



the dr&pw

Department:
Roads and Public Works
NORTHERN CAPE PROVINCE
REPUBLIC OF SOUTH AFRICA

DEPARTMENTAL IMMOVABLE ASSET DISPOSAL POLICY

Version 3
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1. DEFINITIONS AND ACRONYMS

HOD / AO	The Head of Department (HOD), according to the Public Finance Management Act (PFMA), 1999 is also the Accounting Officer (AO). The PFMA clarifies the responsibilities of the HOD as Accounting Officer.
Department (DR&PW)	Department of Roads and Public Works, Northern Cape Province.
Acquisition	Obtain ownership of or rights to immovable property in the name of the Department by means of sale, donation, auction, usufruct or lease.
Alienation	Disposal of government owned immovable property by means of sale, land availability, land swap, usufruct and lease.
BEE	Black Economic Empowerment.
BBBEE	Broad Based Black Economic Empowerment.
Disposal	The lease of land in terms of which the use and the enjoyment of the land are granted for a period of 10 years or more for a market related rental.
GIAMA	Government Immovable Asset Management Act, Act No. 19 of 2007.
Immovable property	Land and or any improvements affixed thereto as defined in the Land Act.
Land availability	Giving rights for use or development of the land to a third party.
Lease	A contract by which the owner of the property give permission to the other party to use and enjoy the use of property for a specified period of time in return for a specified market related rental.
PFMA	Public Finance Management Act, Act No.1 of 1999, as amended.
PPPFA	Preferential Procurement Policy Framework Act, Act No. 5 of 2000.
Servitude	Real right registered or to be registered in favour of the Province over privately owned land, or a real right owned or to be registered by a third party over the land owned by the Province.
PPP	Public Private Partnership.
Transfer	Refers to transfer of ownership of land or any right owned or vested within the Northern Cape Province.

Usufruct	The right to enjoy the use and/or possession of a property.
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2. INTRODUCTION

The Northern Cape Land Administration Act, 2001, as amended gives the provincial government the powers to dispose of certain immovable properties owned by the government within the Northern Cape Province.

This is a necessary process to minimize the administrative and maintenance burden on the Department Roads and Public Works in the Northern Cape in a manner that promoted Broad Based Black Economic Empowerment through property ownership, development and usage as well as to encourage first time entry of previously disadvantaged individuals into the property market at discount pricing.

The policy advocates the disposal of immovable assets that is fair, equitable, transparent, competitive and cost effective in accordance with the Preferential Procurement Policy Framework Act and section 217 of the Constitution of the Republic of South Africa (Act 108 of 1996).

Each department must relinquish all surplus state owned properties including residential accommodation, agricultural land, vacant stands, communal land, etcetera; to Department Roads and Public Works (DR&PW) for reallocation, lease termination or disposal. Departments must provide DR&PW with appropriate notice where accommodation is no longer required and is subject to the terms and conditions of the Residential Accommodation Agreement.

It is therefore imperative to augment and align the legislative prescripts with policy guidelines in the process of disposal.

3. BACKGROUND

In keeping up with the provincial framework, strategy and asset management policy which is in line with GIAMA; it is of paramount significance that a policy regarding the disposal of immovable assets owned by the provincial government in a manner that is consistent with the requirements and conditions as specified by the aforementioned legislative framework. The framework for the disposal of assets is set-out in the provincial asset management strategy and quoted verbatim hereunder:

- The decision to dispose an asset should be taken after thorough examination and economic appraisal. Provincial Asset Management Unit must be invited to conduct a Pre-Disposal Audit.
 - Effective assets disposal policies must incorporate consideration of alternatives, in costs/benefits terms for disposal of:
 - Surplus,
 - Obsolete,
 - Under-performing, or
 - Unserviceable assets.
 - Land disposal must be conducted in accordance with the guideline stipulations in the GIAMA;
 - The approval of the Accounting Officer is to be sought in this regard;
 - The Disposal Report must be lodged with the Provincial Asset Management and the Auditor General.
 - All proceeds relating to the disposal of the immovable and movable assets must be paid into the Pay Master General (PMG) account.
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4. REGULATORY FRAMEWORK

