

# NSW Land and Housing Corporation Acquisition Policy

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## 1. Purpose of this Policy

This Policy sets out guiding principles for the acquisition of real property (land and dwellings<sup>1</sup>) by the NSW Land and Housing Corporation (LAHC).

The policy principles guide the development of acquisition strategies, programs and proposals alongside other policies, frameworks and tools that support implementation of the LAHC Portfolio Strategy.

The Policy aims to:

- identify acquisition as one of the approaches that LAHC can use to grow and change the portfolio, in addition to divestment and the delivery of new supply through renewal and development
- ensure any acquisition proposal, strategy or program contributes to achieving NSW Government housing related policies, the LAHC Portfolio Strategy and directions in Local Area Analyses or Regional Area Analyses
- provide guidance for LAHC to design large scale acquisition programs or make best use of acquisition funding opportunities when they are available
- increase consistency and comparability in the development of acquisition proposals, strategies or programs
- provide guidance on appropriate and detailed due diligence, so that acquired properties are appropriate for the intended need and present value for money, and risks relating to acquisitions are effectively managed.

The policy is used to guide identification, assessment and decision making for acquisitions in conjunction with:

- new supply strategies and frameworks (including Local Area Analyses, new supply strategies, development pipelines)
- the LAHC Direct Dealing Framework and policies for direct dealing
- decision making policies, guidelines and frameworks (including Treasury Directives and policies, Return on Investment metrics etc.)
- implementation guidance (e.g. Acquisition content of *LAHC's Quality Management System (QMS) Procedures*, maintained by LAHC's Commercial Division).

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<sup>1</sup> As opposed to personal property.

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## 2. Policy and Operating Context

LAHC (together with the Aboriginal Housing Office) owns the NSW Government's social housing portfolio. LAHC is a Public Trading Enterprise established under the *Housing Act 2001* and is part of the Department of Planning and Environment (DPE) under the portfolio and direction of the Minister for Planning, Minister for Homes.

Housing 2041 sets the NSW Government's long-term vision and objectives for better housing outcomes across NSW. It embodies the Government's goals and ambitions to deliver better housing outcomes by 2041 – housing in the right locations, housing that suits diverse needs and housing that feels like home.

It considers all housing types and tenures across the housing spectrum, from crisis housing to social and affordable housing, private rental, specialist housing and home ownership.

It commits to continuing to invest in growing and changing the social housing portfolio, so it can meet future needs and challenges, and reducing waitlist times to access social housing.

The Future Directions for Social Housing in NSW strategy is the NSW Government's vision for the social housing system to 2025. A strategic priority is to grow social housing supply with better designed homes to meet tenants' needs. The strategy commits to implement a program of acquisitions to replace existing dwellings and expand supply in major regional centres that have good access to services and employment.

Housing 2041 and Future Directions are the primary Government policies guiding LAHC's planning, decision making and activities.

LAHC's Portfolio Strategy, published in 2020, sets out the vision and priorities to grow and change the LAHC portfolio over the next 20 years. It 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, planned and designed to meet changing needs. It commits to exploring ways to acquire well located land and that decisions to acquire will be driven by guiding principles, portfolio analysis and housing need.

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## 3. Rationale for Acquisitions

Alongside development and renewal activities, the acquisition of land and dwellings supports achievement of the Portfolio Strategy vision and objectives.

Property can be acquired by LAHC, when funding is available, as part of an acquisitions strategy or program or proposed as part of a site specific redevelopment proposal or project. The examples listed below are not exhaustive.

## Growing the portfolio

Acquisitions can be used to:

- secure property required to meet a future, long term housing need, including well located land owned by other government agencies, non-government entities, Local Aboriginal Land Councils or the private market and opportunities at the land release stage.
- Directly or indirectly support the more efficient delivery of housing in well-serviced locations
- grow the portfolio asset base for future social housing supply, including in newer ‘greenfield’ housing release areas
- increase the supply of social housing and land in regional areas, where acquisition costs can be lower than build costs, and in the process support local economies and the construction industry
- as part of LAHC’s broker role, by facilitating or priming local builder/developer markets delivering housing that is purpose-built for sale to LAHC
- facilitate the relocation of tenants; for example where redevelopment is planned, where property is otherwise needed or where there has been a fire incident, extreme weather event or other disaster.

