Direct dealing under this Policy is restricted to CHPs as they are registered under the National Regulatory System for Community Housing (NRSCH) in one of three tiers of registration or through the NSW Local Scheme.

The NRSCH is designed to identify, monitor and respond to risks that have serious consequences for tenants, funders and investors, community housing assets and the reputation of the sector. The NSW Local Scheme Regulatory Code is aligned to the NRSCH's National Regulatory Code and sets out the performance outcomes and requirements that CHPs registered through the Scheme must comply with.

Registered CHPs are uniquely positioned because CHPs have the capacity to deliver greater value for money outcomes and/or benefits to the community through:

- Potential access to low cost borrowing through the National Housing Finance and Investment Corporation (NHFIC) and other lenders, and a range of tax concessions.

- GST and payroll tax savings and access to a higher revenue stream due to access to Commonwealth Rent Assistance (which is not available for State managed properties).
- Ability to fund their operations through rental income and without the need for ongoing subsidies from the NSW Government.
- Their not-for-profit status and operations.

3.3 Value for money

There are also portfolio growth and value for money factors underpinning the rationale for seeking or considering direct dealing proposals from registered CHPs. These include:

- Growing social housing in partnership with registered CHPs supports NSW policy objectives related to social housing growth and CHP sector growth.
- Efficiencies from direct dealing can deliver greater value for money and effectively divert more resources into growing the social housing sector, which in turn drives increased economic activity. When social housing capital programs have tendering requirements, significant amounts of CHP funds are directed to developing tenders that could otherwise be directed towards growing the supply of social and affordable housing. Allowing for direct dealing in circumstances where it is appropriate to do so could reduce costs for CHPs and more money invested in the social housing system.

The CHP sector has undergone a period of growth and continues to evolve as new opportunities arise. Some CHPs have become experienced developers and/or partners with developers, some have developed diversified business models to cross-subsidise social housing and some have real estate functions involving management of private rental properties. Many CHPs are already involved in commercial transactions with LAHC, either on their own, as part of a consortium or with a private sector development partner.

4 Guiding Principles

4.1 Core Principles for Small Scale Direct Dealing

Proposals that will be considered under this policy need to:

- Align with NSW Government housing-related policy and priorities.
- Align to LAHC’s strategic priorities at a portfolio and local level.
- Be a feasible and viable proposal, with realistic objectives and intended outcomes.
- Represent value for money.
- Have a clear rationale for direct dealing that complies with the rationale for direct dealing outlined in this policy.
- Not have unacceptable probity concerns or conflicts of interest (perceived or actual).

Discussion about, consideration or assessment of a proposal does not guarantee that it will be approved for direct dealing under this Policy.

If a proposal could achieve better value for money through an open market tender, it will not be considered for direct dealing. These issues will be considered in each stage of the process set out in Section 5.

4.2 Justification for Direct Dealing

The justification for considering Direct Dealing must be established, documented and approved by the Chief Executive or relevant delegate prior to entry into any formal discussions.

If a CHP intends to present a direct dealing proposal to LAHC they will need to provide a clear rationale for it to be considered for direct dealing. This includes identifying why they are in a unique position to deliver or another justification as per Section 3.2.

