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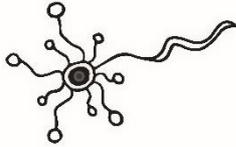


Community Housing Provider Direct Dealing Policy

A NSW Land and Housing Corporation Policy

June 2022





Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

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First published: June 2022

Department reference number: D22/1439187

More information

This policy was developed by the NSW Land and Housing Corporation LAHC), Policy and Innovation Division and replaces the LAHC Policy for Small Scale Direct Dealing with CHPs (2020) and Policy for CHP-led Redevelopment of Social and Affordable Housing on LAHC-owned Land (2020).

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Contents

1.	Purpose of this Policy	4
2.	What is Direct Dealing?.....	4
3.	Policy Objectives.....	5
4.	Scope and application.....	6
5.	Proposal Criteria	7
6.	Direct Dealing Process.....	9
7.	Policy Context for Direct Dealing.....	10
8.	Policy Monitoring and Review.....	12

1. Purpose of this Policy

Partnerships between the NSW Land and Housing Corporation (LAHC) and community housing providers (CHPs) ¹ create opportunities to increase the overall supply and quality of social and affordable housing owned by LAHC and CHPs across NSW, which contributes to a more diverse, sustainable and resilient housing system.

Partnering between LAHC and CHPs can be achieved through a range of procurement approaches including, in certain circumstances, direct dealing.

This policy sets out the pathways, objectives and decision-making principles for direct dealing (exclusive dealing) between LAHC and CHPs on proposals for acquisition or redevelopment of LAHC property, or for LAHC to invest in CHP developments, which increase the supply (directly or indirectly) of social housing and could also deliver affordable and other types of housing.²

This policy is designed to provide clear information for CHPs and LAHC when considering or developing proposals for direct dealing between LAHC and CHPs.

Proposals can be considered under this policy where they align to the policy objectives and eligibility criteria.

Where direct dealing proposals are not eligible for consideration under the CHP Direct Dealing Policy, they may be directed through the [NSW Government Unsolicited Proposals Process](#) if that pathway is appropriate.

2. What is Direct Dealing?

Direct Dealing is a market engagement method under the NSW Procurement Policy Framework.

It refers to exclusive dealings between a Government agency and non-government entity over a commercial proposal. It may be:

- Solicited or unsolicited by a Government agency
- Used when a competitive tender is not appropriate or possible
- Appropriate where a counterparty is in a unique position to offer a particular solution to the NSW Government.

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

¹ Community housing providers refers to any mainstream, specialist or Aboriginal community housing provider registered, monitored and regulated through the National Regulatory System for Community Housing (NRSCH) or NSW Local Scheme.

² This can include sales, purchases, leasing and other commercial arrangements involving land and property.

3. Policy Objectives

This policy aims to:

1. Increase CHP involvement in delivery of NSW Government objectives, priorities and outcomes for social and affordable housing as set out in Future Directions for Social Housing in NSW and Housing 2041: NSW Housing Strategy, and in achieving the vision and priorities outlined in the LAHC 20-year Portfolio Strategy.
2. Provide fair and transparent pathways for CHP direct dealing proposals, where there is clear justification for direct dealing.
3. Provide streamlined pathways for direct dealing proposals between CHPs and LAHC for novel propositions that increase housing supply, and that minimise tendering costs (for CHPs and LAHC), so that more system resources can be directed towards social housing outcomes.
4. Create partnership opportunities between LAHC and CHPs to co-invest combinations of capital, resources, land and other contributions, to increase housing supply and enhance the growth and sustainability of the housing system.
5. Effectively leverage the resources, capacity and capability of both LAHC and CHPs in achieving the NSW Government's housing policy objectives and outcomes.
6. Ensure LAHC achieves value for money, meets key probity requirements and minimises financial and other risks to Government via alignment to the NSW Direct Dealing Guidelines and LAHC Direct Dealing Framework.

4. Scope and application

LAHC may consider proposals from, or initiate a direct dealing proposal with, registered CHPs under this Policy if they meet the CHP and Proposal eligibility criteria in the table below.

For clarity – ‘capital investment value’ equates to the total value of the LAHC contribution, comprising the land value, capital and any other contributions.