## Supporting redevelopment

Acquisitions can be used to:

- accelerate redevelopment projects and bring forward delivery of new housing supply, by acquiring land or properties that increase relocation capacity. These strategic acquisitions can be held on either a short term or long term basis.
- maximise the value to the portfolio of existing LAHC assets; for example, by enabling purchase of ‘missing teeth’ for lot consolidation where it will enhance site value or increased project yield and represents value for money.

## Supporting the achievement of other policy or operational initiatives

Acquisitions can be used to:

- enable and accelerate expenditure of time-sensitive funding
- where it is not economically or logistically viable to construct (limited land, remote locations etc)
- provide interim use of short-term accommodation
- offset divestment of properties that are no longer fit for purpose, including heritage, bushfire or flood prone properties, and where there is high demand for social housing
- assist in disaster responses.

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# 4. Scope and Application of the Policy

## Audience and application

This policy applies to all staff involved in acquisition planning, approval and execution, including the Property and Investment Committee (PIC), which is responsible for endorsing acquisition proposals. For clarity, this includes shared services staff of DPE.

## In Scope

This Policy applies to all acquisition strategies, programs or proposals, regardless of:

- source of funding
- type of acquisition
- existing property owner
- acquisition process
- characteristics of the property
- whether it is an ad hoc, strategic, programmed or pipeline proposal
- whether it is for a full or part interest in land or property.

The policy is a guide for decision making and can be applied with a degree of flexibility, recognising there may be acquisitions or unforeseen circumstances that fall outside the intended scope.

## Out of Scope

This Policy does not apply to:

- identifying or securing funding sources for acquisitions. Noting that proposals for funding would be expected to consider the intent and principles of the policy and decision making on the merits of an acquisition proposed under this Policy may influence a decision to allocate funding
- processes for completing the acquisition, as these are outlined elsewhere, including in LAHC's QMS Procedures
- acquisitions undertaken by or on behalf of LAHC's Housing Services directorate or another agency.

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# 5. Context for Acquisitions

## Forms of acquisitions

Property can be acquired for a number of purposes – and in some case, for multiple purposes – including:

- **procedural, transactional acquisitions** necessary to satisfy statutory or project requirements (e.g. in the case of easements) or resolve management or ownership issues (e.g. where LAHC purchases a part-share to obtain full ownership of a property)
- **strategic acquisitions** to support redevelopment opportunities, grow the portfolio or support deliver other policy or operational initiatives
- **as part of an acquisition strategy, program or pipeline**, where it is made possible with specific funding
- **on an ad hoc basis**, where an opportunity presents that adds value to the portfolio.

All acquisition strategies, programs or proposals, regardless of their scope or significance, should be aligned to this Policy to ensure these investments add value to the portfolio, are strategic, are coordinated, and contribute to delivering the LAHC Portfolio Strategy and NSW Government policies.

## Source of property

LAHC can acquire land or property from the private market, local councils or other State Government agencies, through various processes including:

- public auction or Private Treaty (usually via a selling agent)
- by direct negotiation
- compulsorily (under the *Land Acquisition (Just Terms Compensation) Act 1991*)
- through property swaps between Government agencies.

LAHC can also acquire land or property from the community housing sector, Local Aboriginal Land Councils or other organisations.

## Types of properties and locations

The LAHC Portfolio Strategy emphasises that LAHC invests in well-located, right-sized, fit for purpose and well-designed properties.

LAHC can acquire various types of properties, including:

- vacant land, easement and redevelopment sites; of varying size and levels of servicing
- part or full shares in properties
- existing buildings for residential use
- new residential dwellings – through pre-sales, under construction or recently completed.

Dwellings can include general housing typologies, as well as specialised properties such as group homes or crisis accommodation.

Acquisition opportunities can occur across NSW, from metropolitan settings to regional, rural and remote locations.

The LAHC Portfolio Strategy emphasises that LAHC invests in well located land and dwellings that are in the interests of current and future tenants, and to add value to the portfolio.

