



## **KwaZulu-Natal Provincial Department of Provincial Public Works**

### **Immovable Asset Disposal Strategy**

**APPROVED AS PER  
CABINET RESOLUTION  
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# **STRATEGY ON THE DISPOSAL OF PROVINCIAL GOVERNMENT LAND (IMMOVABLE ASSETS)**

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## **1. Introduction**

Property is a strategic and productive resource which provides a vehicle for economic development, service delivery and transformation. The National Department of Public Works (NDPW) and the National Department of Public Enterprises (DPE) have embarked on a process to improve on the management of properties within the national government and state owned enterprise (SOEs) portfolios.

The Government Immovable Asset Management Act was accordingly developed by the NDPW and approved by Cabinet. GIAMA views immovable asset management as a set of management processes to enhance the value of immovable assets throughout their life cycle, encompassing strategic planning, acquisition, operation & maintenance management, and disposal. It advocates that an immovable asset strategic planning process must link service delivery requirements and the determination, amongst other things, of whether the assets are surplus to the needs of Government.

In line with the then Government- wide Immovable Asset Management Policy (GIAMP), the NDPW then designed a disposal policy and strategy to guide national government in property management.

The disposal policy and strategy initiative by the Central Government needs to be replicated at Provincial level. The policy proposals produced by the Department of Public Provincial Public Works and the Department of Public Enterprises have accordingly been adapted in the document that follows to cater for a disposal policy framework for the KwaZulu-Natal Provincial Government.

This Strategy aims to improve on the efficiency of the disposal process, promote consistency across all provincial departments, provide criteria for the identification of properties for disposal and outline the types of disposals and the evaluation criteria to be used when disposing of immovable assets.

## **2. Legislative framework**

The basis for this policy/strategy statement is governed by the following:-

Constitution of the Republic of South Africa, 1996;

KwaZulu-Natal Land Administration Act, 2003 (Act No. 3 of 2003);

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);

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);

The Provincial Supply Chain Management Policies and Procedures as contained in the practice notes as issued by the KwaZulu-Natal Provincial Treasury from time to time.

### **3. Effective Date**

#### **3.1 Date of Commencement**

This policy will take effect on the date of acceptance thereof by the KwaZulu-Natal Executive Council.

#### **3.2 Replacement of Existing Policies/Strategies/Procedures**

This policy statement replaces all existing policies/strategies/procedures dealing with the disposal of Provincial State land in the Province of KwaZulu-Natal

### **4. Objectives**

This Policy and Strategy:-

- Aims to improve on the efficiency of the disposal process, promote consistency across all government tiers, provide criteria for the identification of properties for disposal and outline the types of disposals and evaluation criteria.
- Includes deliberate measures to increase black participation in, and benefit from, property disposals and in the services surrounding these processes.
- Provides the framework within which disposal processes and related transactions are to be implemented to promote efficiency and consistency across government to enable government 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.
- Promotes the optimum management of Provincial Government's asset portfolio.
- Encourages commercially viable local and regional economic development, through development of properties and investment in targeted areas.
- Provides for asset disposal for housing, land reform, local economic development and other socio-economic imperatives.
- Provides an assurance that the disposal process will be implemented in the context of the transformation within the property sector and will promote B-BBEE and the development of micro and small enterprises.

## 5. Definitions

**“B-BBEE enterprise”:** means an enterprise whose B-BBEE score in terms of a sector scorecard which has been issued as a code of practice or in terms of the dti’s generic scorecard is greater than or equal to 30% and has been verified by an accredited verification agency.

**“B-BBEE Scorecard”:** means a scorecard for the measurement of broad-based black economic empowerment for a particular enterprise as set out in the charter.

**“Black people”:** means Africans, Coloureds and Indians as referred to in the B-BBEE Act No 53 of 2003 and the DTI’s definition contained in the DTI’s Codes of Good Practice.

**“Broad-Based Black Economic Empowerment (B-BBEE)”** means 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:

- Increasing the number of black people that manage, own and control enterprises and productive assets;
- Facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
- Human resource and skills development;
- Achieving equitable representation in all occupational categories and levels in the workforce;
- Preferential procurement; and
- 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.

**“Disposal”:** means the sale, exchange, donation or letting of Provincial state land (including the allocation of state land free of charge for a period of time), the conclusion of any form of land availability agreement in respect of immovable property with any person and the registration of any real or personal right in respect of state land, including servitudes.

**“Enablement”:** means the preparation of land for development and includes securing development rights; rehabilitating land; removing redundant structures or installations and installing infrastructure.

**“Enterprise”:** means a person or persons conducting a business, trade or profession in the Republic of South Africa.

**"Exchange"** means the simultaneous acquisition and disposal of immovable property or any right in respect of immovable property in terms of an agreement between the Provincial Government and any other party or parties where the compensation payable by the parties to each other are offset and only the difference, if any, is payable to the appropriate party.

