

public works

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Public Works
REPUBLIC OF SOUTH AFRICA

For Discussion

National Department of Public Works

Draft Immovable Asset Disposal Policy & Strategy

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1. Introduction

The Constitution mandates the National Government to pass legislation for all spheres of government if the purpose is to establish uniformity and to set minimum norms and standards with regard to service delivery. To this end, the Minister of Public Works was mandated by Cabinet to formulate and implement a government-wide policy framework on the management of immovable assets. Such policy, called the *Government-wide Immovable Asset Management Policy (GIAMP)* was developed by NDPW and approved by Cabinet.

GIAMP views immovable asset management as a collective term for a set of management processes to ensure the value of an immovable asset is optimised throughout its life cycle, which encompasses strategic planning, acquisition, operation & maintenance management, and disposal. It advocates for employment of an immovable asset strategic planning process to link service delivery strategies with immovable assets. This process includes an analysis of the current portfolio of immovable assets. The aim is to determine, amongst other things, immovable assets that are surplus to the needs of Government and to plan for their disposal.

Thus far, the disposal of immovable assets poses a number of challenges for Government. These include inadequate skilled officials; lack of a comprehensive asset management system, inefficient disposal processes, limited immovable asset disposal policies and insufficient alignment and interaction between the various custodians of State immovable assets. Coupled with these, Government faces a number of challenges in fulfilling its role as a developmental state. This requires managing the delicate balance between economic growth and social development.

It is therefore necessary that the disposal of immovable assets be conducted strategically and that it continues to address the various challenging demands faced by Government. To ensure this, key objectives to address the challenges faced by Government have been identified. These include that:

- (a) Government manages an optimum asset portfolio;
- (b) Assets are used to meet Government's socio-economic agenda of -
 - Land reform (restitution, redistribution and tenure reform);
 - Broad-Based Black Economic Empowerment (BBBEE);
 - Provision of housing and related infrastructure;
 - Urban renewal; and
 - Rural development.

- (c) Economic growth is stimulated;
- (d) Return on assets is maximised; and
- (e) Costs reduction and cost containment are attained.

It is with this view that NDPW has developed this Immovable Asset Disposal Strategy & Policy (incorporating Guidelines). The purpose of this document is to define the problem in the disposal of immovable assets and provide the strategy and directives to address the problem. The Immovable Asset Disposal Strategy & Policy is responding to why, what, when and how Government should dispose of its immovable assets.

In this document, disposal refers to the permanent or temporary alienation of immovable assets, which includes but is not limited to sale, exchange, donation and letting of immovable assets and other rights in immovable assets, such as servitudes.

2. Objectives

- 2.1 Custodians of State-owned immovable assets must implement deliberate measures to increase black people's participation in and benefit from the disposal of such assets and in the services related to these processes.
- 2.2 Recognising the potential impact that the disposal of immovable assets can have, custodians will endeavour to stimulate economic growth and development through employing innovative disposal mechanisms that will inject much needed investment in targeted areas.
- 2.3 The purpose of this Immovable Asset Disposal Strategy & Policy is therefore to:
 - (a) Outline the conceptual framework for the disposal of immovable assets within the custodianship of the National Department of Public Works and Provincial custodians of State-owned immovable assets;
 - (b) Provide the framework within which disposal processes and related transactions are to be implemented to promote efficiency and consistency in the disposal of immovable assets by all custodians of State-owned immovable assets;
 - (c) Provide the framework which enables units responsible for disposals to prioritise preference in respect of method or beneficiary of disposal in order to achieve the best social, economic or other value from immovable asset disposal; and

- (d) Provide an assurance that the disposal process will be implemented in the context of the transformation within the property industry and will promote Government's socio-economic objectives of broad-based black economic empowerment (BBBEE), land reform, urban renewal, rural development, alleviation of poverty, creation of jobs and redistribution of wealth.

3. Regulatory Framework

The Immovable Asset Disposal Strategy & Policy must be read in conjunction with the following legislation and policy:

- Constitution of the Republic of South Africa, 1996
- State Land Disposal Act, 1961 (Act 48 of 1961)
- Provincial Land Administration Acts
 - Eastern Cape Land Disposal Act, 2000 (Act No. 7 of 2000)
 - Free State Land Administration Act, 1998 (Act No. 1 of 1998)
 - Gauteng Land Administration Act, 1996 (Act No. 11 of 1996)
 - KwaZulu-Natal Land Administration Act, 2003 (Act No. 3 of 2003)
 - Mpumalanga Land Administration Act, 1998 (Act No. 5 of 1998)
 - Northern Province Land Administration Act, 1999 (Act No. 6 of 1999)
 - Northern Cape Land Administration Act, 2002 (Act No. 6 of 2002)
 - North West Land Administration Act, 2001 (Act No. 4 of 2001)
 - Western Cape Land Administration Act, 1998 (Act No. 6 of 1998)
- Public Finance Management Act, 1999 (Act 1 of 1999) and the National Treasury Regulations published in terms of Section 76 of the PFMA
- Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)
- Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003)
- Provision of Land and Assistance Act, 1993 (Act 126 of 1993)
- Restitution of Land Rights Act, 1994 (Act 22 of 1994)
- Extension of Security of Tenure Act, 1997 (Act 62 of 1997)
- Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act 19 of 1998)
- Government-wide Immovable Asset Management Policy & Bill (2005)
- Relevant Departmental Procurement & BEE policies

4. Application

This Immovable Asset Disposal Strategy & Policy applies to the National Department of Public Works and Provincial custodians of State-owned immovable assets and should serve as guideline for all other custodians of State immovable assets.

5. Effective Date

The Immovable Asset Disposal Strategy & Policy comes into effect immediately upon approval by the Top Management Committee of the relevant custodian department.

PART I

DISPOSAL POLICY

6. Policy Statement

National and Provincial Departments of Public Works recognise the need for a clear policy to guide units responsible for disposal of State-owned immovable assets to efficiently and effectively carry out such disposals. To this end, the Departments introduce this Policy framework and accompanying Guidelines to be complied with in every disposal of immovable assets.