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## 6. Principles Guiding Acquisitions

Acquisition strategies, programs and proposals need to have regard to the Principles outlined below.

The Principles are intended to be applied flexibly, as best practice guidance rather than being mandatory. There may be instances where acquisitions are justifiable despite not being able to satisfy all Principles (for example where an acquisition meets a short-term, greater need).

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

- Demonstration of the merits of any proposed acquisition, compared to other options to achieve the same outcome (such as disposal, 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. Value for money

Under the NSW Procurement Policy Framework the overarching consideration for Government procurement is to ensure best value for money.

Value for money is critical to LAHC's sustainability as a self-funded housing provider.

Value for money includes not only the dollar value of the property, but other factors such as capital and maintenance costs, risks to the organisation and strategic benefits across the life cycle.

### Ensuring value for money

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| <b>1.1</b> | <p>Ensure value for money is established and understood in the context of the acquisition, and is achieved and supported by evidence, including (where applicable):</p> <ul style="list-style-type: none"> <li>• demonstrating that the acquisition enhances a potential redevelopment outcome from a financial and outcomes perspective</li> <li>• demonstrating that it is more efficient to buy than it is for LAHC to build in that area</li> <li>• demonstrating that the property is fit for purpose and aligned to need (see Principle 3)</li> <li>• demonstrating that the purchase price of the property (market value) will not contribute to over-capitalising the portfolio</li> <li>• consideration of the timing of the purchase with the local housing market cycle.</li> </ul> |
| <b>1.2</b> | <p>For all properties considered for acquisition, an independent valuation has been conducted according to:</p> <ul style="list-style-type: none"> <li>• in the case of acquisition from another government agency:           <ul style="list-style-type: none"> <li>○ <i>Treasurer's Direction TD92/2 (469.03) – Basis of Transfer of Realty between Government Authorities</i></li> <li>○ the Strategic Land and Property Framework, which may include procuring an independent market valuation</li> </ul> </li> <li>• a market valuation from an independent qualified valuer, for acquisitions from the open market</li> <li>• the <u>Land Acquisition (Just Terms Compensation) Act 1991</u>, in the case of compulsory acquisition.</li> </ul>  |
| <b>1.3</b> | <p>Consideration should be given to the current and potential future value of the property, within the context of the acquisition, having regard to the independent valuation and all other relevant factors. (e.g., is the property in an area identified to undergo growth, does the acquisition unlock development potential, is it a standalone acquisition for a specific purpose?)</p>   |
| <b>1.4</b> | <p>Where large investment in acquisitions has the potential to impact local or regional housing markets, consideration is to be given to potential market impacts.</p>   |
| <b>1.5</b> | <p>Appropriate due diligence should be undertaken with respect to the property and land, vendor, market conditions, risk, and value for money considerations, to inform transaction</p>  |

terms and support evidence-based decision making. Where appropriate, due diligence will be enhanced by independent expert advice.

## Principle 2. Alignment with policy and strategic directions

Property acquisition is one of the approaches that LAHC can use to grow and change the portfolio, in addition to divestment and the delivery of new supply through renewal and development, sales and disposals.

Acquisitions should contribute to the achievement of LAHC's Portfolio Strategy and NSW Government policies and priorities for housing, to maximise the value of existing investment and ensure housing activity is coordinated to achieve the best housing outcomes possible.

### Alignment with policy and strategic directions

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| <b>2.1</b> | Acquisition strategies, policies and proposals should align to current and future demand.   |
| <b>2.2</b> | The acquisition strategy, program or proposal aligns with and supports achievement of policy and priorities outlined in the <u>LAHC Portfolio Strategy</u> , <u>Future Directions for Social Housing in NSW</u> and/or <u>Housing 2041: NSW Housing Strategy</u> .  |
| <b>2.3</b> | The acquisition strategy, program or proposal should consider opportunities to align with and support achievement of LAHC's strategy outlined in the applicable <u>Local or Regional Area Analyses</u> and the Delivery Division strategy in the region, or supports delivery of a redevelopment or sales pipeline. |
| <b>2.4</b> | The acquisition strategy, program or proposal should consider opportunities to align with strategic planning, growth and investment in the region, including as outlined in the <u>Greater Sydney Region Plan</u> or relevant <u>Regional Plan</u> .  |

## Principle 3. Fit for purpose, easier to manage and costs less to maintain

LAHC's Portfolio Strategy commits to increasing the portion of fit-for-purpose, well designed homes in the portfolio. This includes more cost effective and efficient homes, which are easier to manage and cost less to maintain.