**"Fronting"** refers to any entity, mechanism or structure established in order to circumvent the BEE requirements as required under various policy instruments. Fronting structures generally claim a higher BEE status than the actual substantive economic benefits flowing to black beneficiaries.

**"Generic scorecard"**: means the balanced B-BBEE scorecard included in the DTI's Codes of Good Practice.

**"Joint venture"**: means a venture which is formed ad-hoc for a specific project, in which two or more parties share the obligations, risks and rewards.

**"Local area"**: means the area within a 100 kilometre radius of the property to be disposed of.

**"PSLDC"**: means the KwaZulu-Natal Provincial State Land Disposal Committee.

## **6. Policy/Strategy Statement**

- 6.1 Any immovable property which no longer supports the service delivery objectives of the Provincial Government or its Statutory Bodies in a cost-effective and efficient manner should be disposed of. Where such immovable asset is of environmentally sensitive or culturally and historically significant nature, careful consideration must be given to the impact of its disposal.
- 6.2 The disposal of Provincially owned immovable assets should ensure the increased participation of black people, black designated groups and black women in management and / or acquisition of such immovable Provincial State land as well as in the procurement of services relating to the disposal of such immovable assets.
- 6.3 The Provincial Government should, subject to the approval of the Provincial Treasury, consider the gratis transfer of immovable assets identified for socio-economic purposes in terms of a municipality's Integrated Development Plan (IDP) and Spatial Development Framework (SDF), to the relevant municipality, including immovable assets required to provide affordable / social housing and related infrastructure.
- 6.4 Pro-active steps must be taken to identify immovable assets suitable for land reform purposes. Where practicable and feasible and if necessary subject to the approval of the Provincial Treasury, such identified immovable asset should be released to the National Department of Land Affairs (NDLA) who shall make suitable arrangements for the interim management and control of such immovable assets until the release thereof to the identified beneficiaries.

- 6.5 Any immovable assets which, by virtue of their historic use by government, were never integrated into the surrounding city spatial context, should be considered for development by government in partnership with the private sector for alternative optimal use through development rights, provision of service infrastructure (roads, sewerage, water and electricity) and release by long lease or sale or Public Private Partnership (PPP) or Joint Venture (JV).
- 6.6 To achieve the policy objectives contained in this statement, the Department of Provincial Public Works, in consultation with the other Provincial Departments and Statutory Bodies, must on an annual basis, prepare a detailed plan for the disposal of immovable assets considered to be surplus to the Provincial Government's requirements and therefore suitable for disposal. This plan must, in addition to the above, include:
- Physical information of the immovable assets: description, extent, ownership, locality, physical condition, title deed information (including restrictions and servitudes), accessibility etc.
  - Financial information: operational and maintenance costs, assessment of current market value and potential income to be derived from the proposed disposal.
  - Operational information: functionality or use of the immovable asset and potential alternative uses.
  - Proposed method of disposal and, if known, the potential beneficiary/ies of such intended disposal.
  - Timeframes for finalisation of the disposal process, including the registration of transfer following the disposals.
  - Any specific socio-economic criteria that each proposed disposal will take into account.
  - Use, if any, of non-governmental service providers and consequently the adherence to the prescripts of PPPFA.
  - The key performance measures and standards for monitoring and reviewing the implementation of the disposal plan for the financial year.

## **7. Application**

This Property Disposal Policy and Strategy applies to all Provincial Departments and Provincial Statutory Bodies and must be complied with in every case where the disposal of immovable assets is dealt with.



## **8. Policy Requirements**

### **8.1 Procedural Requirements**

The disposal of immovable property in the Province of KwaZulu-Natal will be conducted in accordance with the processes and procedures set out in Annexure A.

### **8.2 Disposals to be noted in the property register**

To ensure proper control over the disposal process, good administration of the Provincial asset register and in order to meet the requirements of the KZN Land Administration Act, all disposals must be noted in the register maintained in terms of Section 11 of the said Act.

### **8.3 Liaison with Local Government**

In identifying assets for disposal, the provincial government will engage with municipal and district councils providing information on the identified assets to enable municipal and district councils to consider their requirements vis a vis their IDPs and other strategies.

### **8.4 Liaison with Central Government**

The co-ordination of the Provincial Disposal plans must be conducted through the KwaZulu-Natal Provincial State Land Disposal Committee.

## **9. Roles & Responsibilities**

- 9.1 The Departments of Agriculture, Housing and Transport will be responsible for the disposal of properties acquired specifically for agricultural, housing or road construction and maintenance purposes (as the case may be) and the Department of Provincial Public Works will be responsible for the identification (in consultation with all other provincial departments) and disposal of all other surplus provincial properties.
- 9.2 The strategy, given it's transversal nature, must be adopted by the Provincial Executive Council.
- 9.3 The MEC's for Provincial Public Works, Agriculture, Transport and Housing who have been assigned the power to dispose of provincial state land in terms of the KZN Land Administration Act, may approve the delegation of their powers, duties and functions as contained in the said Act to officials of the relevant departments. In the case of the MEC for Provincial Public Works, these delegations are already in place.
- 9.4 The MEC: Provincial Public Works, must maintain a central register of all properties disposed of and manage the annual plan for the disposal of all provincial state land other than land acquired for agricultural projects, roads or housing project purposes.
- 9.5 The Head Office Real Estates Component of the Department of Provincial Public Works must maintain and update this strategy and any operational handbooks and manuals after any changes to the National Government Disposal policy and strategy and any of the legislation governing this strategy;.