In their management of immovable assets, custodians must take cognisance of and actively contribute to Government's socio-economic objectives (as stated in the Introduction to this document). It is for this reason that the disposal of immovable assets in support of Government's socio-economic objectives must take precedence over any other purpose necessitating such disposal.

7. Guiding Principles

The following guiding principles must be adhered to in the disposal of immovable assets:

- 7.1 The disposal of immovable assets must primarily contribute to fulfilment of socio-economic objectives of the broader government. Disposal to other organs of State, particularly in furtherance of socio-economic objectives of government, must take priority over disposals for commercial purposes. In other words, when faced with a choice of disposing of an immovable asset for socio-economic or commercial purposes, the asset shall be disposed of to further the socio-economic objectives.
- 7.2 Units responsible for disposals may not dispose or attempt to dispose of any asset illegally under the custody of the executive authority responsible for such immovable asset. (National Department of Public Works, National Department of Land Affairs and the various Provincial custodians)
- 7.3 Disposal of immovable assets must maximise benefits and lessen risk to Government. To this end, the units responsible for disposal shall, among other things:
 - (a) Enter into sound legal agreements that protect the interests of Government;
 - (b) Not dispose of assets that pose any known physical danger to the recipient (e.g. properties in high risk dolomite areas; buildings in an extreme state of disrepair); and

- (c) Dispose of assets at the best possible value to Government, at the time (value is not limited to financial consideration and includes socio-economic benefits).
- 7.4 The written approval of the executive authority responsible for that immovable asset or a delegated office-bearer / official must be obtained in all disposals.
- 7.5 All disposals must be at market value / rental unless the relevant Treasury approves otherwise (in terms of the Treasury Regulations).
- 7.6 All formal valuations commissioned from valuers registered with the South African Council for the Valuers' Profession, for the purposes of ascertaining -
- (a) the market value or market rental of immovable assets; or
 - (b) the compensation payable for rights in immovable assets,
- should be submitted to the Land Affairs Board for ratification.
- 7.7 All custodians must be committed to improving good governance by implementing measures to detect and combat fraud, corruption, favouritism and unfair or irregular practices in the disposal of immovable assets.
- 7.8 All officials involved in the disposal of State-owned assets must uphold a standard of behaviour that is based on:
- (a) The highest levels of transparency, honesty and professional competence.
 - (b) Non-disclosure of confidential information.
 - (c) Avoidance of conflict of interest, or the appearance of conflict of interest or any perception of bias. Officials must declare their own interest in any situation in which a conflict of interest may arise.
 - (d) Refusal to accept gratuities, favours, or anything of monetary or other value from vendors or contractors, potential contractors, or parties to sub-contracts, that have an interest in the disposal of State immovable assets.

8. Problem Statement

The immovable asset disposal policy was drafted to deal with the current problems facing NDPW and government as a whole in disposing of State immovable assets. In developing the policy, it was crucial to understand the existing problem and the influence of the external and internal factors on the outcome of this Immovable Asset Disposal Strategy.

8.1 Problem Definition

Currently Government does not have an immovable asset disposal policy and strategy that defines its vision for disposing of immovable assets. There are no processes and procedures to guide Government on:

- Why dispose;
- What to dispose;
- When to dispose; and
- How to dispose of immovable assets.

As a result, there is a largely haphazard disposal of State immovable assets and the disposals are not necessarily in line with Government's service delivery objectives.

Consequently there is a risk of disposing of assets that are still required or retaining assets that are surplus to the needs of Government.

8.2 Definition of Immovable Asset Disposal

In this document, disposal refers to the permanent or temporary alienation of immovable assets, which includes but is not limited to sale, exchange, donation and letting of immovable assets and other rights in immovable assets (e.g. servitudes).

9. Categories of Disposal

Immovable assets may be disposed for the following reasons:

9.1 Socio-economic objectives

While historically, in most parts of the world, property ownership is viewed as a right, in South Africa black people were denied access to land through racially discriminatory policies and legislation. This legislative environment precluded black people from owning or trading in property, which had a devastating impact on their ability to create or accumulate wealth.

Despite legislative and policy interventions to eradicate these inequalities, in practice, skewed patterns of ownership, participation in and benefit from property remain.

9.1.1 Broad-based Black Economic Empowerment (BBBEE)

- (a) In the context of the disposal of State-owned immovable assets, BBBEE entails participation and/or increased participation of designated groups (black people, women, youth, people with disabilities and people living in rural areas) in at least the following categories:
- management, control and ownership of such assets;
 - human resource and skills development; and
 - preferential procurement of services.
- (b) Custodians shall actively develop and implement programmes that include identifying significant portions of surplus assets in the portfolio, to facilitate empowerment of these designated groups as stated above.
- (c) Where a proposed empowerment disposal is likely to be at a cost below the prevailing market value, approval of the relevant Treasury must be obtained.

9.1.2 Land Reform

Government's land reform programme aims to redress the injustices of racially-based land policies of the apartheid era, which caused insecurity, landlessness and poverty amongst black people; the inequitable distribution of land ownership; the need for security of tenure for all and the need for sustainable use of land. This programme is central to Government's growth, employment and redistribution strategy.

- (a) Custodians should pro-actively identify immovable assets suitable for land reform purposes. Where feasible and if so required by NDLA, custodians will release such assets to NDLA.
- (b) NDPW will, subject to the approval of National Treasury, release assets so identified free of charge to NDLA. Other custodians are encouraged to release immovable assets so identified, free of charge, with the approval of the relevant Treasury.
- (c) The relevant custodian and NDLA shall make suitable arrangements for the interim management and control of such immovable assets until the release thereof to the identified beneficiaries.

9.13 Rural development & Urban renewal

Where an immovable asset is identified for socio-economic purposes in terms of the Integrated Development Plan (IDP) and Spatial Development Framework (SDF) of a municipality, the custodian should consider the gratis transfer of such asset to the municipality, subject to the approval of the relevant Treasury.