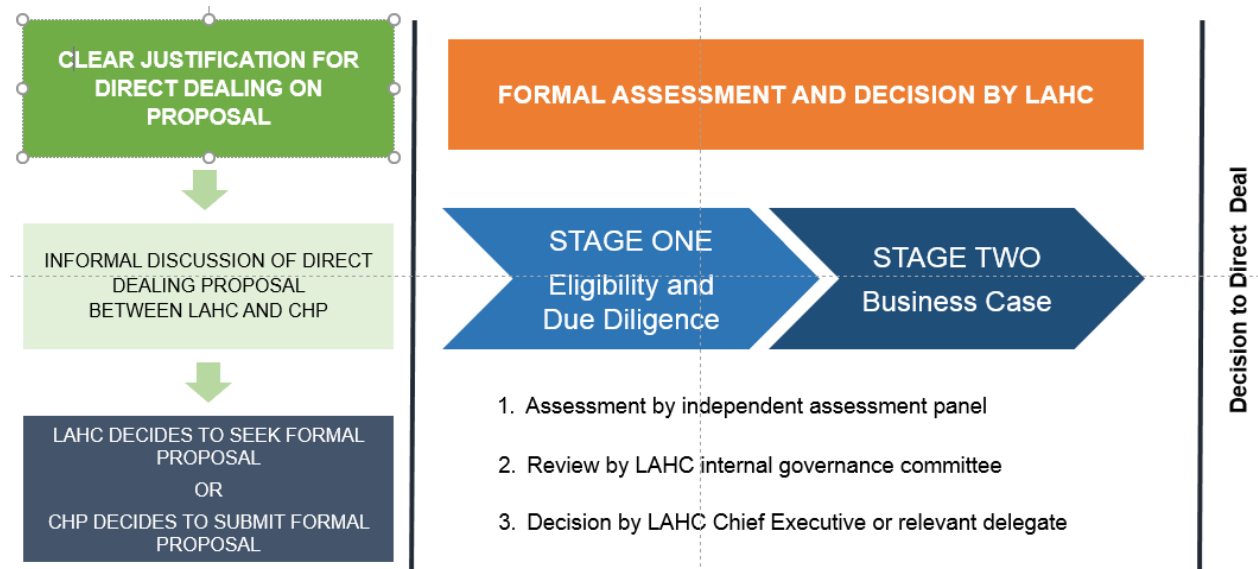
Consistent with the ICAC guides and the NSW Government Procurement Policy Framework regarding complex market engagement methods, before proceeding to a formal process, LAHC needs to justify direct dealing through consideration of:

- How the direct deal may allow LAHC or the CHP to contribute to achieving NSW Government housing-related policy and priorities or LAHC's strategic priorities.
- Why direct dealing is the most suitable procurement approach.
- Whether any other procurement approaches should be considered, and if so which ones.
- Why a competitive process does not need to or cannot be conducted, but value for money can still be achieved.
- Any risks arising from the procurement method.

The detail to be included with the justification must be commensurate to the significance, size and risk of the proposal, as well as reflecting the early stage of the direct dealing process.

In the event of a change to the structure or scope of a proposal, the justification will be reviewed to test whether the changes impact the justification, and whether direct dealing remains appropriate.

5 Evaluation process



The direct dealing process has been designed to be efficient and avoid extensive resources being invested in proposal development by CHPs and proposal assessment by LAHC.

5.1 Pre-proposal Stage

All informal discussions between LAHC and CHPs in the pre-proposal stage will be commercial in confidence and non-binding and will be documented by LAHC.

As such, it is appropriate to hold informal discussions to determine interest of LAHC and the CHP and discuss high-level feasibility of the potential direct deal.

Approval to engage in informal discussions should be sought at Director level or higher.

5.2 Two Stage Submission and Assessment Process

A two stage submission process will be used under this Policy to ensure an efficient process and that resources are not used on ineligible proposals by both the CHP and LAHC.

Stage One considers eligibility and due diligence matters. This stage will only require a high level proposal to have been developed that meets the CHP eligibility and proposal eligibility criteria outlined below.

Proposals that are assessed as eligible and recommended to proceed to Stage Two will require a detailed proposal to be submitted for Stage Two assessment.

The proposal submission requirements for each stage are proportionate to the scale and risk level of the decision and the project.

Proposals are to be submitted by CHPs to LAHC's Policy and Innovation Division.

5.3 Stage One – Eligibility and Due Diligence

Prior to a fully developed proposal being considered, an assessment of eligibility – of the CHP and the high level proposal – will first be conducted.

5.3.1 Stage One Submission

The CHP submission for Stage One will require the following information to be provided:

- a) High level overview of the intended outcomes of the proposal.
- b) High level description of the proposal including details on the land, current lease or ownership details, structure of the proposed transaction and other relevant information.
- c) Address the *CHP eligibility criteria and proposal eligibility criteria*.
- d) How the proposal responds to the NSW Government’s housing-related policies and priorities.
- e) Current planning controls for the site, if relevant.

LAHC will provide a template to guide CHPs regarding the scope of information they will need to provide in their submission.