9.6 The Head Office Real Estates Component of the Department of Provincial Public Works must–

- identify, in consultation the other provincial departments, all redundant provincial state land which is not used for agricultural projects, roads and housing projects;
- prepare the necessary disposal plans which must be reviewed and updated on an annual basis;
- ensure that the disposal of immovable properties are dealt with in accordance with the plan and in a timeous and equitable manner;
- liaise with the Departments of Agriculture, Transport & Housing in the preparation and implementation of their disposal management plans and record all disposals by these three departments in the provincial asset register;
- maintain all registers required in terms of the KZN Land Admin Act,2003 and this policy/strategy.

9.7 The Departments of Agriculture, Transport and Housing must–

- identify all redundant provincial state land under their control;
- prepare the necessary disposal plans which must be reviewed and updated on an annual basis;
- ensure that the disposal of immovable properties are dealt with in accordance with the plan and in a timeous and equitable manner;
- advise the Head Office Real Estates Component of the Department of Provincial Public Works of all disposals finalised during the financial year to facilitate the updating of the provincial asset register.

## **10. Compliance**

- 10.1 Officials/Real Estates Components 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.
- 10.2 Any contravention of the terms and conditions of this Strategy and B-BBEE Guidelines by any official of the provincial government will be considered to be misconduct and will be dealt with in terms of the disciplinary code and procedures of the relevant department.
- 10.3 The relevant department 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 a party.

10.4 Penalties and remedies available include, but are not limited to:

- Nullification of the disposal and claim for any damages and or financial penalties as a result of having to make less favourable arrangements;
- Exclusion of such party from future participation in disposal processes;
- Blacklisting from all government procurement opportunities;
- Civil action.

10.5 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.

10.6 All officials involved in the disposal of State-owned assets must uphold a standard of behaviour that is based on:

- Transparency, equity, fairness, competitiveness and value for money.
- The highest levels of transparency, honesty and professional competence.
- Non-disclosure of confidential information.
- 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.
- 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.

## **11. Review and Evaluation**

This Policy/ Strategy should be reviewed and evaluated at least every two (2) years by the Department of Provincial Public Works in consultation with the other provincial departments in line with the review and evaluation process by the National Department of Public Works and the Department of Public Enterprises.

## **12 Monitoring and Reporting**

12.1 Each department responsible for disposals must report progress made to the PSLDC (with a copy to the Department of Provincial Public Works) on a quarterly basis on their performance against the targets contained in their disposal plan.

12.1 The Department of Provincial Public Works will be responsible for the compilation of a consolidated annual report on the disposal of assets including an evaluation of performance against objectives for tabling in the Provincial Legislature and reporting to the National Department of Public Works.

### **13. References**

- 13.1 The document entitled “Draft Property Disposal Strategy” prepared by the National Department of Public Works and the National Department of Public Enterprises.

### **14. Enquiries**

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### **Annexures**

- A.. DISPOSAL PROCESS
- B. THE DTI SCORECARD
- C. PROPERTY CHARTER SCORECARD

### DISPOSAL PROCESS

#### 1. Introduction

This Annexure is not intended to be a detailed procedure manual but rather a document in which the basic tenets of a disposal are dealt, with including the identification of the main types (forms) of disposal, the type of rights in immovable property that can be disposed of, the adjudication criteria to be used to ensure the strategy objectives are met and an outline of the steps that need to be taken when disposing of immovable assets.

#### 2. Forms of Disposal

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

##### 2.1 Sale on open tender

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).

Properties may be disposed of to the private sector or organisations representing civil society for B-BBEE, socio-economic and/or developmental purposes.

All transactions are subject to the tendering and adjudication guidelines contained in this Strategy and the Annexures thereto.

The Provisions of Section 5 of the KZN Land Administration Act 2003 in regard to the advertising of the intention to dispose of a property must be complied with.

**NB:** Other than in exceptional circumstances, 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;
- Properties are identified for donation to CBOs, NGOs and civil society organisations;
- Properties are of a non-commercial nature and there is limited or no interest, in which case the SOE/department may determine that there will be no competition and evaluate the bid on price alone.
- Cases dealing with exchange of properties providing that the exchange does not result in the Provincial Government being disadvantaged in any way;

- Under no circumstances will state immovable property be sold by auction unless the sale on the open market by other methods has not yielded a satisfactory result.

## **2.2 Donation “Gratis” transfer**

The donation (“gratis” transfer) of an immovable asset to other organs of state or to CBOs, NGOs and civil society organisations in furtherance of socio-economic objectives may be considered, subject to the approval of the National Treasury (in terms of Treasury Regulations).