9.14 Low-cost housing and related infrastructure development

Where an immovable asset is identified for the development of low-cost housing and related infrastructure in terms of the IDP and SDF of a municipality, the custodian should consider the gratis transfer of such asset to the municipality, subject to the approval of the relevant Treasury.

Where an immovable asset is to be sold or let for socio-economic purposes at less than market value, suitable restrictions regarding the utilisation and disposal or sub-letting of the asset, as well as the timeframes within which the intended utilisation or development of the asset is to be implemented, should be considered.

9.2 Immovable assets no longer cost-effective to manage and maintain

Generally, immovable assets are only of value to Government if such assets continue to support service delivery objectives in a cost-effective and efficient manner. Therefore, with the exception of environmentally sensitive or culturally and historically significant assets (see paragraph 7.2.2 above), assets that are no longer cost-effective to manage and maintain should be considered for disposal.

9.3 Immovable assets surplus to the needs of Government

Immovable assets that no longer support the service delivery objectives of Government should be considered for disposal.

10. Forms of disposal

Any one or combination of the following methods of disposal may be employed by the custodian department to obtain the best value from the disposal of an immovable asset:

10.1 Sale

- (a) All sales of immovable assets should be at current market value, unless the approval of the relevant Treasury has been obtained (in terms of the Treasury Regulations).
- (b) All sales of immovable assets should be on open tender, unless:
 - The sale is direct to other organs of state in furtherance of socio-economic objectives;
 - The direct sale to any other party is rendered necessary by circumstances surrounding the asset, e.g. land-locked properties, or land that is insignificant in extent or otherwise not economically viable unless it forms part of an adjacent piece of land.

10.2 Donation

The donation of an immovable asset to other organs of state in furtherance of socio-economic objectives; may be considered, subject to the approval of the relevant Treasury (in terms of the Treasury Regulations)

10.3 Letting

- (a) The letting of immovable assets should be at market rental, unless the approval of the relevant Treasury has been obtained (in terms of the Treasury Regulations);
- (b) A written agreement of lease should be concluded, clearly describing all salient details - the parties, immovable asset(s), rental payable, conditions, duration and cancellation of the lease agreement; and
- (c) Custodians must guard against entering into lease agreements that are burdensome to the Government and that will potentially prevent or make it difficult or costly for Government to re-acquire full use of its immovable assets.

10.4 Exchange

- (a) The process of exchange means that a disposal and an acquisition is taking place simultaneously and therefore the rules of both must apply.
- (b) Exchange usually occurs where one party approaches another to purchase an immovable asset and instead of a purchase price being agreed, the parties exchange ownership of their respective immovable assets.
- (c) Should one immovable asset be of a higher monetary value than the other, a cash payment equivalent to the shortfall (being the difference between the two values)

shall be made by the party whose asset is of lesser value. Any deviation from this principle will require the approval of the relevant Treasury.

- (d) Only custodians may enter into agreements regarding the exchange of immovable assets.

10.5 Public Private Partnership (PPP)

- (a) In the context of disposals, a PPP entails a commercial transaction between Government and a private party in terms of which the private party acquires the use of State-owned immovable asset for the private party's commercial use and simultaneously assumes financial, technical and operational risk in connection with the use of such immovable asset. Ownership of the immovable asset remains vested in the relevant Government.
- (b) A PPP agreement may only be entered into on written approval by the relevant Treasury (in terms of the PPP Toolkit issued by National Treasury).
- (c) The policy guidelines and procedures governing PPP agreements are set out in the relevant National Treasury PPP Practice Notes.

11. Special Disposals

11.1 Transfer between spheres of Government

- (a) Where a custodian holds immovable asset that is identified as essential for the furtherance of socio-economic objectives of Government, transfer of such asset for this purpose shall take precedence over any other proposed disposal that the asset may have been earmarked for. The immovable asset shall be transferred free of charge where written approval of the relevant Treasury has been obtained (in terms of the Treasury Regulations), and all costs related to the transfer shall be borne by the receiving custodian.
- (b) Transfer of immovable asset contemplated in (a) above shall be subject to a clearly defined reversionary clause providing for a reversion of ownership to the original custodian, free of charge, in the event that the immovable asset is no longer to be used for the specified socio-economic purpose.
- (c) Transfer of immovable asset from one custodian to any other Government organ for any purpose other than that referred to above, shall be on conditions discretionary to the owner custodian of such assets.

11.2 Unsolicited bids

- (a) Unsolicited bids are difficult to manage and could potentially violate constitutional protection of fair administrative process and competitive procurement. Custodians should, therefore, not make any commitment that will undermine competitive procurement or otherwise lead to unfair advantage of one party over others.
- (b) Should the merits and circumstances of an unsolicited request for the disposal of a state-owned asset warrant consideration, the custodian should, subject to the approval of the relevant Executive Authority, invite public comment on the request (through advertisements in appropriate media) before a final recommendation is made.
- (c) Where a proposal has been received for property development, land sale, or leasing, the following will apply:
 - The site and proposal will be advertised in the media to call forth for competitive proposals or objections from the public.
 - Once the advert has elicited a response from the market, then a competitive proposal call will be initiated as per the procurement policy of the department.

11.3 Disposal to political office-bearers and officials in the employ of Government

- (a) The mere fact that a political office-bearer or an official in the employ of Government is accommodated in a State-owned residence does not automatically entitle such political office-bearer or official to acquire such immovable asset in the event of disposal thereof by a custodian department.
- (b) Residential properties declared surplus and ready for disposal may first be offered for sale or rental, at market value, to political office-bearers and officials who are in legal occupation thereof. Tenants who do not wish or are otherwise unable to exercise this option shall be given written notice of three (3) months to vacate the premises.
- (c) Officials in the employ of Government shall have the right to make an offer for acquisition of immovable assets being disposed of by any custodian department, including the custodian department in which such officials are employed.

- (d) A political office-bearer or an official in the employ of Government who, in his / her personal capacity, has a direct or indirect interest in an immovable asset proposed for disposal, shall declare such interest if the failure to declare same may potentially result in a process that appears unfair, prejudicial or in any manner contrary to the principles of this Policy.
- (e) An official in the employ of Government shall not act as a member of a panel responsible for assessing and adjudicating tenders relating to the proposed disposals if his / her presence in such panel may potentially be deemed to be unfairly influential, discriminatory or in any manner contrary to the principles of this Policy.