5.3.2 Eligibility Criteria

To be eligible for a proposal to be considered, a CHP must meet the CHP eligibility criteria and the proposal must meet all of the proposal eligibility criteria.

For CHP eligibility criteria (b) and (c), the materiality of any compliance or contractual issues will be viewed proportionately to the scale of the proposal.

CHP ELIGIBILITY CRITERIA	
a)	Be a registered Tier 1 or Tier 2 CHP under the NRSCH or NSW Local Scheme.
b)	Have no serious regulatory compliance issues.
c)	Have no material unsatisfactory or unresolved contractual issues with a LAHC lease or other contractual agreement.
d)	Have the capability and financial capacity required proportionate to the type, scale and nature of the proposal. The CHP must be willing to give permission for LAHC to obtain a copy of its latest Financial Performance Report and Compliance Report from the Registrar to determine financial risk exposure.
PROPOSAL ELIGIBILITY CRITERIA	
a)	Clear rationale/justification for direct dealing aligned to this Policy. (See Section 4.2 Justification for Direct Dealing)

b)	Have a project value of up to \$5 million (except where a strong rationale for the proposal has been demonstrated) and a positive net financial outcome for LAHC.
c)	Support achievement of NSW Government objectives and outcomes for housing, in particular, growing and changing social housing to meet the needs of vulnerable people and families.
d)	Support growth and capability of the community housing sector to deliver more, better quality housing for people and families that need it.
e)	Align to the NSW Treasurer’s Directions (TD92/2) which require that market value is always considered and pursued in the first instance on any sale or lease of Government assets.
f)	Expected compliance with State and Local Government development requirements (including relevant planning controls), if applicable.

5.4 Stage Two – Proposal

5.4.1 CHP Proposal

The following elements need to be included in a CHP Proposal.

<p>Outcomes to be delivered, giving consideration to:</p> <ul style="list-style-type: none"> a) Support achievement of NSW Government objectives and outcomes for housing, in particular, growing and changing social housing to meet the needs of vulnerable people and families. b) Support growth and capability of the community housing sector to deliver more, better quality housing for people and families that need it. c) Impact on the overall NSW social housing portfolio, LAHC portfolio and/or CHP portfolio.
<p>Transaction feasibility, giving consideration to:</p> <ul style="list-style-type: none"> a) The specific outcomes sought or intended for the transaction. b) Overall costs and intended benefits of the transaction. c) Transaction funding structure (equity/debt/grant etc) and expected revenues and costs. d) Access to finance and funding options. e) Transaction risk analysis.

<p>Project viability, giving consideration to:</p> <ul style="list-style-type: none"> a) Timeframe for commencement and completion. b) Transaction complexity.
<p>CHP capacity (to develop and deliver), giving consideration to:</p> <ul style="list-style-type: none"> a) Capability and capacity commensurate with transaction complexity. b) Partnership arrangements, if relevant. c) CHP financial viability and financial risk exposure.
<p>Tenant considerations, giving consideration to:</p> <ul style="list-style-type: none"> a) Suitable relocation arrangements for tenants i.e. development of a Tenant Relocation Plan, if relevant.³ b) Contributing to NSW Government and LAHC policies related to tenant outcomes.
<p>Commercial framework and risk allocation, giving consideration to:</p> <ul style="list-style-type: none"> a) LAHC’s commercial framework and risk allocation and the requirement for the proposal to materially accept them.

5.4.2 Proposal Assessment Criteria

The following criteria will be used to assess Proposals submitted by CHPs under this Policy:

1. Alignment with the NSW Government’s housing-related objectives and outcomes, in particular, growing and changing social housing to meet the needs of vulnerable people and families.
2. Impact on the NSW social housing portfolio, LAHC portfolio and/or CHP portfolio.
3. The CHP demonstrates capability and financial capacity required to successfully deliver the proposal.
4. Value for money, which will be assessed in terms of the:
 - Value to be added to the overall NSW social housing portfolio as a result of the intended outcomes of the proposal.
 - Extent that the proposal will deliver best value within the land use potential and the financial and economic context.
 - Extent to which the proposal supports earlier achievement of NSW Government housing-related objectives and outcomes.
 - Costs for LAHC – including avoided costs and opportunity costs for LAHC.