## **2.3 Letting**

The letting of immovable assets should be at market related rental, unless the approval of the National Treasury has been obtained (in terms of Treasury Regulations).

The provisions of Section 5 of the KZN Land Administration Act, 2003, in regard to the advertising of the intention to dispose of a property must be complied with.

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.

Every effort must be made to guard against entering into lease agreements that are burdensome to the Provincial Government and that will potentially prevent or make it difficult or costly for the Provincial Government to re-acquire full use of its immovable assets.

## **2.4 Exchange**

The process of exchange means that a disposal and an acquisition is taking place simultaneously and therefore the rules of both must apply and 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.

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.

## **2.5 Public Private Partnership (PPP)**

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 an asset. Ownership of the immovable asset remains vested in the relevant Government level.

A PPP agreement may only be entered into on written approval by the Treasury (in terms of the PPP Toolkit issued by National Treasury). The policy guidelines and procedures governing PPP agreements are set out in the relevant National Treasury PPP Practice Notes.

## **2.6 Transfer between spheres of Government**

Where a Department holds an immovable asset that is identified as essential for the furtherance of socio-economic objectives of a municipal or district council, transfer of such asset for this purpose shall, as much as possible, take precedence over any other proposed disposal for which that asset may have been earmarked. The immovable asset shall be transferred free of charge where written approval of the Treasury has been obtained (in terms of the Treasury Regulations) and all costs related to the transfer shall be borne by the receiving party.

Transfer of immovable assets contemplated above shall be subject to a clearly defined reversionary clause providing for a reversion of ownership to the Provincial Government, free of charge, in the event that the immovable asset is no longer to be used for the specified socio-economic purpose by the municipality or district council concerned.

## **2.7 Unsolicited bids**

Unsolicited bids are difficult to manage and could potentially violate constitutional protection of fair and transparent administrative process and competitive procurement. No commitment that will undermine competitive procurement or otherwise lead to unfair advantage of one party over others should therefore be made when responding to unsolicited bids.

Should the merits and circumstances of an unsolicited request for the disposal of a state-owned asset warrant consideration, the custodial department/SOE shall, subject to the approval of the Executive Authority, invite public comment on the request (through advertisements in appropriate media) before a final recommendation is made.

Where a proposal has been received for property development, land sale, or leasing, the following should be applied:

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/SOE.

## **2.8 Disposal to legal occupants**

Residential properties declared surplus and ready for disposal may first be offered for sale, at market value, to occupants 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.

## **2.9 General Principles**

(a) Officials in the employ of Government shall have the right to make an offer for acquisition of immovable assets being disposed of by the Department, including officials in the employ of any Provincial Department.

(b) 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. The failure to declare such interest, could result in a process that appears unfair, prejudicial or in any manner contrary to the principles of this Policy.

(c) 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 Strategy.

### **3. Disposal of Rights in Immovable Assets**

#### **3.1 Servitudes**

A servitude can be defined as a right which one person has over the immovable asset of another and includes instances in which the Provincial Government grants a party a right (e.g. right of way, grazing, draw water etc.) over a Provincially owned immovable asset. Servitudes result in a burden on the immovable asset for extensive periods of time, sometimes permanently. It is for this reason that servitudes should only be granted after careful assessment of the impact of the proposed servitude on the immovable asset;

If the proposed servitude will result in the immovable asset being negatively affected including the impairment of the ability to productively enjoy, utilise, permanently dispose or otherwise deal with the immovable asset, then such servitude must not be granted.

Servitudes may be granted to any person (private or state organ) upon payment of appropriate market-related compensation by such person provided that where a municipality or district council requires a servitude for the benefit of the general public and subject to the necessary authority having been obtained, the payment of market value for the servitude can be waived.

The party requiring the servitude is responsible for all costs relating to the granting of the servitude including survey and transfer costs.

As a servitude constitutes a “disposal” as contemplated in the KZN Land Admin Act, the provisions of Section 5 of the said Act in regard to the advertising of the intention to dispose of a property must be complied with.

#### **3.2 Restrictive title conditions, pre-emptive & presumptive rights**

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 consents or those that grant the Government powers of use, first preference or resumption of such privately-owned assets.

On receipt of an application for the removal of any of these conditions, the application must carefully assess the particular case and determine the compensation to be paid, where relevant, before finally 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.



### 3.3 Mineral rights

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 and 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. All cases of this nature should be referred to that Department for advice on what should be done.

### 3.4 *Bona Vacantia*

*Bona Vacantia* is Latin and 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.

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*, so any case must be referred to the National Department of Public Works.

## 4. Disposal Process – An Overview

### 4.1 Identification

4.1.1 The first step in the disposal process is the identification of unutilised provincial immovable property which can be considered as surplus and available for disposal.