- 4.1** The Constitution of the Republic of South Africa Act, Act No. 108 of 1996, sections 215 and 217.
- 4.2** The Public Finance Management Act, Act No. 1 of 1999 (as amended by Act No. 29 of 1999):
- Section 38 dealing with general responsibilities of accounting officers and specifically subsection 38 (1)(a)(i), 38(1)(b),38(1)(d),38(1)(h); and
 - Section 45 dealing with the responsibilities of other officials.
- 4.3** The Preferential Procurement Policy Framework Act, Act No. 5 of 2000 and the Preferential Procurement Regulations of 2011.
- 4.4** The Northern Cape Land Administration Act, Act No. 4 of 2001, as amended.
- 4.5** The State Land Disposal Act, Act No. 48 of 1961.
- 4.6** The Removal of Restrictions Act, Act No. 84 of 1967.
- 4.7** The Extension of Security Tenure Act, Act No. 62 of 1997.
- 4.8** The Restitution of Land Rights Act, Act No. 42 of 1994.
- 4.9** Regulations Governing the Granting of Leasehold: GNR of 1996.
- 4.10** Treasury Regulations issued in terms of the Public Finance Management Act, 1999, Section 8.2.2 (Approval of Expenditure), 10.1.1 and 10.1.2 (Asset Management).
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5. POLICY OBJECTIVE

This policy is formulated to provide guidance on matters pertaining to:

- 5.1** The standardisation of disposing of land or real rights vested and owned by the Northern Cape Provincial Government.
 - 5.2** The disposal of portions of state land that the provincial department of Roads and Public Works regards as both administrative and cost burden to the Provincial Administration as they should be serviced and maintained on a regular basis without any plans forthcoming.
 - 5.3** The disposal of state-owned vacant stands in municipal areas that the provincial department of Public Works regards as both administrative and cost burden to the Provincial Administration as they should be serviced and maintained on a regular basis without any plans forthcoming; and the Government incurs expenditure on rates and taxes on such stands.
 - 5.4** The disposal of redundant state-owned buildings (houses, office buildings, stores, etc.) that the provincial department of Roads and Public Works regards both administrative and cost burden to the Provincial Administration as they should be serviced and maintained on a regular basis and the Government incurs fruitless rates and taxes on such buildings. Such buildings attract vandalism, invasion, and public outcry.
 - 5.5** The transfer or disposal of the land and/or the real rights that are not needed for the provision of basic services; having taken into account inputs from the public after extensive public participation
 - 5.6** The decisions to dispose or transfer of state owned properties or real rights are in line with enabling legislations, acts and regulations.
 - 5.7** Ensuring market related prices are charged and obtained for the disposal of land or real rights taken into account the market conditions of all interested parties including the poorest of the poor.
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6. PRINCIPLES, VALUES AND PHILOSOPHY

The Department of Roads and Public Works within the Northern Cape Provincial Government is committed to the implementation and full compliance of Supply Chain Management Policy and Practices as enshrined in the Act, and regulations in a manner that is fair, equitable, transparent and competitive.

The Department is also committed in enhancing healthy and mutual beneficial relationships with all its citizens including those interested in government bids, based on the principles of integrity, honesty, professionalism and promotion of good business ethics.

The utilization of the Province's land ownership as a leverage to ensure effective implementation of the Broad Based Black Economic Empowerment objectives through the promotion of economic development of the community, SMME's; women and youth and disabled owned enterprises within the jurisdiction of the Northern Cape.

7. SCOPE AND APPLICABILITY

7.1 This policy covers the DISPOSAL AND/OR TRANSFER of state owned land and or real rights and must at all times be adhered to by all departmental employees involved in the task of immovable asset disposal or transfer.