Eligibility	Small scale proposals up to \$10m land value or capital investment value	CHP-managed land: Redevelopment proposals up to \$25m LAHC capital investment value
CHP eligibility criteria	<ul style="list-style-type: none"> Any registered CHP, including Aboriginal CHPs. 	<ul style="list-style-type: none"> Registered Tier 1 or Tier 2 CHPs, including Aboriginal CHPs, currently leasing LAHC-owned properties.
Proposal eligibility criteria	<ul style="list-style-type: none"> A proposal may request LAHC to: <ul style="list-style-type: none"> Sell or acquire property. Contribute land and/or capital and/or other contributions towards a housing development project. Where a proposal requests the sale of LAHC property: <ul style="list-style-type: none"> The sale transaction recognises at least market value for LAHC, and The transaction value is not greater than \$10 million (excl. GST) For any other proposal: <ul style="list-style-type: none"> The capital investment value for the LAHC contribution³ is no greater than \$10 million (excl. GST) 	<ul style="list-style-type: none"> The proposal must involve the redevelopment of a LAHC-owned property over which the CHP has a current leasehold interest. The proposal may also include other land, in addition to the LAHC-owned land leased to the CHP. The proposal requests LAHC to contribute land and/or capital and/or other contributions towards the redevelopment project. The capital investment value for the LAHC contribution is not greater than \$25 million (excl GST).
	<ul style="list-style-type: none"> A proposal must: <ul style="list-style-type: none"> Directly result in growing or renewing social housing, or Indirectly support growing and renewing social and affordable housing, for example, through a sale of LAHC-owned land that will allow the CHP to deliver housing outcomes or frees up capital for LAHC to invest in social housing. A proposal will <u>not</u> be eligible if it: <ul style="list-style-type: none"> Requests LAHC to gift or vest property or capital to a CHP. Seeks to deal with LAHC property at below market value. Proposes a lease term over LAHC property longer than 49 years. 	

³ The Capital Investment Value equates to the total value of the LAHC contribution, comprising the land value, capital and any other contributions.

5. Proposal Criteria

LAHC will consider eligible proposals against the five criteria outlined below.

Criterion 1 – Alignment to Government policies and LAHC Portfolio Strategy

- Alignment with NSW Government housing policies (Housing 2041 and Future Directions) and LAHC's Portfolio Strategy.
- Alignment with the objectives outlined in section 3 of this Policy.
- Alignment with housing needs, by reference to LAHC's Local Area Analysis or Regional Area Analysis (noting these consider social housing demand and supply among other factors) and the relevant Council's Local Housing Strategy.
- The quality, type and suitability of housing and other outcomes to be delivered.
- Availability of the land, relative to any other competing commitments or priorities.
- Capability of the land to achieve the proposed outcomes. For example, a strategy to:
 - achieve vacant possession if it is required in order to deliver the proposal
 - create a transactable parcel if subdivision is required
 - deal with title affectations
 - address site conditions, planning controls, and other relevant factors.*(The list above is indicative, not exhaustive).*

Criterion 2 – Justification for direct dealing

- Rationale and justification for direct dealing having regard to the principles outlined in the LAHC Direct Dealing Framework.
- Demonstration that:
 - the CHP is uniquely positioned to offer a solution that cannot be offered by another CHP or entity; or
 - there is another clear rationale for direct dealing instead of using a market-based procurement method.

Criterion 3 – Capability and capacity

- Demonstrated capability and financial capacity of the CHP (and its consortium members, where relevant) to deliver the proposal and its intended outcomes successfully.
- Scale and complexity of the proposal relative to the CHP's capability and capacity, as indicated by the Registration Tier and the CHP's operational capacity.

Criterion 4 – Value for money

- Value for money for LAHC, demonstrated by achievement of:
 - at least market value in the case of a divestment by LAHC, or
 - a positive return on investment in the case of a development on LAHC land or an acquisition or investment by LAHC into a development project on non-LAHC land. ‘Value for money’ requires balanced consideration of both LAHC’s and the CHP’s returns.
- Demonstrated financial viability of the proposal.
- Evidence that funding has been or will be committed for the proposal, and demonstration of the intended sources of funding.
- Availability of funds where a capital contribution is requested from LAHC. (Note that LAHC will not have forecast a financial contribution in its budget and forward estimates, due to the unexpected nature of direct deal proposals. Therefore, a financial contribution cannot be guaranteed, and may be declined or deferred by LAHC in its absolute discretion.)

Criterion 5 – Risk

- Appropriate allocation of risk in the context of project, financial, market, counterparty, reputational, probity and other risks.
- Appropriate strategy for managing risks associated with the proposal, including during any delivery and operation phases.
- Achievability of the proposed outcomes, in light of planning risk, economic conditions, program, funding and bankability of the proposal.

6. Direct Dealing Process

LAHC and CHPs will develop, evaluate and seek approvals for direct dealings in accordance with LAHC's Direct Dealing Assessment Framework.

The process typically has the following stages:

1. Preliminary discussions (optional).
2. Proposal submission and assessment against the defined criteria in section 5 above.
3. Negotiation of detailed proposal and/or legal and commercial arrangements.
4. Each party's respective approvals.
5. Contract award and execution.