4.1.2 In order to achieve this it will be necessary for the Department of Provincial Public Works, in conjunction with the other departments (other than Agriculture, Transport and Housing who will be conducting separate exercises in respect of the properties for which they are responsible), to conduct a structured exercise to identify all unutilised provincially owned immovable assets which could be declared redundant and surplus to provincial requirements.

4.1.3 Once the properties have been identified, they should be tested against the following criteria to determine if they can be considered redundant and available for disposal:-

- An asset is not required for the delivery of services by any provincial department;
- An asset has become too costly to maintain or use;
- An asset is not suitable for service delivery by any other department or statutory body;
- An asset is required for economic growth whereby the benefits for disposal outweigh the benefits for current utilisation.

### 4.2 Assessment

4.2.1 Detailed research must be undertaken to confirm ownership, title conditions, improvements, servitudes or other notarial deeds registered against the property and whether or not the property is occupied legally or otherwise.

4.2.2 The next step is to carry out a thorough analysis of the properties to determine if they should be disposed of. The identified properties can be considered against the following:-

- Whether the property is required by any other provincial department, the National Department of Public Works, the Department of Land Affairs (as a land claim) or the relevant municipal or district council;
- Whether there are net benefits, either in social, financial or other terms;
- Whether there are secondary service obligations (e.g. long term leases) associated with the asset which dictate its retention and
- Whether a disposal can be carried out without adverse impact on the physical environment or physical harm to any person.

4.2.3 Essentially, this step establishes the desirability, advantages and disadvantages of proposed disposals. It will not always hold true that surplus immovable assets must be disposed of and any decision to retain them should, together with the reasons for so deciding, be recorded on the relevant file and the asset management register.

### **4.3 Disposal Plan**

4.3.1 Next a comprehensive disposal plan, which must incorporate a detailed status report on immovable assets considered to be surplus and disposable must be prepared. This report, which should be reviewed on an annual basis, must include:

- Physical information of the immovable assets including the property description, extent, ownership, locality, physical condition, title deed information (including restrictions and servitudes), accessibility, improvements, municipal zoning and valuation etc.
- Financial information: operational and maintenance costs including annual rates costs, any costs of buying out registered leases, an assessment of current market value and potential income to be derived from the proposed disposal.
- Operational information: functionality or use of the immovable asset and potential alternative uses.
- Proposed method of disposal and, if known, potential beneficiary/ies of the property if it is disposed of;
- Timeframes for finalisation of transfers following the disposals;
- Specific socio-economic criteria that each proposed disposal will take into account, including the relevant Municipal/District councils IDP's;
- Use, if any, of non-governmental service providers and consequently the adherence to the prescripts of PPPFA;

- Key performance measures and standards for monitoring and reviewing the implementation of the disposal plan for the financial year.

#### **4.4 Type of Disposal**

4.4.1 The next step is to identify the type of disposal (see “Forms of Disposal” under paragraph 2 above in this annexure) in order to decide whether a an outright sale, a letting, a donation, an exchange, or PPP is necessary as well as the most suited method of disposal (e.g. direct disposal, open or closed tender etc.). In disposing of immovable assets, custodians may employ any or combination of any appropriate form and method.

#### **4.5 Valuations**

4.5.1 Depending on the type of disposal, it may well be necessary to obtain a valuation of the property/ies being disposed of. It must be borne in mind that, whilst one of the objectives of this policy/strategy is to ensure the increased participation of black people, black designated groups and black women in management in the in the procurement of services relating to the disposal of immovable assets, it is nonetheless essential that anyone appointed to carry out the necessary valuations should be a member of the South African Institute of Valuers.

4.5.2 It should also be borne in mind that the sale of an immovable asset should be based on the market value (ie. willing buyer/willing seller basis) and by calling for bids from the public, one is able to determine what the market is prepared to pay and it may not be necessary to go to the extent of obtaining a valuation unless it is clear that the highest bid offered is not anywhere near the market value.

#### **4.6 Advertising**

4.6.1 It should be remembered that, in terms of the provisions of section 5 of the KZN land Administration Act, 2003, it is necessary to advertise the intention to dispose of a provincial property no matter what type of disposal is decided upon. The notice of intention must be signed by the relevant MEC (i.e. Provincial Public Works, Agriculture, Transport or Housing). Any comments received as a result of such advertisement must be submitted to the MEC (or his/her delegate) when final authority is sought for the sale.

#### **4.7 The Bidding Process**

4.7.1 In cases where it is decided to sell a property or properties on the open market, the bidding process set out in the Real Estates Standing Operating Procedures in the Department of Provincial Public Works should be followed. This includes but is not limited to:-

- All properties for sale must be advertised.
- Additional information on the property will be accessible from the Provincial Government.
- The offer must contain key information such as:
  - Relevant details of bidders;

- Relevant empowerment credentials of bidders – in the form of audited B-BEE verification certificates;
- Level of Board / shareholder approval for the offer;
- The indicative offer price;
- Confirmation of the necessary cash resources and
- Conditions precedent, if any

4.7.2 The offers must be adjudicated based on the criteria contained in paragraph 4.8 of these guidelines and the successful bidder selected in terms of such criteria.