7.2 The Head of Department must establish Departmental State Land Disposal Committee which may comprise of the following:

- i. Chief Director: Roads
 - ii. Chief Director: Public Works
 - iii. Director: Legal Services
 - iv. Chief Financial Officer (CFO)
 - v. Deputy Director: Property Management
 - vi. Regional Directors whose submissions are on the agenda of a particular meeting.
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7.3 The functions of the Departmental Land Disposal Committee shall include amongst others the following:

- Screening of land or real right for disposal.
- The actual disposal of the redundant and vandalized properties or real rights, vacant land, unutilized residential accommodation; adjudication of tenders; promotion of broad based black economic empowerment; etcetera.
- The determination of market prices taking into account the market conditions in the Province.
- Monitoring the entire process of land alienation, property disposal and transfer.

8. PROCEDURES

The following procedures must be followed in order to correctly manage and administer the disposal and transfers of government owned properties or real rights. Different disposal method should be explored in this regard which amongst others should include:

- Sale by public (auction/bid),
 - Sale by private treaty (PPP contract), and
 - Land and other immovable property in accordance with GIAMA.
 - The Provincial Asset Management Unit must be invited to conduct Pre-Disposal Audit.
 - The decision to dispose should be made within an integrated service and financial framework.
 - In disposing of assets, the Provincial Departments are to:
 - Evaluate the effectiveness of their disposal or transfer strategies in maintaining and asset portfolio that best meets service needs; and
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- Establish arrangements for decommissioning of assets and for under-performing or surplus assets as efficiently as possible, prior to disposal or transfer.
- A cost-benefit analysis should be compiled to determine the viability of options.
- The decision to dispose should take into account the following matters; before it is implemented:
 - The nature of the asset;
 - Its location (with regards to access);
 - Its volume;
 - Its ability to support wider government programmes;
 - Environmental considerations;
 - Its potential market value and market conditions; and
 - Asset's useful life.

1. PROVINCIAL STATE OWNED LAND

1.1. Provincial State Land

Provincial state land refers to state land vested in the Northern Cape Province by the Minister responsible for Land Affairs by signing and issuing an item 28 (1) Certificate in terms of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

1.2. Categories of provincial state land

Agricultural land

This land comprises:

- i. Farms leased on long term leases;
 - ii. Farms donated to other government departments for official purposes such as running farm schools, clinics, etc.
 - iii. Parcels of land reserved for national projects such as roads, parks, etc.
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Vacant stands

These are vacant stands in proclaimed towns and municipalities earmarked for future establishment of official office and housing accommodation, hospitals, schools etc.

Communal Land

This type of land is the state land under the jurisdictions of traditional leaders.

2. DISPOSAL PROCESS

2.1. Screening of land for Disposal

- 2.1.1.** Regional Offices of the Department Roads and Public Works shall identify the extend and location of land required for state domestic purposes, where such need has been objectively motivated for the next five (5), ten (10) and fifteen (15) years and make a submission to the Directorate Property Management.
 - 2.1.2.** Regional offices shall identify state land which is superfluous to the domestic needs of the Province and which can be considered for alternative use such as multipurpose community centres, non-governmental organizations accommodation, etc, and make submission to the Directorate Property Management.
 - 2.1.3.** The Directorate Property Management shall call upon client departments to submit proposals and time frames for optimal utilization of land zoned and/set aside for their use.
 - 2.1.4.** The Directorate Property Management shall assess all submissions from Regional Offices to ensure statutory and other regulatory compliance.
 - 2.1.5.** The Directorate Property Management shall submit Regional submissions to the State Land Inventory division of the Department of Land Affairs for update and ownership verification.
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2.1.6. The Directorate Property Management shall submit Regional submissions to the Provincial State Land Disposal Committee for vesting if not already done.

2.1.7. The Departmental State Land Disposal Committee shall be instituted to vet/screen all properties for disposal, before submission to the Executive Management.

2.1.8. The Departmental Land Disposal Committee may co-opt any official of the Department and/or any Department whom it deems necessary to attend.