12. Disposal of Rights in immovable assets

12.1 Servitudes

- (a) A servitude can be defined as a right which one person has over the immovable asset of another. In this document, servitude refers to instances where the custodian grants a party a right (e.g. right of way, grazing, draw water etc.) over a State-owned immovable asset under its control.
- (b) Servitudes may be granted to any person (private or state organ) upon payment of appropriate market-related compensation by such person.
- (c) Servitudes result in a burden on the immovable asset of the custodian for extensive periods of time, sometimes permanently. It is for this reason that custodians must grant servitudes only after careful assessment of the impact of the proposed servitude on the immovable asset. If the proposed servitude will result in the custodian being unable to productively enjoy, utilise, permanently dispose or otherwise deal with the immovable asset, then the custodian shall not grant such servitude.

12.2 Restrictive title conditions, pre-emptive & presumptive rights

- (a) This category of rights relates to conditions embodied in title deeds of privately-owned property in favour of Government, such as those that restrict the use, subdivision or disposal of privately owned immovable assets unless the Minister / Premier consents, or those that grant the Government powers of use, first refusal or resumption of such privately-owned assets.

- (b) On receipt of an application for the removal of any of these conditions, the custodian shall assess and request payment of appropriate compensation for the right before granting the necessary approval to remove the condition. Where the relevant Title Deed determines the amount payable for the removal of the condition, then such value will be payable for the removal of the condition.

12.3 Mineral rights

- (a) In terms of the Mineral and Petroleum Resources Development Act, 2002, the State, through the Minister of Minerals & Energy, is the custodian of all minerals. Consequently, it is only the Department of Minerals & Energy (DME) that has the authority to grant, refuse and control all rights pertaining to mineral resources.
- (b) Where the mineral resources are on the custodian's immovable asset, then the custodian may, on the advice of DME, grant consent for the use of the asset to facilitate mining or related activities. The custodian's consent shall only be granted if the proposed activity will not negatively impact on the operations and strategic plans of the custodian. DME will advise the custodian on consideration payable to the State for the mining and related activities on the State land.

12.4 *Bona Vacantia*

- (a) *Bona Vacantia* is a Latin word which literally means vacant goods or ownerless property, and includes immovable assets belonging to a deregistered or liquidated company or close corporation and deceased persons who leave no known beneficiaries.
- (b) The legal doctrine of *Bona Vacantia* is that when a company or close corporation is dissolved or an individual dies and there is no known legal successor, beneficiary or claimant to the assets of such juristic or natural person, the property of such company, close corporation or deceased person immediately vests in and thus becomes the property of the State. The National Government is the custodian of all *Bona Vacantia*.
- (c) Custodians must note that the vesting of *Bona Vacantia* in the National Government does not automatically mean that an immovable asset is now registered in the name of the State. The custodian must still obtain a court order to confirm such ownership and thus enable registration of the property in the name of the National Government.

- (d) National Government custodians should be judicious in administering immovable assets that accrue to the State through *Bona Vacantia*, as it is Government's position that it shall not enrich itself at the cost of its citizens. Custodians should therefore allow for the return of such assets to the rightful owner, should they be requested to do so within three (3) years from the date on which a property was registered in the name of the National Government.
- (e) Where feasible, a *Bona Vacantia* property should be let during the initial three year period, to defray the costs that Government will incur in managing the property. Should Government be requested to return such a property to the rightful owner, the applicant will be required to compensate Government for any expense it incurred in managing the property and will be responsible for all costs incidental to the transaction.
- (f) Government shall not be liable for any debts accrued to a *Bona Vacantia* property before the date of deregistration or liquidation of a company/close corporation or the date of death of a natural person who leaves no known beneficiaries.

PART II

DISPOSAL STRATEGY

1 3.1 Two key factors have been identified that impact this Strategy. These are the external factors that relate to government's strategic focus and industry developments and the internal factors that relate to the Departments of Public Works.

1 3.1.1 External Factors

(a) Government's Strategic Focus

There are a number of factors that Government has identified as strategic thrusts for the next 10 years. The following factors are addressed in this Strategy:

- Economic growth and development;
- Building capacity in Government;
- Improving service delivery;
- Countering corruption and promoting security and
- Participating in the Integrated Sustainable Rural Development Programme (ISRDP) and Urban Renewal strategy (URS) of Government.

(b) Industry Developments

- The Property and Construction Charters.

13.1.2 Internal Factors

There are internal factors that are integral to determining the immovable asset disposal strategy. Internal factors are important to the strategy because they influence the crafting and realisation of the strategy. Internal analysis is essential because it will identify the strengths and weaknesses of units responsible for asset disposal. Internal factors include the following:

(a) Current internal business processes

Custodians of the State's immovable assets need to ensure that there are effective processes that lead to the realisation of the immovable asset disposal strategy. Internal business processes should be able to service the various government entities in a manner that there are no bottlenecks in immovable asset disposal. In addition, the various government entities should be clear on what their responsibilities are in immovable asset disposal.

(b) Current immovable asset disposal policies

Current immovable asset disposal policies generally do not provide adequate guidance, procedures and controls when disposing of immovable assets. The policy should address all forms of disposal and state the procedures and controls that are necessary when disposing assets.

(c) Information technology

Information technology is an essential tool that helps organisations to perform their functions easily. It is necessary that the units responsible for immovable asset disposal have information technology that will enable them to carry out their duties.