³ Managing agents are responsible for tenant relocations. Where relocations are challenging within a managing agent’s portfolio they are encouraged to work collaboratively with other providers to meet tenant needs, this could include other CHPs, other Aboriginal CHPs or DCJ.

- Potential additional supply of social housing that would be forgone if the proposal was not considered (if relevant).
5. Transaction feasibility and viability.
 6. Robustness of CHP's operating plan over the term of the lease.
 7. Alignment of proposed commercial framework and risk allocation to LAHC's commercial framework and risk allocation.
 8. Risk to the NSW Government, LAHC and/or social housing supply.

5.5 Assessment and Decision-making

5.5.1 Assessment of proposals

The Stage One eligibility assessment will be undertaken by an independent panel comprising representatives from the Department of Planning, Industry and Environment (DPIE) Legal and Governance and from LAHC. The Stage Two proposal assessment will be undertaken by LAHC representatives. At each stage, the assessment panel will make recommendations to LAHC's internal investment or divestment governance committee, as appropriate.

Each assessment panel will assess each proposal on its merits against the assessment criteria outlined in this Policy.

5.5.2 Requests for additional information as part of assessment

The assessment panel may request clarifications or additional information as part of its assessment. If further information is required from the CHP, this will be forwarded in writing to the CHP with a timeframe for provision of the information.

As part of the assessment in Stage One and Two, information may be requested from the Registrar or DCJ with the consent of the CHP for the purposes of due diligence activities.

5.5.3 Decision on CHP Proposal

The LAHC internal governance investment or divestment committee (as appropriate) will endorse the decision and make recommendations to the Chief Executive or relevant delegate for approval.

The appropriate governance committee will review the recommendation from the assessment panel at each stage and provide a decision for endorsement or otherwise by the LAHC Chief Executive or relevant delegate.

The outcome of the assessment of the proposal will then be notified to the CHP in writing. If the CHP is unsuccessful at Stage One or Stage Two, it may request feedback from LAHC.

If a proposal is approved, the relevant transaction documents will be negotiated for the transaction.

5.6 Documentation of Actions, Decisions and Reasoning

Consideration of all direct dealing proposals from registered CHPs will be documented and supported by evidence, addressing the following (where relevant):

- The rationale for the proposal.
- Demonstrated consideration of the guiding principles in this Policy.
- How the proposal delivers against the assessment criteria to a satisfactory standard.
- Appropriate considerations relating to conflict management and probity principles.
- Compliance with other relevant LAHC policies and frameworks.
- Other specific factors that the CHP considers to be relevant to the proposal.
- Other matters that LAHC considers relevant.

5.7 Feedback on proposals

A CHP may seek feedback on their proposal following receipt of written confirmation on a decision in relation to their proposal. This includes at the following stages:

- Following the Stage One – Eligibility and due diligence assessment. Feedback can be provided to CHPs, if requested, on proposals that are recommended to proceed to Stage Two – Proposal assessment, or following a decision to not proceed to Stage Two.
- Following the decision on the Stage Two – Proposal assessment which is made by the LAHC Chief Executive or relevant delegate.

Feedback in these circumstances will focus on the assessment of the extent to which the proposal was assessed as meeting each of the relevant criteria.

6 Governance

6.1 Direct Dealing Register

A LAHC register of all small scale direct deal proposals involving CHPs will be maintained. This will include details of every direct dealing sought or received by LAHC.

This register will be reviewed by LAHC's Policy and Innovation division on a quarterly basis.

The register will be appropriately secured.

6.2 Probity

LAHC seeks to conduct its commercial dealings with integrity. Discussions, consideration and assessment of direct dealing proposals must be fair, open and demonstrate the highest levels of probity consistent with the public interest.

The assessment of direct deal proposals will be conducted through the application of established probity principles that aim to assure all parties of the integrity of the decision making processes. These principles are outlined in this section.

LAHC may elect to engage a probity advisor to oversee and/or advise on the process for considering a direct deal proposal.

6.2.1 Maintaining Impartiality

Fair and impartial treatment will be a feature of each stage of the process. The process will feature a clearly defined separation of duties and personnel between negotiation, assessment and approval functions.