2.2. Method of Disposal

2.2.1. Procedure for Adjudicating Tenders

A person/juristic entity that tenders the highest monetary sum and complies with provisions of purchase as embedded herein will be declared the successful tenderer. In the event of there being a tie of two or more equally qualified tenders, the successful tender will be determined by a lottery.

- **Adjudication Criteria**

- To be done in terms of PPPFA: functionality, price, preference;
- Some functionality points allocated for socio-economic benefits from intended development / use; and
- Preference points for BEE, women, youth and disability.

2.2.2. Determination of Market Value

The open market value of all redundant properties will be assessed by registered valuers/appraisers and adjudicated by the Departmental Land Disposal Committee.

2.2.3. Disposal of redundant vacant sites and vandalized buildings

Redundant vacant sites and buildings will be sold by tender. Special attention will be given to the effective advertising of such tenders, to ensure the widest possible participation. The process will be administered by the Directorate Property Management in cooperation with Regional Offices.

2.2.4. Disposal of redundant state-owned houses

The first option to purchase a redundant state-owned house shall be given to the sitting legal tenant, both public servants and non-public tenants. Redundant state-owned houses surplus to the needs of sitting tenants shall be sold through estate agents on commission basis or, through tender as stipulated on 2.3.2 supra;

- 20% discount on the selling price shall be given to all first-time home-owners on the first house purchased;
- 10% discount on the selling price shall be given to other buyers.

2.2.5. Participation by Previously Disadvantaged Individuals

Natural persons and juristic entities (including BEE's) who have never before owned immovable property, either directly or indirectly but are financially able to and otherwise qualified to purchase, will be afforded preference in purchasing land, in accordance with the Preferential Procurement Policy Framework No. 5 of 2000 and Regulations.

Natural persons or juristic who are eligible as above will be required to furnish a sworn statement confirming their previously disadvantaged status.

2.2.6. Limitation on Number of Acquisition

While there will be no limit on the number of properties for which an individual person/juristic entity may submit tenders (provided that the declared order of preference is stated), such person/juristic entity will only be permitted to acquire a maximum of two properties.

2.2.7. Prevention of Speculation

In order to prevent speculation for profit in the properties disposed of, the following conditions will be incorporated in the title deeds of such properties:

The property may not be sold within a period of five (5) years from the date of purchase:

- Unless it has been offered for sale to the State at the original purchase price.
- Without the consent of the Member of the Executive Council (MEC) for the Department of Roads and Public Works.

2.2.8. Disposal of Redundant Vacant Stands

Redundant vacant stands in municipal areas shall be transferred to respective municipalities at nominal value amounting to the current municipal value. Should a municipality indicate their unwillingness to purchase such stands, the Department shall put them on open tender and sell them to the highest bidder.

9. ROLES AND RESPONSIBILITIES

9.1 HEAD OF DEPARTMENT / ACCOUNTING OFFICER

The Accounting Officer of the Department Roads and Public Works; should for all immovable assets under his/her control:

- a) Compile, in accordance with section 7, and with due regard to the user immovable asset management plans submitted in terms of section 9, a custodian immovable asset management plan that forms part of the strategic plan of that custodian;
 - b) Submit the custodian immovable asset management plan to the relevant treasury as part of its strategic plan;
 - c) Advise the relevant treasury on the immovable asset management plans of users;
 - d) Ensure that all activities that are associated with common law ownership are executed,
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- e) Establish and execute a performance measurement system as prescribed.

- The Accounting Officer of a custodian must assist a user by making available information pertaining to an immovable asset used by that user as well as suitable alternatives, including analysing that information in a manner that would enable the user to make informed and effective decisions on the use and management of that immovable asset.

9.2 DEPARTMENTAL LAND DISPOSAL COMMITTEE

- Screening of applications relating to the disposal of immovable properties within the Province of the Northern Cape.
- The Departmental Land Disposal Committee of the custodian department may recommend to the Accounting Officer the disposal of a surplus immovable asset in the following manner:
 - a) by the allocation of that immovable asset to another user; or
 - b) subject to the State Land Disposal Act, 1961 (Act No. 48 of 1961), and any provincial land administration law, by the sale, lease, exchange or donation of that immovable asset or the surrender of a lease.