(d) Capacity and skills

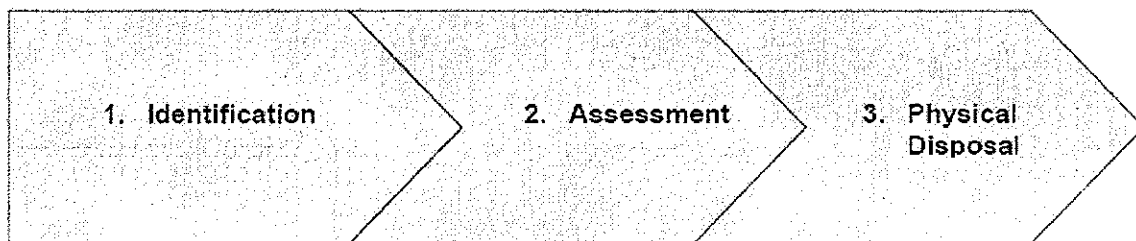
Effective and efficient disposal of immovable assets requires sufficient skilled employees with adequate technical skills and experience and a thorough understanding of government objectives.

(e) Interaction between custodians of State immovable assets

It is important that all custodians of State immovable assets interact in a structured manner to ensure synergy in the disposal of assets, in line with Government's service delivery objectives.

13.2 When to Dispose of Assets

Disposal of immovable assets is a three step process that requires a thorough understanding in order to carry it out effectively. The diagram below depicts the process:



13.2.1 Identification

This is the identification of immovable assets that are no longer required, also known as surplus assets. For an immovable asset to be considered surplus, any one or more of the following conditions must be present:

- (a) An asset is not required for the delivery of services.
- (b) An asset has become costly to maintain or use.
- (c) An asset is not suitable for service delivery.

- (d) An asset is required for economic growth whereby the benefits for disposal outweigh the benefits for current utilisation.

It is imperative that there is constant management of assets to determine their status. In accordance with the PFMA, all custodians must maintain an immovable asset register, containing information on the status and utilisation of immovable assets under a custodian's control. Asset registers facilitate custodians' control over and management of immovable assets and allows the identification of assets that should be considered for disposal.

13.2.2 Assessment

The assessment step requires an analysis of the surplus assets to determine if they may or should be disposed of. For a surplus asset to be disposed of is dependent on any of the following conditions:

- (a) Whether there are net benefits, either in social, financial or other terms;
- (b) Whether there are secondary service obligations associated with the asset which dictate its retention; and
- (c) Whether a disposal can be carried out without adverse impact on the physical environment, or physical harm to any person.

Essentially, this step establishes the desirability, advantages and disadvantages of proposed disposals. It will not always hold true that surplus immovable asset must be disposed. For example, an immovable asset may be of such cultural, historical or environmental importance that it will be retained and declared a heritage or conservation site. Similarly, it will not always hold true that only immovable assets deemed surplus will be disposed. An example is an asset that may be disposed of in order to address black economic empowerment.

13.2.3 Disposal

In this step a decision should be made as to the form (sale, letting, donation, exchange, or PPP) and method of disposal (e.g. direct disposal, open or closed tender). In disposing of immovable assets, custodians may employ any or combination of any appropriate form and method.

14. Five Year Immovable Asset Disposal Strategy

The main purpose of the five-year strategic perspective is to align the immovable asset disposal activities with the broader policy objectives of Government, as well as to address the inefficiencies that exist within government structures. The strategic perspective captures the linkages and thereby ensures that they constitute the driving force in all activities of the units responsible for the disposal of immovable assets.

14.1 Strategic Plan

For custodians to contribute towards fulfilment of Government's key policy thrusts, five strategic principles have been identified, which must be complied with. These are -

- Economic value;
- Economic growth;
- Transformation and socio economic value;
- Efficient and effective organisation and
- Cooperative governance.

14.1.1 Economic value

The disposal of immovable state assets must be conducted in a manner that yields economic value for Government. In so far as addressing this strategic principle, Government aims to manage an optimum asset portfolio that will ensure:

- (a) Retention of assets required for service delivery that are managed and maintained cost effectively; and
- (b) Disposal of surplus assets that yield maximum social and economic benefits for Government.

14.1.2 Transformation and Socio-economic Value

Disposal of immovable assets must lead to significant and comprehensive transformation in respect of BBBEE, land reform, urban renewal and rural development. Custodians must commit themselves to be bound by and comply with the agreements and recommendations in the property and construction charters. To this end, custodians will actively undertake disposals to address BBBEE, land reform, urban renewal and rural development processes where possible.

1 41.3 Efficient and effective organisation

An efficient and effective organisation ensures streamlined processes, competent employees, adequate controls and systems to enable the organisation to meet its objectives. An efficient organisation does things correctly and an effective organisation does the right things.

1 41.4 Cooperative governance

NDPW will be required to ensure that the disposal of immovable assets process is uniform across all government departments undertaking disposals. It also seeks to promote consultation and collaboration with the other custodians of the state's immovable assets. This will ensure that all spheres of government are aware of which assets have been earmarked for disposal prior to the disposal. Collaboration amongst the custodians will encourage working towards similar objectives.

15. Disposal Plans

In terms of the Government Immovable Asset Management Policy, all custodians must annually prepare a comprehensive disposal plan, which must incorporate:

- 15.1 Detailed status report on immovable assets considered surplus and disposable. This report shall state and include:
- (a) Physical information of the immovable assets: description, extent, ownership, locality, physical condition, title deed information (including restrictions and servitudes), accessibility, etc.
 - (b) Financial information: operational and maintenance costs, assessment of current market value and potential income to be derived from the proposed disposal.
 - (c) Operational information: functionality or use of the immovable asset and potential alternative uses
 - (d) Proposed method of disposal and, if known, beneficiary of such intended disposal
 - (e) Timeframes for finalisation of transfers following the disposals
 - (f) Specific socio-economic criteria that each proposed disposal will take into account

- (g) Use, if any, of non-governmental service providers and consequently the adherence to the prescripts of PPPFA
- 1 52 Key performance measures and standards for monitoring and reviewing the implementation of the disposal plan for the financial year.

16. Compliance

- 1 6.1 Any contravention of the terms and conditions of this Policy by an employee of a custodian will be considered to be misconduct, and shall be dealt with in terms of the disciplinary code and procedures of that custodian.
- 1 6.2 Custodians shall take action against a party to whom assets were disposed of in preference to others as a result of fraud, bribery or any other irregular conduct by such party.
- 1 6.3 Penalties and remedies available to custodians in situations referred to in 17.2 above include, but are not limited to:
- (a) Exclusion of such party from future participation in the custodian's disposal processes;
 - (b) Nullification of the disposal and claim for any damages and or financial penalties as a result of having to make less favourable arrangements;
 - (c) Blacklisting from all government procurement opportunities;
 - (d) Civil action.