Maintaining impartiality in this way enables fair and robust assessment of proposals and provides participants with confidence in the integrity of the process.

6.2.2 Maintaining Accountability and Transparency

Accountability and transparency are related concepts. The demonstration of both is crucial to the integrity of the process. Accountability requires that all participants acknowledge and take responsibility for their actions in decision-making and are held accountable to the people of NSW, ensuring that decisions are in the community's best interests.

This Policy and any associated guidelines or processes will clearly identify responsibilities, provide feedback mechanisms and require that all activities and decision making be appropriately documented.

Transparency refers to the preparedness to open a project and its processes to scrutiny, debate and possible criticism. This also involves providing reasons for all decisions taken and the provision of appropriate information to relevant stakeholders. Relevant summary information regarding proposals will be published as outlined in Section 7.

6.2.3 Managing Conflicts of Interest

In support of the public interest, transparency and accountability, all actual or perceived conflicts of interest must be identified, managed and monitored.

All participants will be required to disclose any current or past relationships or connections that may unfairly influence or be seen to unfairly influence the integrity of the assessment process. Staff and any advisers from LAHC and the CHP involved in the direct deal proposal need to provide written declaration of any conflicts or confirm that no conflicts exist.

Conflict of Interest disclosures will be managed in line with the [DPIE Code of Ethics and Conduct](#).

Meetings of the assessment panel will include declaration of conflicts of interest in each agenda.

6.2.4 Maintaining Confidentiality

In addition to requiring high-levels of accountability and transparency, direct dealing may require some information to be kept confidential, at least for a specified period. Any potential direct deal will generally be kept confidential until the signing of an initial process

document, such as a memorandum of understanding or similar document between Government and the CHP. In some circumstances, it may also be appropriate to keep a direct deal confidential until the signing of binding documentation. This is important to provide participants with confidence in the integrity of the process.

Communication with the Registrar is exempted from confidentiality restrictions under this Policy.

6.2.5 Obtaining Value for Money

Obtaining optimal value for money is a fundamental principle of public sector work. This is achieved by:

- ensuring that robust processes are in place to maximise Government's capacity for negotiation; and
- undertaking comprehensive evaluation prior to Government making any binding commitments to proceed with the direct deal.

Ensuring value for money is achieved will require that LAHC evaluates a clear commercial proposition from a CHP prior to making any binding commitments.

In undertaking discussions relating to a proposal for the purchase of LAHC-owned land, LAHC will carefully consider when is the appropriate stage of the process to communicate expectations about price elements of the proposal. Prior to entering into complex negotiations, LAHC will identify and document a negotiation strategy, which includes price considerations and the parameters of a value for money direct deal.

Where a probity advisor is appointed, their role is to observe and comment on the probity aspects of the process. It is not the role of the probity advisor to determine whether a proposal meets the required value for money criterion. However, a probity advisor may comment if there is evidence that there is not adequate value for money.

7 Communication

7.1 CHP Awareness of this Policy

All relevant CHPs will be made aware that they can make a direct approach to LAHC or LAHC can make a direct approach to a CHP, with a small scale direct dealing proposal where it aligns with the principles and eligibility criteria outlined in this Policy.

7.2 Reporting and Public Disclosure

The Registrar will be notified of direct dealing proposals received by LAHC to ensure they align with business and strategic plans used to provide assurances to maintain registration, and to see that financial modelling is consistent with forecasts.

Relevant summary information regarding CHP small scale direct dealing proposals will be made publicly available following advice being sent to the relevant CHP of:

- A decision to proceed to direct deal with the CHP. This would be after the Stage Two assessment is finalised and where the recommendation to proceed to direct deal has

been approved by the Chief Executive or the relevant delegate. Proposals that are not progressed or are rejected will not be published.

- The formal outcome of a finalised direct deal.

Further information may be published as appropriate.

8 Monitoring, Evaluation and Review

It is the responsibility of the LAHC Policy and Innovation Division to monitor and update this Policy when required. Future changes will be submitted to the LAHC Chief Executive for approval.