Acquisition strategies, programs and proposals need to consider, where relevant, liveability and cost effectiveness for:

- tenants – efficient, well-designed climate resilient homes can support reduced cost of living for tenants
- managing the portfolio – efficient, well-designed climate resilient homes can reduce maintenance costs.

### Fit for purpose, easier to manage and costs less to maintain

<b>3.1</b>	<p>Where acquired buildings are to be occupied, they should require minimal capital works or meet the <i>LAHC Asset Build Standards</i> and <i>Asset Performance Standards for Existing Dwellings</i> and relevant legislative requirements.</p> <p>Where properties do not meet these standards, a rationale for not meeting the standards and a timeframe for holding the property is important.</p>
<b>3.2</b>	<p>Acquired properties must not present unacceptable ongoing maintenance liabilities. It is preferred that LAHC does not acquire buildings for long term occupation that:</p> <ul style="list-style-type: none"> <li>• are over 5 years old (except with the approval of the Chief Executive), noting this building age limit does not apply to acquisitions that support redevelopment.</li> <li>• significantly depart from the <i>LAHC Asset Build Standards and Asset Performance Standards for Existing Dwellings</i></li> <li>• include property features that require out of the ordinary maintenance (e.g. Pools or Strata Corporation's expectations for amenity, chattels and fixtures).</li> </ul>
<b>3.3</b>	<p>Consideration should be given to not acquiring properties that are identified as heritage listed or in a heritage conservation area, or at high-risk for bushfire or flooding, or in a sea level rise location.</p>
<b>3.4</b>	<p>Acquisitions that provide homes for social housing tenants need to be fit for purpose for current and future tenants. For example, homes:</p> <ul style="list-style-type: none"> <li>• are, or will be, within an appropriate distance from public transport, local retail and community services</li> <li>• have access to education and employment opportunities, within a reasonable distance.</li> </ul>
<b>3.5</b>	<p>Consideration should be given to tenancy management options in the location/s of the acquisition strategy, program or proposal. This includes noting Social Housing Management Transfer locations and ensuring efficient management and maintenance.</p>
<b>3.6</b>	<p>Where redevelopment or strategic sales necessitate relocation, the acquisition enables tenants to continue living in their community.</p>

## Principle 4. Acquisitions are effectively governed

Acquisition is a form of procurement and involves varying degrees of risk.

Risk can be 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.

**Acquisitions are effectively managed and governed**

<b>4.1</b>	<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>LAHC achieves this through:</p> <ul style="list-style-type: none"> <li>• exercising probity, transparency and integrity in its dealings, including through disclosure and management of conflicts of interest</li> <li>• independent governance and through the Property and Investment Committee and appropriate exercise of delegations</li> <li>• disclosure of contracts with the private sector, in accordance with the <i>Government Information (Public Access) Act 2009</i> (GIPA Act).</li> </ul> <p>(Detailed guidance is provided in LAHC’s Procurement Policy and Procedures Manual).</p>
<b>4.2</b>	<p>For acquisitions involving direct dealing, all processes and negotiations are to be conducted in line with the LAHC Direct Dealing Framework and relevant LAHC policies for direct dealing.</p>
<b>4.3</b>	<p>Risks associated with any acquisition strategy, program or proposal need to be clearly identified and effectively mitigated, in accordance with the Department of Planning and Environment (DPE) <u><i>Risk Management Policy</i></u> and LAHC <u><i>Risk Management Framework</i></u>.</p>
<b>4.4</b>	<p>Decision making is to be:</p> <ul style="list-style-type: none"> <li>• managed through LAHC governance committees and delegates with appropriate separation of functions from the team managing the transaction</li> <li>• evidence-based and informed by rationale in line with this Policy, detailed due diligence to demonstrate suitability and value for money and by the relevant governance committee’s terms of reference</li> <li>• appropriately documented and recorded.</li> </ul>

## 7. Policy Context Relevant to Acquisitions

The *Implementation Overview* that accompanies this Policy (TRIM22/1794726) outlines how this Policy is to be applied in the context of other LAHC strategies, decision making tools and processes.