17. Monitoring and Reporting

- 17.1 All custodians must annually prepare a report on the achievement of performance goals stated in their disposal plan for the previous year. The report shall be submitted to the relevant Treasury (according to Treasury Regulations) and must state and include:
- (a) All disposals, indicating disposal criteria and the process followed for each disposal;
 - (b) The percentage of BBBEE entities that gained access to assets disposed of by the custodian and a comparison to the target set.

- 1 72 An inter-governmental compliance forum shall be established to monitor the effective implementation of this Strategy & Policy. NDPW will facilitate the establishment and proper functioning of the forum.

17. Review and Evaluation

This Policy and Strategy must be reviewed and evaluated every two (2) years by the National Department of Public Works, in conjunction with all other Provincial Departments of Public Works.

PART III

DISPOSAL GUIDELINES & PROCEDURES

18. Introduction

Government together with the private sector has developed a Property Charter which seeks to promote the transformation, growth and development of the sector. To support these and other government objectives, the Departments of Public Works (National and Provincial) have developed an Immovable Asset Disposal Policy and Strategy. Given the size of the state property portfolio, the disposal of the state immovable asset will have a significant impact in the property sector. The purpose of this document is to provide guidelines on the disposal of assets and should be read with the Immovable Asset Disposal Strategy and Policy.

19. Targets

Annexure A of the Immovable Asset Disposal Policy and Strategy document sets out target, strategic objectives, key performance indicators (KPIs) and performance indicators for asset disposals. These indicators apply to all the officials responsible for disposal of assets in the National and Provincial Departments of Public Works and will be incorporated in their Performance Management Agreements.

Annexure B sets out Strategic Initiatives to be undertaken to achieve the targets set out in Annexure A. These guidelines will, therefore, not deal with all the strategic initiatives. Consequently, it is proposed that each custodian aims to meet the following targets:

- A minimum of 50%, 60% and 70% of all asset disposals (other than those transferred to other organs of state) in years 1, 2 and 3, respectively, by each custodian must be to entities with a BEE ownership of at least 51%.
- A minimum of 25%, 30% and 40% in years 1, 2 and 3, respectively, of all asset disposals (other than those to other organs of state) by each custodian must be to enterprises that are 25% +1 owned by black women and/or designated groups.
- A minimum of 50% of all asset disposals over the next three years should contribute to urban renewal and ISRDP.

Each custodian will monitor the implementation of the guidelines. The National Department of Public Works will compile a consolidated annual report on the achievement of the disposal objectives and report to appropriate structures such as, but not limited to, BBBEE Presidential Advisory Committee, Public Works MinMEC and HOD Committee.

20. PROPOSED TENDER ADJUDICATION CRITERIA

20.1 General

20.1.1 Specifications will be determined for all the disposals to determine the participants in the disposal. The criteria will set out following as the responsiveness criteria, among others:

- > The minimum empowerment requirements, in addition to other criteria, for participation in disposals are set out in 3.2 below for levels A, B and C properties. Only companies adhering to these criteria will be considered for the disposals. The levels are:
 - Level A: Properties below the value of below R2 million;
 - Level B: Properties to the value of between R2 million and R30 million;
 - Level C: Properties to the value of R30 million unlimited;
 - Level D: Properties to the value of R100 million and all properties for development.
- The socio-economic objectives to be incorporated in transactions must be determined for all transactions. The nature and extent of these will be different depending on the size and type of property for disposal.

20.1.2 Only companies adhering to minimum requirements will be considered for disposals.

20.1.3 While BBBEE is an important developmental objective, in certain instances, other socio-economic objectives may be equally significant for evaluation purposes. Therefore, for properties of larger values, these guidelines allow for the allocation of points in the overall evaluation to socio-economic criteria.

20.1.4 The custodians should continuously consider whether certain sales could be set aside for enterprises with higher BEE status levels or purely for other socio-economic purposes.

202 Minimum BEE requirements

20.2.1 Adjudication for proposals for disposals will take into account the following criteria.

a) Level A: Properties below R2m in value

- No bids will be considered unless they are 51% black owned, and 25% + 1 black-women owned and Level 1 Contributors in terms of the Property Charter Scorecard.
- All the residential properties will be sold to companies that meet these criteria, of which 50% must be black women-owned.
- Bidders will be required to present a BBBEE verification certificate from a verification agency accredited by DTI (or is temporarily approved by the Departments of Public Works pending accreditation process by DTI).

b) Level B: Properties between R2m and R30 million in value

- Bids at this level should be at least be 40% black owned and 20% black-women owned will be considered for participation in disposals and at least Level 4 Contributors in terms of the Property Charter Scorecard.
- Bidders will be required to present a BBBEE verification certificate from a verification agency accredited by DTI (or temporarily approved by the Departments of Public Works pending accreditation process by DTI).
- Bidders must provide proof of ability to fund the acquisition of the property.
- The adjudication of tenders will be based on the following criteria:

Price	40 points
BBBEE	10 points
Development concept	50 points
Maximum points	100 points

c) Level C: Properties exceeding R30 million in value (and all properties for development)

- Bids at this level should be at least be 30% black owned and 15% black-women owned will be considered for participation in disposals and at least Level 6 in terms of the Property Charter Scorecard.