## 4.8 The Adjudication Process

### 4.8.1 General

4.8.1.1 In an open or closed tender, there are two possible options to assess levels of empowerment, namely:

- A minimum score as a requirement to participate in tender process (“the absolute criterion”) and/or
- Score is one of the factors taken into consideration in assessing any offer (“the relative criterion”)

4.8.1.2 Since securing the optimum value for property is a key consideration, these guidelines advocate a mix of both absolute and relative criteria, dependent on the value of the properties for disposal.

4.8.1.3 Detailed criteria should be designed in line with the proposed guidelines by each department/SOE.

**Note:** More work is still to be done to determine the type of disposals; the target markets, and packaging of properties where feasible. As part of the assessment, and in order to meet the 70% disposal target, the SOEs/DPE/NDPW should consider whether certain sales could be set aside for enterprises with higher BEE status levels, for small enterprises, community organisations or for other socio-economic purposes.

### 4.8.2 Adjudication Criteria

4.8.2.1 All bids will be adjudicated on the following criteria:

Price	60-80 points
Functionality	0-20 points
B-BBEE	20 points
Maximum points	100 points

### 4.8.3 Functionality

4.8.3.1 Properties will be sold incorporating a functionality variable. Functionality relates to the use of the property and should be broken down to suit a specific disposal objective but should be a maximum of 20 points. The breakdown may include, but not limited to:

- Concept plan
- Financial viability
- Experience and expertise
- Socio-economic objectives
- Local benefit and economic development.

4.8.3.2 Properties suitable for development or other socio economic objectives, such as housing or transfer to government will be identified prior to the sale. It is however considered that local benefit and economic development is a functional criterion against which bids should be measured. The following is therefore proposed:

- For property sales below R30m, at least 25% of the economic interest must be held by people from the local area.
- For property sales above R30m at least 25% of the economic interest must be held by people from the province.

### 4.8.4 B-BBEE bid adjudication points

Departments and SOEs will allocate B-BBEE points in bid adjudication using the following hierarchy and BEE status level determinations:

Level	B-BBEE adjudication points
1	20
2	17
3	14
4	11
5	9
6	6
7	3
8	1

**Note:** The scorecard points relative to B-BBEE accreditation level will need to be aligned with the DTI Codes of Good Practice on B-BBEE once finalised.

#### 4.8.5 B-BBEE status levels

The following table provides the BEE status levels as outlined in the DTI Codes of Good Practice:

BEE Status	Qualification	Recognition Level
Level One Contributor	≥100 points on the Generic Scorecard	135%
Level Two Contributor	≥85 but <100 points on the Generic Scorecard	125%
Level Three Contributor	≥75 but <85 on the Generic Scorecard	110%
Level Four Contributor	≥65 but <75 on the Generic Scorecard	100%
Level Five Contributor	≥55 but <65 on the Generic Scorecard	80%
Level Six Contributor	≥45 but <55 on the Generic Scorecard	60%
Level Seven Contributor	≥40 but <45 on the Generic Scorecard	50%
Level Eight Contributor	≥30 but <40 on the Generic Scorecard	10%
Non-Compliant Contributor	<30 on the Generic Scorecard	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.

4.8.6 Black individuals bidding in their personal capacity for properties that are less than R5m in value only should be recognised at level 1 during adjudication.

#### 4.9 Agents

In the event of the department not being able to sell the properties, or there is a lack of capacity within the department to handle the sales, with the approval of the MEC (or his/her delegate), the services of agents could be utilised to assist with the sale. The SCM bidding process must be followed and preference should, if possible, be given to agents with a BEE status level of at least 4.

#### 4.10 Targets

4.10.1 Recognising the potential impact the disposal of government property may have on transformation in the property sector and on property ownership patterns in general, it is imperative that the NDPW, DPE and SOEs take steps to ensure that they substantially increase their property related disposals to targeted enterprises, including black people.

4.10.2 Consequently, it is proposed that a target be set that a minimum of 70% of all asset disposals by value (other than those for transfer or housing) must be to entities with a B-BBEE status of at least Level 4, i.e. entities with scorecard points equal to and above 65%.

#### **4.11 Additional Measures**

4.11.1 Successful B-BBEE outcomes are not only derived from setting overall targets or incorporating BEE into the adjudication criteria. Each department should, where feasible, implement a number of other measures around BEE. These include:

- Extensive promotion and effective and accessible advertising of property opportunities, such as notices in tender bulletins and in local newspapers. In all cases, sufficient time must be given to interested parties to comply with the required criteria.
- The creation of a website or the use of the National Department of Public Works website which they are to create, in order to advertise opportunities (in addition to the 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.
- Recognising the need to enhance access to black people and companies with a good BEE status or small enterprises, consideration should be given to designing both financial and non-financial support mechanisms in partnership with SEDA, Khula and the NEF and/or financial institutions, to promote access to the provincial government's property portfolio.
- Sale agreements may contain certain empowerment commitments 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.
- Consideration to including a reversionary clause against the title deed which provides for ownership to revert to government should the property not be utilised for the stated purpose, especially where property is sold with a substantial discount or where development and other socio-economic objectives are incorporated and not fulfilled. Alternatively penalties may be imposed for onward sale at a profit within specified periods of time.
- 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.
- Successful BBBEE outcomes are not only derived from setting overall targets or incorporating BEE into the adjudication criteria. Consideration can also be given to, where necessary, introduce other initiatives to promote BEE participation in the property sector.