### LAHC policies

#### LAHC Procurement Policy and Procedures Manual

As a form of procurement, all acquisitions must be managed in accordance with the LAHC Procurement Policy and Procedures Manual. This provides detailed guidance that will assist staff to identify and manage procurement and compliance risk, and exercise probity, transparency and integrity throughout the acquisition process.

## LAHC Direct Dealing Framework

Where LAHC acquires property by direct negotiation<sup>2</sup> with the current property owner, the acquisition must be handled in accordance with LAHC's *Direct Dealing Framework*.

## NSW Government policies and regulations

### Housing 2041: NSW Housing Strategy

Housing 2041: NSW Housing Strategy sets out the NSW Government's long-term vision and objectives for better housing outcomes across NSW. The Strategy considers all housing types and tenures across the housing spectrum. A priority for the Housing 2041 action plan is to maximise the impact of government-owned land, investment or assets, and government-led development projects or funding to achieve the housing vision.

The Strategy aims to:

- 1 Deliver housing supply in the right locations at the right time.
- 2 Provide housing that is affordable and secure.
- 3 Provide housing that is diverse and meets varied and changing needs.
- 4 Deliver enduring and resilient housing.

### Future Directions for Social Housing in NSW (2016 – 2025)

Future Directions for Social Housing in NSW sets out the NSW Government's vision for the social housing system. It is focused on delivering more social housing, more opportunities to avoid or leave social housing, and a better social housing experience. Strategic priorities relevant to the LAHC portfolio include:

- growing social housing supply with new homes that are modern, look the same as neighbouring homes and are close to transport, employment and other community services
- more social housing that is better designed to meet tenants' needs by building more smaller, fit-for-purpose homes to match the needs of new and future tenants.

### Strategic Land and Property Framework

The NSW Strategic Land and Property Framework (SLPF) 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.

It provides that transfers to other NSW Government agencies (excluding State Owned Corporations<sup>3</sup>) for the delivery of election commitments or Expenditure Review Committee 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.

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<sup>2</sup> Defined in the LAHC Glossary as exclusive dealings between a Government agency and non-Government sector body over a commercial proposition or proposal, which may be solicited or unsolicited.

<sup>3</sup> Note, LAHC is a Public Trading Entity, not a State Owned Corporation.

The Business Development team within LAHC's Policy and Innovation Division is the initial contact for exploration of SLPF options, as well as related initiatives such as the Property Working Group and Government Property Exchange.

### **Treasurer's Direction TD92/2 (469.03)**

*Treasurer's Direction TD92/2 (469.03) – Basis of Transfer of Realty Between Government Authorities* applies where an Authority acquires lands already in Government ownership and sets out the basis for determining compensation, including how to assess current market value.

### **Land Acquisition (Just Terms Compensation) Act 1991**

The *Land Acquisition (Just Terms Compensation) Act 1991* enables private land to be compulsorily acquired on just terms, by an authority of the State. LAHC is considered such an authority, and therefore has the power to compulsorily acquire land under the Act.

The Act outlines procedures for acquisition by agreement or compulsorily, including determining appropriate compensation.

Despite the provisions of the Act, LAHC rarely uses its powers to compulsorily acquire property. In addition to the application of Principles and Criteria in this document, legal advice must be sought where compulsory acquisition is being considered.

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## **8. Monitoring and Review**

The LAHC Policy and Innovation Division is responsible for maintaining this Policy. This includes:

- monitoring the correct functioning of the Policy
- comprehensive review in the 12 months from its introduction in 2022 (i.e. in 2023) and every two years thereafter (or at other times if and when any significant new information, legislative, policy or organisational change warrants it)
- progressing changes and updates as required, with approval from the Chief Executive.