- Adjudication of the proposals will be done on the basis of points and the criteria will cover aspects such as price, the proposed development and its financial viability, the bidder's experience and expertise, economic empowerment and other socio-economic objectives, where feasible as a determinant.
- Bidders will be required to present a BBBEE verification certificate from a verification agency accredited by DTI (or temporarily approved by the Departments of Public Works pending accreditation process by DTI).
- The criteria to be used for the adjudication of proposals are as follows:

Price	The proposal with the highest financial benefit to the State will score the maximum points.	A maximum of 40 points.
Concept plan	This criterion covers the broad understanding of town planning and physical, alignment to IDP's, social and built environment issues. The proposal must explain how spatial integration will take place and must further specify the envisaged land uses, other issues related to the built environment and impact on the physical environment e.g. transport issues, natural environment issues, etc.	10 points. Appropriate points awarded, based on the proposal.
Financial viability	The bidder must provide a detailed financial analysis of the proposal and demonstrate his/her ability to mobilise the necessary resources, financial and other, to complete the development successfully.	A maximum of 10 points. Points awarded based on content of the documents submitted with the proposal.
Experience and expertise	The bidder must demonstrate ability and experience with regard to developments of a similar nature. The bidder will have to indicate the professional team that they have in place e.g. architect, project manager, town planner, engineer, environmental scientists, and property finance experts, to cover all facets of the proposed development.	10 points. No relevant previous experience or fitting professional team will score no or very low points; vast experience and appropriate professional team may score maximum points.
BBBEE	Measured according to the score on the bidder's BBBEE verification certificate issued in terms of the property sector charter.	A maximum of 20 points.
Socio-economic objectives	The bidder must demonstrate his/her plans and ability to address the other socio economic development issues such as local economic or community development.	A maximum of 10 points.

20.3 Properties above R100m in value (and all properties for development)

- Bids at this level should be at least be 25% + 1 black owned and 10% black-women owned will be considered for participation in disposals and Level 7 in terms of the Property Charter Scorecard.

- As these properties hold vast potential, requests for qualifications (RFQs) will be called to identify entities that will be allowed to submit formal proposals, for the following reasons.
- The adjudication of the RFQs will be based on the following criteria:

Experience and expertise	60 points
BBBEE	10 points
Development concept	20 points
Financial viability	10 points
Maximum points	100 points

- Bidders will be required to present a BBBEE verification certificate from a verification agency accredited by DTI (or temporarily approved by the Departments of Public Works pending accreditation process by DTI).

Bidders that do not meet the minimum requirements of the necessary experience, expertise and BBBEE requirements can be eliminated before the submission of a formal development proposal.

Bidders qualifying after the adjudication of the RFQs will be invited to submit formal proposals.

21. Individual bidders

- 21.1 Black individuals bidding in their personnel capacity will also be part of the target group to acquire assets that are being disposed of, and should be recognised at level 2 during adjudication.

22. BBBEE STATUS LEVELS

- 22.1 The following table provides the BEE status levels as outlined in the Property Charter:

BEE Status	Qualification	Recognition Level
Level One Contributor	≥100 points	135%
Level Two Contributor	≥85 but <100 points	125%
Level Three Contributor	≥75 but <85 points	110%
Level Four Contributor	≥65 but <75 points (or any micro enterprise)	100%
Level Five Contributor	≥55 but <65 points	80%
Level Six Contributor	≥45 but <55 points	60%
Level Seven Contributor	≥40 but <45 points	50%

Level Eight Contributor	≥30 but <40 points	10%
Non-Compliant Contributor	<30 points	0%
Where any enterprise is in excess of 50% owned by black people and has achieved the full 7 points under net equity interest, the BEE Status of that Enterprise will be at the level immediately above the level at which its actual score is evaluated.		

23. ADDITIONAL MEASURES

23.1 Successful BBBEE outcomes will require the following measures to be in place:

23.1.1 Creation of a database to monitor the progress of BEE companies from one level to the next.

23.1.2 Custodians will be required to create a website for advertisement of opportunities over and above normal advertising that will be undertaken in the normal course of disposals. This will allow BEE companies enough time to mobilise necessary resources to participate.

23.1.3 Successful BBBEE outcomes are not only derived from setting overall targets or incorporating BEE into the adjudication criteria. Each custodian should, where feasible implement a number of other measures around BEE.

23.1.4 These include:

- > Effective and accessible advertising of property opportunities. This would include notices in tender bulletins, in local newspapers and through small business advice offices.
- > The custodians may consider providing advice to potential bidders and various levels of support, in partnership with appropriate service providers. Support could include credit guarantee facilities, access to affordable finance to purchase the asset, basic business advice and training programmes in property purchasing and management.
- > Sale agreements may contain certain empowerment commitments. For instance, where a property is sold with a substantial discount, the custodian may impose penalties for onward sale at a profit within specified periods of time.
- > For property sales of significant value, such as those above R15m, the sales agreement may incorporate additional criteria e.g. providing preferential access for small and micro businesses. The Property Charter

requires all companies embarking on property investment and development to participate in development in under-resourced areas, or similar alternative commitments.

- > Where property has been identified to be disposed of for socio-economic development purposes and, for that reason is sold below market value, a reversionary clause must be registered against the title deed, providing for ownership to revert to government should the property not be utilised for the stated purpose.

24. RECOMMENDED TRANSACTION PROCESS

24.1 Identification of properties for disposal and type of disposal

- 24.1.1 Detailed research should take place investigating Title Conditions, Alienation Plans, Rights of First Refusal, Options, etc
- 24.1.2 Valuations must be undertaken
- 24.1.3 While all property sales will incorporate BEE elements, where feasible properties may be identified for socio-economic development purposes.

24.2 Identification of interested parties and sale offer

- 24.2.1 Advertisement of property for sale and a call for offers (where more than R15 m the offer is an indicative offer only)
- 24.2.2 For all disposals below R15 m, after the offers are received the disposal evaluation committee will evaluate the offers based on the criteria in these guidelines.
- 24.2.3 For offers above R15 m, the following additional steps should be followed.

24.3 Preparation and distribution of information memorandum

- 24.3.1 An information memorandum is prepared and sent to all parties who have expressed interest in the property or portfolio;
- 24.3.2 The memorandum contains sufficient high level information to enable a party to make a binding offer (all properties valued at less than R100 m)
- 24.3.3 The offer must contain key information such as:
 - Relevant details of bidders
 - Relevant empowerment credentials of bidders – in the form of audited BBBEE verification certificates.