This Policy will be reviewed at 12 months following publication and then every two years or at other times if and when any significant new information, legislative, policy or organisational change warrants amendments to this document.

The 12 month review will at a minimum consider issues:

- related to scope of the Policy
- that have arisen during implementation
- effectiveness in providing a framework for small scale direct dealing, including, management of risks.

Reviews will be conducted in collaboration with other LAHC Divisions, the NSW Registrar and the community housing sector.

9 Support and Advice

Advice and support about this policy can be obtained from LAHC's Policy and Innovation Division, which has carriage of this document.

If reviewing a printed version of this document, please refer to the LAHC Internet website to confirm that you are reviewing the most recent version.

Following any subsequent reviews and approved amendments, this Policy will be uploaded to the LAHC internet and/or intranet and all previous versions removed.

Appendix 1 – Regulatory and Policy Context

LAHC Regulatory Framework

LAHC is a Public Trading Enterprise established in 2001 under the *Housing Act 2001* and operates under the portfolio and direction of the Minister for Water, Property and Housing.

As a Housing Agency, LAHC may give assistance to a registered CHP in the form of the provision of funding, land or other property, under s15 (2) of the *Community Housing Providers (Adoption of National law) Act 2012*.

As asset management allocation involves the use of government resources by CHPs, any asset allocations will be conducted in accordance with the *Public Works and Procurement Act 1912*.

Decisions under this Policy will also be consistent with the NSW Government's *Procurement Policy Framework for NSW Government Agencies*, Treasurer's Directions, Private Public Partnership guidelines, in particular the objectives of:

- Achieving value for money.
- Delivering quality government goods and services.
- Aligning procurement with business needs.

LAHC Policy and Operating Context

LAHC (together with the Aboriginal Housing Office) owns the NSW Government's social housing portfolio. LAHC is part of the DPIE under the portfolio and direction of the Minister for Water, Property and Housing. Under a service level agreement, which reflects aspects of sections 3 and 6 of the *Housing Act 2001*, the DCJ together with LAHC manage the tenancies of LAHC's social housing portfolio. Under leases, CHPs manage LAHC-owned social housing properties.

Future Directions for Social Housing in NSW

LAHC seeks to ensure that the NSW Government's social housing portfolio is positioned to meet the current and future needs of social housing eligible clients.

The Future Directions in Social Housing in NSW (Future Directions) strategy is the NSW Government's vision for the social housing system to 2025. It includes a focus on greater involvement of private and non-government partners in financing, innovative ground leasing, owning and managing a significantly expanded stock of high quality, social and affordable housing assets.

LAHC is committed to working in partnership with registered CHPs to increase and renew the supply of social housing in NSW. *Future Directions* includes a strategy for registered CHPs to manage a significant proportion of LAHC's portfolio. The Social Housing Management Transfer program delivered in 2018/19 and 2019/20 has helped support this strategy, with nine whole of location management transfers.

LAHC Portfolio Strategy 2020

The LAHC Portfolio Strategy (2020) sets out the vision and priorities to grow and change the LAHC portfolio over the next 20 years. By growing and changing the social housing portfolio we can house more vulnerable people and families in better quality homes and improve our financial sustainability as a self-funded housing owner.

The Portfolio Strategy provides direction for the sort of homes LAHC will own and build into the future – they will be fit for modern use and well-maintained quality homes that will be planned and designed to meet changing needs. In achieving this, our property renewals and developments are focused on good design, great amenities, better landscaping and strong environmental performance to improve long term property and portfolio value and tenant experience.

A key element of the Portfolio Strategy is focussed on increasing the flexibility of the portfolio so it better meets demand and is more efficient to manage. LAHC renews its portfolio by delivering new supply through various delivery models, using LAHC's own funding and through partnerships with the private and not-for-profit sectors to deliver new homes on LAHC sites. LAHC is also exploring new brokering and innovative financing arrangements to facilitate renewal and growth of social housing.

LAHC Disposal Policy

LAHC is continually refreshing and developing a range of policies that may enable or restrict small scale direct dealing with CHPs. These policies and their associated governance requirements for decision making must be adhered to when seeking or considering a proposal for direct dealing with a CHP.