9.3 USER DEPARTMENT

A user of immovable assets utilises such assets to give best effect to its functions and therefore must produce a user asset management plan (U-AMP) to ensure:

- accountable, fair and transparent utilisation of immovable assets;
- effective, efficient and economic use of immovable assets;
- reduced overall cost of service delivery;
- reduced demand for new immovable assets.

9.4 ACCOUNTING OFFICER – USER DEPARTMENT

The accounting officer of a user or custodian in its capacity as a user must, for all the immovable assets that it uses or intends to use:

- a) compile, in accordance with section 8, a user immovable asset management plan that will form part of the strategic plan of that user;
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- b) jointly conduct the immovable asset strategic planning process with the relevant custodian;
- c) submit its user immovable asset management plan to the relevant treasury in accordance with section 9;
- d) submit a copy of the user immovable asset management plan to the relevant custodian in accordance with section 9; and
- e) establish and execute a performance measurement system as prescribed.

The accounting officer of a user department must surrender a surplus immovable asset under its control to the relevant custodian.

9.5 DEPARTMENT OF ROADS & PUBLIC WORKS (DR&PW)

Custodians are responsible for the efficient & effective management of immovable assets throughout their life-cycle and therefore must produce a custodian asset management plan to ensure that immovable assets are:

- provided in a transparent & cost effective manner to meet the service delivery requirements of users;
- maintained in the state in which they would optimally support service delivery objectives;
- assessed in relation to performance, suitability, condition & effect that condition of an asset has on service delivery ability; and
- disposed of if the assessments so indicate.

10. FINANCIAL RESOURCE IMPLICATION

The Programme / Responsibility Managers of the Department shall submit budgetary requests to be approved by the Accounting Officer, on the recommendation of the Chief Financial Officer, to ensure that all expenses relating to disposal and transfer of state-owned land and/or real rights are budgeted for through the medium expenditure framework.

11. MONITORING AND EVALUATION

11.1 Departmental State Land Disposal Committee

The Departmental State Land Disposal Committee as part of its oversight role shall in conjunction with the Head of Department ensure amongst others the following:

- (i) Efficient and effective implementation of the policy.
- (ii) The accessibility of the policy to the intended beneficiaries.
- (iii) Ensure that properties disposed of are used for the intended zoning purposes.
- (iv) The possible abuse of the policy.
- (v) Furnish the required monitoring reports, periodically.
- (vi) Develop necessary tools and processes to assess the outcome of the policy implications by all the stakeholders.

11.2 Penalties for Non-Compliance

- Any failure to comply with the Policy will be viewed as a serious disciplinary transgression and could lead to disciplinary action taken against the offending employee in terms of the Public Service Regulations and Code of Conduct.
 - Any employee that contravenes the provisions of this policy shall be charged with misconduct and or fraud and will be held liable for any damages suffered by the state as a result of non-compliance.
 - Furthermore, those employees found to have connived or committed irregularities including fraud and related matters with the bidders may be summarily dismissed from the public service.
 - Bidders and their directors who been found guilty of violating this policy shall be prohibited from conducting any future business with the state; depending on the severity of the offence; legal action may be taken against the perpetrator and if it
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is discovered that fraud was committed a case of fraud will be reported to the SAPS for investigation and prosecution.

- The Department reserves the right to cancel and/or not to award any tender to bidders found to have unfairly influenced the process of award and have been found guilty of improper conduct or have been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act, 12 of 2004.

12. POLICY REVIEW

12.1 This policy shall be assessed every five (5) years from its effective date to determine its effectiveness and appropriateness. This policy may be assessed before that time as necessary to reflect substantial organizational etc. changes at the Department or any change required by law.

12.2 Deviations from this policy must be approved by the Accounting Officer.

13. APPROVAL OF THE POLICY AND DATE OF EFFECT

Approved / Not Approved

Comments:

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HEAD OF DEPARTMENT

5.3.19
DATE