LAHC may vary the process depending on the scale and complexity of the proposal. However, LAHC will consistently:

- Adhere to the principles and requirements set out in the NSW Government Direct Dealing guidelines.
- Adhere to the governance arrangements detailed in the LAHC Direct Dealing Framework.
- Request information at a level of detail appropriate to the stage in the direct dealing process, and appropriate to the scale and complexity of the proposal.
- Communicate and clarify any process changes with the CHP.

In respect of a proposal submitted by a CHP under this policy, LAHC may in its discretion:

- Reject a proposal if it is ineligible under this policy, if the proposal fails to meet satisfactorily any one or all of the criteria outlined in section 5, or if the CHP does not comply with this policy.
- Reject a proposal as ineligible if the CHP has significant outstanding debts to LAHC.
- Consider, evaluate, or exclude from further consideration, a proposal that is incomplete or does not comply with any of the requirements of this policy.
- Seek further information, clarification, references, and/or supporting evidence from a CHP about its proposal, or enhancements, additions or improvements to its proposal.
- Conduct a financial capacity or other independent assessment about a CHP or its proposal, to assist with evaluation and negotiation of the proposal.
- Allow or not allow another CHP or entity to take over a proposal, where there is justification to do so.
- Conduct a financial or other independent assessment about a CHP or any aspect of its proposal.
- Publish the name of the CHP and the date of the award of the contract, if successful.
- Reject a proposal, or discontinue negotiations or discussions with a CHP at any time for any reason.

7. Policy Context for Direct Dealing

LAHC (and the Aboriginal Housing Office) owns the 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 Homes.

LAHC operates under NSW Government and internal policies that mandate or guide LAHC's planning, decision making and operational activities.

Key policies and their relevance to direct dealings between LAHC and CHPs are outlined in this section.

Throughout any direct dealing, LAHC will consider the strategic merit of proposals based on their alignment to the NSW Government and LAHC housing and asset management policies, and the degree to which they contribute to achieving the policy priorities and outcomes.

NSW Government housing policies

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:

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

The Future Directions for Social Housing in NSW strategy is the NSW Government's vision for the social housing system to 2025. It is focused on delivering more social housing, more opportunities for members of the community to avoid or leave social housing, and a better social housing experience. Future Directions 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 Portfolio Strategy

The LAHC Portfolio Strategy (2020) sets out the vision and priorities to grow and change the LAHC portfolio over the next 20 years, so we can house more vulnerable people and families in better quality modern homes and improve our financial sustainability. Key areas of focus in the Portfolio Strategy include:

- Partnering more with CHPs to meet current and future housing demand collectively better.
- Leveraging and making best use of land and property.

- Improving the flexibility of the portfolio so it better meets demand and is easier to manage, including through strategic sales that free up capital to invest in new supply.
- Generating alternate funding to accelerate new supply of homes, through increasing our broker role in developing new homes, developing new finance partnerships and building homes to rent or sell to fund more new social housing.

LAHC Disposal Policy

Small Scale Direct Dealing proposals may involve the sale of currently LAHC-owned properties to CHPs.

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.

Direct Dealing policies

NSW Government Direct Dealing Guidelines

The Direct Dealing Guidelines provide an overarching framework for direct dealing across NSW Government agencies to ensure agencies meet key probity requirements and deliver value for the State.

Throughout any direct dealing, and when establishing and maintaining frameworks governing direct dealings, LAHC will have regard to the guiding principles and core requirements set out in the Direct Dealing Guidelines. This includes the requirement for direct deals to comply with:

- The Independent Commission Against Corruption's (ICAC) [Guidelines on Direct Negotiations: Guidelines for Managing Risks](#)
- PBD 2019-05 [Enforceable Procurement Provisions](#)
- All applicable legal, policy and probity obligations.

LAHC's policy, processes and criteria for evaluation of CHP proposals are aligned to the Direct Dealing Guidelines and the associated NSW Government Unsolicited Proposals Guide. LAHC's direct dealing processes are documented in the Direct Dealing Assessment Framework, which will guide LAHC and CHPs in proposal development, assessment and approval.

LAHC Direct Dealing Framework

The LAHC Direct Dealing Framework sets out guiding principles for LAHC to seek, receive, consider, and assess exclusive dealings (or direct dealing) with another entity relating to real property commercial propositions or proposals without a competitive procurement or market process.

The framework establishes the minimum process and governance to be applied to ensure risks are managed, value for money is delivered, and LAHC complies with its obligations under the *Public Works and Procurement Act 1912 (NSW)*, fundamental principles of probity, the Independent Commission Against Corruption's (ICAC) *Guidelines on Direct Negotiations: Guidelines for Managing Risks*, the NSW Government *Direct Dealing Guidelines*, and LAHC's procurement policies.

8. Policy Monitoring 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 Executive for approval.

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