#### **4.12 Bid Approval & Finalisation of the Sale**

- 4.12.1 The results of the adjudication process must be submitted to the BEC and BAC for consideration and recommendation before the written approval of the MEC (or his/her delegate) is obtained.
- 4.12.2 Once the selection and approval of the preferred bidder has been completed, the preferred bidder/s are invited to submit formal binding offers as well as an appropriate guarantee/s for the payment/funding of the purchase price.
- 4.12.3 The final selected offer must be formalised with a binding legal agreement in the form of a Deed of Sale.



THE DTI SCORECARD – DECEMBER 2005 <sup>\*1</sup>

BEE elements	Weighting	Indicators	Indicator Weighting	Targets	Notes
Ownership	20%	Exercisable Voting Rights by black people	3%	25% + 1 vote	
		Exercisable Voting Rights by black women	2%	10%	
		Economic Interest in the Enterprise to which Black people are entitled	4%	25%	
		Economic Interest in the Enterprise to which Black women are entitled	2%	10%	
		Economic Interest in the Enterprise to which Black designated groups are entitled and deemed participants of broad-based ownership schemes	1%	2.5%	
		Ownership fulfilment	1%	No restrictions	
		Net economic value	7%	10%-year 1 20%-year 2 40%-year 3&4 60%-year 5&6 80%-year 7&8 100%-year 9&10	
		Ownership by broad-based distribution schemes, employee schemes or new entrants (bonus)	3%	Bonus per each level of 5%	
Management Control	10%	Percentage of exercisable Voting Rights held by Members of the Board who are black people to the total of all Voting Rights exercised by all members of the Board	3%	50%	
		Executive Members of the board who are black people	1%	50%	
		Executive Members of the board who are black women	1%	25%	

<sup>\*1</sup> This draft of the scorecard will be replaced by the final version due to be released by DTI during 2006.

		Percentage that Senior Top Management who are black people constitute of the total number of Senior Top Management	2%	40%	
		Percentage that Senior Top Management who are black women constitute of the total number of Senior Top Management	1%	20%	
		Percentage that Other Top Management who are black people constitute of the total number of Other Top Management	1%	40%	
		Percentage that Other Top Management who are black women constitute of the total number of Other Top Management	1%	20%	
		Percentage that black people who are Independent Non-Executive Board Members constitute of the total number of Independent Non-Executive Board Members (bonus)	1%	40%	
Employment Equity	10%	Black Employees with disabilities	2%	4%	
		Senior Management Black people	2%	60%	
		Senior Management Black people	2%	30%	
		Middle Management Black people	2%	75%	
		Middle Management Black Women	1%	40%	
		Junior Management Black people	1%	80%	
Skills Development	20%	Investment in skills Development of Black people(including the skills development levy) as a percentage of payroll	4%	3%	The following contributions will be considered for enhanced recognition: Skill Development spend on which is related to an ABET program may be recognised at a multiple of 1.25 to the actual level of such Skills
		Skills Development spend on Critical Skills and / or Core Skills of Black people as a percentage of payroll	2%	2.6%	
		Skills Development spend on Critical Skills and / or Core Skills of Black women as a percentage of payroll	2%	1.4%	
		Skills Development spend on Critical Skills and / or Core Skills of Black people with disabilities as a percentage of payroll	1%	0.3%	

		Black employees on SETA accredited Learnerships	2%	5%	Development spend
		Black women employees on SETA accredited Learnerships	2%	2.5%	
		Formerly unemployed black people and/or black people formerly residing in rural areas on Learnerships	1%	Yes	
		Existence of a comprehensive Black Economic Empowerment strategy	1%	Yes	
		Employment of a Skills Development Facilitator	1%	Yes	
		Existence of a policy on non-discrimination	1%	Yes	
		Compliance with all relevant employment related legislation	1%	Yes	
		Implementation of an effective human resource management plan	1%	Yes	
		Designed a programme to give practical effect to the policies and programs above	1%	Yes	
Preferential Procurement	20%	BEE Procurement Spend from Suppliers	15%	70%	The following contributions will be considered for enhanced recognition: Where goods and services are procured directly from a Supplier which is also a recipient of enterprise development contributions all BEE Procurement Spend from that Supplier shall be multiplied by a factor of 1.2 when calculating the BEE Procurement Spend
		BEE Procurement Spend from Qualifying Small Enterprises	4%	15%	
		BEE Procurement Spend from Exempted Micro Enterprises	1%	5%	
Enterprise Development	10%	Cumulative Non-Recoverable Contributions made by the Enterprise	6%	2%	The following contributions will be considered for enhanced
		Cumulative Recoverable	4%	3%	