- Level of Board / shareholder approval for the offer
- The indicative offer price
- Confirmation of the necessary cash resources to pay at least reserve price (where applicable)
- Conditions precedent, if any

24.4 For offer above R15 m and less than 100 m, the evaluation committee will evaluate the offers based on the criteria in these guidelines.

24.4 Offers above R100 m – the RFP stage

24.4.1 For offers above R100 m, an evaluation will be conducted and preferred bidders will be recommended to move through to the RFP stage.

- Bidders are given more detailed contractual and financial information.
- Preferred bidders are invited to submit formal binding offers in a prescribed format
- Appropriate guarantees are to be given in relation to the funding of the purchase price
- The offers are adjudicated based on the criteria in this guidelines and the successful bidder selected
- The final selected offer is to be formalised with a binding legal agreement.

24.5 Agents

24.5.1 In the event of the custodian not being able to sell the properties, the services of agents could be utilised to assist with the sale.

24.5.2 Preference will be given to agents with a BEE status level of at least 4.

24.5.3 The commission payable shall not be more than the laid down tariffs as determined by the relevant governing authorities (i.e. SAPOA, Estate Agency Affairs Board).

ANNEXURE A

Five (5) Year Strategic Plan:

Strategic Principle	Strategic Objective	Key Performance Indicators	Performance Targets					
			Yr1	Yr2	Yr3	Yr4	Yr5	
1. Efficient and effective organisation	Achieve an effective and efficient asset disposal process that is transparent, accountable and fair	Reduced disposal turnaround time ¹						
		• Open tenders	30%	35%	40%	45%	50%	
		• Direct disposals	20%	30%	40%	50%	60%	
		• Closed tenders	20%	30%	40%	50%	60%	
		Elimination of non-compliant ² transactions	100%	100%	100%	100%	100%	
	Acquire and retain skilled and competent employees	Number of vacant positions over six (6) months	20%	20%	20%	20%	20%	
		Reduced staff turnover rate to the industry norm	10%	10%	10%	10%	10%	
		Competent and skilled property practitioners						
		• Asset management	5%	5%	5%	5%	5%	
		• Property management (finance, marketing, practice)	80%	80%	80%	80%	80%	
		• Legal	5%	5%	5%	5%		
		• Town-planning	5%	5%	5%	5%		
		• Policy development & management	5%	5%	5%	5%		

¹ Turnaround time refers to from the time that properties are identified as surplus until properties are disposed

² Compliance refers to complying with all the relevant legislation, technical specifications and procedures

Five (5) Year Strategic Plan: (Continued)

Strategic Principle	Strategic Objective	Key Performance Indicators	Performance Targets				
			Yr1	Yr2	Yr3	Yr4	Yr5
2. Economic Value	System regularly utilized and reviewed to align with the strategic objectives of the department Decision-making processes Up to date database	System regularly utilized and reviewed to align with the strategic objectives of the department Decision-making processes Up to date database	Quarterly	Quarterly	Quarterly	Quarterly	Quarterly
			Quarterly	Quarterly	Quarterly	Quarterly	Quarterly
			20%	30%	40%	50%	60%
3. Economic growth	Optimise surplus asset portfolio	Updated categorization and prioritization of surplus assets	Quarterly	Quarterly	Quarterly	Quarterly	Quarterly
	Dispose surplus assets at best value	Dispose of assets identified and approved for disposal	10%	10%	10%	10%	10%
	Contribute toward level of local & regional investments	Final price deviation below market value (% terms)	5%	5%	5%	5%	5%
4. Transformation and Socio-economic value	Economic participation or activities in the community	Increase in level of local and regional investment					
	Increase the level of local & regional economic growth	% Contribution to local and regional economic growth	2%	2.5%	3%	3.5%	4%
	Promote BEE in the disposal of surplus assets	Minimum 50% of disposed surplus assets in each category to black-owned enterprises and black new entrants	50%	60%	70%	70%	70%
	Contribute to urban renewal and ISRDP when disposing of surplus assets	Minimum 25% of disposed immovable assets to black women, youth and disabled	25%	30%	40%	45%	50%
		Contribute ³ average 50% of disposable assets located in areas identified for urban renewal and ISRDP	50%	50%	50%	50%	50%

³ Contribute refers to participation in urban renewal and ISRDP with other organs of government by availing assets in those areas

Annexure B

Definitions

Broad Based Black Economic Empowerment (BBBEE) is defined in the BBBEE Act, 2003 as "...the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to -

- (a) increasing the number of black people that manage, own and control enterprises and productive assets;
- (b) facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
- (c) human resource and skills development;
- (d) achieving equitable representation in all occupational categories and levels in the workforce;
- (e) preferential procurement; and
- (f) investment in enterprises that are owned or managed by black people"

Custodian of State immovable assets - means an organ of state tasked with custodial or ownership functions by the Constitution of the Republic of South Africa or other legislation.

- The Minister of Public Works is the custodian of immovable assets that vest in the National Government, situated within the former (pre 27 April 1994) Republic of South Africa, except in cases where national assets are assigned to other Ministers by virtue of specific legislation.
- The Minister of Land Affairs is the custodian of immovable assets acquired for land reform purposes, as well as immovable assets that vest in the National Government, situated within the former homelands (as defined in the Constitution), except in cases where national assets are assigned to other Ministers by virtue of specific legislation. The Minister of Public Works, however, is responsible for certain custodial functions (mainly maintenance and management) in relation to immovable assets situated in the former homelands and occupied by a national department in support of its service delivery objectives.
- Other ministers or public entities are assigned custodial functions in terms of the provisions of specific legislation.
- The Premiers or designated Members of Executive Councils (MECs) are the custodians of immovable assets that vest in the provincial governments, where such Premiers or MECs have been empowered by legislation to act accordingly.
- The municipal councils are the custodians of immovable assets that vest in municipalities.

Disposal - means the permanent or temporary alienation of immovable assets, which includes but is not limited to sale, exchange, donation and letting of immovable assets and other rights in immovable assets, such as servitudes.

Land Affairs Board - means a statutory body established in terms of the Land Affairs Act, 1987 (Act 101 of 1987) to advise Government on the value of land and the rights therein.