LAHC's [Disposal Policy](#) notes strategic reasons where disposals may be desirable, including generating funding for other better quality homes, increasing the portfolio's fit for purpose and utilisation, deconcentrating social housing, extracting value from development and supporting other policy objectives to be achieved, such as home ownership or increased Aboriginal service provision. The LAHC Disposal Policy notes properties can be occupied and identified for strategic disposal. Disposal of properties to registered CHPs is specifically covered in Section 8.4.3 of the Disposal Policy.

The LAHC Disposal Policy is supported by the LAHC Strategic Relocations Policy, which enables strategic relocation of tenants to support achievement of LAHC's Portfolio Strategy and any LGA strategy objectives.

Appendix 2 – Procurement Context

NSW Government Procurement Policy Framework 2019

The *NSW Government Procurement Policy Framework* (2019)⁴ has five objectives:

- Value for money – the overarching consideration for government procurement.
- Fair and open competition.
- Easy to do business.
- Innovation.
- Economic development, social outcomes and sustainability.

The *Procurement Policy Framework* recognises that government agencies can have unique procurement requirements that require non-traditional methods or complex market arrangements, such as direct dealing.

The *Procurement Policy Framework* recognises that time and money can be saved when procurement is made simpler, easier and more efficient. It also requires all procurement to be fair, ethical, transparent and probity rich. However, probity should not be used as a ‘road-block’ or to ignore innovative procurement arrangements.⁵

The *Procurement Policy Framework* emphasises that direct negotiations should only be used when it is clear it will deliver the best value for money.⁶

Taking a Risk-Based Approach to Direct Negotiations

This Policy has been developed to align with the *Direct Negotiations: Guide for Managing Risks* (2018) published by the NSW Independent Commission Against Corruption (ICAC)⁷. The ICAC Guidelines note that direct negotiations can arise from a range of contexts, including through partnership arrangements with non-government providers under mechanisms that differ from traditional procurement.

The Guidelines note the need to pay greater attention to measures that mitigate the risk of corruption and to ensure appropriate levels of integrity when engaging in direct negotiations.

The following probity principles need to be used in decisions related to direct negotiations:

- Fairness.
- Impartiality.

⁴ buy.nsw.gov.au/policy-library/policies/procurement-policy-framework accessed 23 March 2020.

⁵ buy.nsw.gov.au/buy/source/select-suppliers/probity-and-fairness

⁶ buy.nsw.gov.au/policy-and-reform/goods-and-services-procurement-policies/complex-market-engagement-methods.

⁷ icac.nsw.gov.au/ArticleDocuments/232/Direct%20Negotiations%20-%20guidelines%20for%20managing%20risks%20in%20direct%20negotiations%203Aug18.pdf.aspx.

- Accountability.
- Transparency.
- Value for Money.

These principles have been addressed in relevant sections of this policy.

ICAC's *Supplier Due Diligence: Guide for Public Sector Agencies* (June 2020) encourages agencies to take a risk-based approach to due diligence. The Guide has informed the approach to managing risk to both the NSW Government and LAHC in direct dealing with CHPs. Specifically, the policy scope, guiding principles, two stage assessment process and governance arrangements set the parameters for risk-based due diligence. Additional due diligence activities will apply in the negotiating and additional stages that follow this policy.

ICAC was consulted in the process of developing this Policy.

Appendix 3 – Glossary

Definitions

The table below is a list of terms, keywords and/or abbreviations used throughout this document.

Term	Definition
DCJ	Department of Communities and Justice
DPIE	Department of Planning, Industry and Environment
Community Housing Providers	Providers of community housing, inclusive of both registered and unregistered community housing providers
LAHC	New South Wales Land and Housing Corporation
LGA	Local Government Area
NRSCH	National Regulatory System for Community Housing
NSW Local Scheme	A local system of registration, monitoring and regulation of entities that provide community housing but are unable to be registered under the Community Housing Providers National Law (NSW).
Policy	means <i>LAHC Policy for Small Scale Direct Dealing with Community Housing Providers</i>
Registered CHP	Not-for-profit Community Housing Provider registered under the National Regulatory System for Community Housing, this includes Aboriginal Community Housing Providers
Registrar	Registrar of Community Housing