		Contributions made by the Enterprise			recognition: Those which directly contribute towards the creation of employment opportunities in rural communities and, in particular but without limitation, in any geographic areas identified in the government's integrated sustainable rural development and urban renewal programmes qualify for recognition at a multiple of 1.5 to actual Rand value.
		Creation of employment opportunities in the Republic of South Africa(Bonus)			Enterprise Development Contributions which assist and accelerate the development of Exempted Micro Enterprises, qualify for recognition at a multiple of 1.25 to actual Rand value. Enterprise Development Contributions which assist and accelerate the development of Beneficiary Entities which manufacture, produce or sell

					goods and/or services not previously produced or manufactured in South Africa qualify for recognition at a multiple of 1.5 to actual Rand value Enterprise Development Contributions to the funding of warehousing funds qualify for recognition at a multiple of 125 to actual Rand value
Residual	10%	Cumulative Rand value of Non-recoverable Qualifying Corporate Social Investment Contributions made by the Enterprise	5%	1.5%	The following contributions will be considered for bonus points and enhanced recognition: Qualifying Residual Contributions which directly provide Contribution Beneficiaries who are natural persons with a means of generating an income for themselves will be calculated at the specified multiple of 1.5 to actual Rand value.
		Cumulative Rand value of Qualifying Industry Specific Contributions made by the Enterprise	5%	1.5%	
		Qualifying Residual Contributions which benefit natural persons living in rural communities and/or natural persons living in the geographic areas identified in governments integrated sustainable rural development programme and urban renewal programme(Bonus)	1%		
Elements	100%	Weighting	105%		

## PROPERTY CHARTER SCORECARD

Element	Indicators	Proposed Weighting	5 Year Target
OWNERSHIP (20 points)			
Voting Rights	Voting Rights in the enterprise in the hands of black people	5	25% plus 1vote
	Voting Rights in the enterprise in the hands of black women	2	10%
Economic interest	Economic interest to which black people are entitled	5	25%
	Economic interest to which black women are entitled	2	10%
	Economic interest to which broad-based / designated groups are entitled	1	2.5
Realisation points	Ownership fulfilment	1	No restriction
	Net equity value	4	10%-year 1 20%-year 2 40%-year 3&4 60%-year 5&6 80%-year 7&8 100%-year 9&10
CONTROL (10 points)			
	Members of the Board who are black people as a % of the board	3	40%
	Members of the Board who are black women as a % of the board	2	20%
	Executive Management who are black people as % of Executive Management	4	40%
	Executive Management who are black women as % of Executive Management	1	13%
EMPLOYMENT EQUITY (10 points)			
Senior Management	Black Senior Management as % of total Senior Management	2	30%
	Black women in Senior Management as % of total Senior Management	1	15%
Middle Management	Black Middle Management as % of total Middle Management	2	37.5%
	Black women in Middle Management as % of total Middle Management	1	20 %
Junior Management	Black Junior Management as % of total Junior Management	2	40%
	Black women in Junior Management as % of total Junior Management	1	20 %
Property brokers/estate agents	Black practitioners as % of total practitioners used	3	37.5%
	Black women practitioners as % of total practitioners used	1.5	20%
	Black people in Management as % of total Management	3	30%
	Black women in Management as % of total Management	1.5	15%

SKILLS DEVELOPMENT (15 points)		
% of Skills Spend on black people as a % of payroll over and above the Skills Development levy	7	1.5 %
Learnerships – Black learnership positions (as % of employees) (18.1 and 18.2)	4	2.5 %
Mentorships – Black staff on mentorships programmes as a % of total staff (adult learnerships) subject to verification	4	2.5%
PROCUREMENT(20 points + 2 bonus points)		
Procurement from BBBEE suppliers	15 for 60 % 2 for 70% (incl 1 bonus point)	70%
% Spend on Property Services Enterprises (Level 1-4) of total Property Services spend	3	40 %
Preferential procurement policies in place & mechanisms, which verify BEE status of suppliers including the use of dti-approved verification agencies.	2 (incl 1bonus point)	Yes
ENTERPRISE DEVELOPMENT (15 points)		
Proof of enterprise development programme in place	1	Yes
Disposal of assets to BBBEE enterprises (level 1-4) as a % of total asset disposal (private)	9	35%
Monetary support to and investment in BBBEE SMMEs (level 1-4) over 5 years	3	3% of net profit before tax
Quantifiable non-monetary support to BBBEE SMMEs (level 1-4) over 5 years	2	2 % of net profit before tax
RESIDUAL (10 points)		
CSI as a % of net profit after tax	2	1%
Development Investment in under-resourced areas as a % of total annual investments	8	10 %
Total	102 points	