

		<p>(b) adhere to the principles contemplated in section 5;</p> <p>(c) adhere to any regulations published in terms of section 20; and</p> <p>(d) adhere to standards issued in terms of section 19.</p>
75.	COMMENT	<p>Council for the Built Environment:</p> <p>The CBE is concerned that no reference is made to sequencing in terms of section 6: since the custodian is required to prepare a user management plan and the user is required to prepare a user management plan, the two parties may well have a different view with regard to the performing of its functions and two contradictory management plans may well result. The requirement for two apparently similar plans (in the absence of any clarity of differentiation in the Bill) one wonders why the duplication is required. It is suggested that this process be simplified in the interests of efficiency and effectiveness.</p> <p>Furthermore the Bill makes no provision for dispute resolutions: the provision of this mechanism is imperative.</p>
76.	DPW RESPONSE	<p>The custodian is required to prepare two plans, a C-AMP and a U-AMP. Last-mentioned plan will be similar to that of any user who uses immovable assets in the custody of the custodian. Please note that the Minister may, in terms of section 19, prescribe minimum requirements in relation to the content and format of and processes required to compile an immovable asset management plan. This would include both a C-AMP and U-AMP.</p> <p>The Intergovernmental Relations Framework Act provides for the dispute resolution mechanism between organs of state.</p>
77.	PROPOSED AMENDMENT	None
78.	COMMENT	<p>Gauteng DPRTW:</p> <p>DPTRW supports the concept of such plans as a tool to ensure effective use, acquisition and disposal of immovable assets. We see the custodian plan as a macro plan and the user plan as a micro plan. Is this supposition correct?</p>
79.	DPW RESPONSE	<p>The supposition is not correct. Both plans are strategic plans that form part of the strategic planning cycle of all departments. The U-AMP is a statement of need to accommodate the user's line-function responsibilities. The C-AMP is the custodian's strategic plan to provide in the needs of the users.</p>
80.	PROPOSED AMENDMENT	None
81.	COMMENT	<p>Gauteng DPRTW:</p> <p>We are of the view that the provisions are currently unclear as to intention with regard to each plan and that there is little in the Bill as it is currently drafted to distinguish between the two types of plans. We would support guidelines that assist in distinguishing between the plans and avoiding simple duplication of user plans by custodians. For example, we feel it is appropriate for the custodian plan to deal with portfolio management issues and long term planning for asset management, while user plans are necessarily detailed as regards individual assets.</p>
82.	DPW RESPONSE	DPW will issue comprehensive guidelines (with templates) in this regard.
83.	PROPOSED AMENDMENT	None
84.	COMMENT	<p>Gauteng DPRTW:</p> <p>Some comments we would like to make with regard to the planning provisions are:</p> <ol style="list-style-type: none"> 1. User plans for maintenance of leased properties, which are maintained by external service providers or the custodian – how will this be provided for in the user plan?

		<ol style="list-style-type: none"> 2. There is no provision for user plans in respect of property that is leased or otherwise used by the private sector, for example in PPPs. Do such properties just fall outside of the user plan framework? Should the custodian then take over the function of detailed planning for such properties? 3. There is no provision for a custodian to demand the compliance by a user with this Bill. 4. There is no provision which deals with the situation where a custodian is not satisfied with the form or content of a user immoveable asset management plan. We would recommend that a provision deal with the revision of the plan by the user to the satisfaction of the custodian. For example, if the plans of the user as regards an asset do not cohere with the portfolio management interests or intentions of the custodian, then the question arises in whose favour such a dispute should be resolved and how.
85.	DPW RESPONSE	<ol style="list-style-type: none"> 1. The guideline for C-AMPs will contain the detail as to the contents and format of such plans. 2. The Bill applies to all assets, whether state-owned or leased. In the event of an accommodation-related PPP, the custodian and user must reflect the contractual provisions in respect of the acquisition, operation and maintenance of the asset in their C-AMP and U-AMP. 3. Non-compliance with section 6 is a criminal offence in terms of section 21. 4. DPW intends a consensus process and the spirit of the Bill reflects this intention. Should a dispute between user and custodian not be resolved amicably, it will be resolved through the mechanisms provided in the Intergovernmental Relations Framework Act.
86.	PROPOSED AMENDMENT	None
87.	COMMENT	<p>DEVELOPMENT BANK OF SOUTHERN AFRICA</p> <p>6(1)(b) – "a user must prepare or cause to be prepared" why is the "cause to be prepared" included in 6(b) and not in 6(a)? we suggest it can be n both or omitted in both as it can be regarded as implied.</p>
88.	DPW RESPONSE	The words "cause to be prepared" is technically unnecessary and can be deleted.
89.	PROPOSED AMENDMENT	See proposed amendments in DPW Proposal to Portfolio Committee .
90.	COMMENT	<p>DEVELOPMENT BANK OF SOUTHERN AFRICA</p> <p>The central features of the bill, clauses 6 to 13, appear to raise a number of questions, particularly in terms of who does what, between the custodian and the user. It is suggested that in most instances it is the user of the asset who is best situated to understand the maintenance requirements and costs, and yet the custodian appears to have the responsibility and must take the lead in determining requirements. Most of the following comments derive from this point.</p>
91.	DPW RESPONSE	User departments focus on their particular service delivery objectives and do not necessarily have the required skills in-house to assess and cost maintenance requirements of their accommodation. GIAMA requires custodians to provide users with all relevant information required to compile their U-AMPs [as embodied in section 13(2)].
92.	PROPOSED AMENDMENT	None

SECTION 7: MINIMUM CONTENTS OF CUSTODIAN IMMOVEABLE ASSET MANAGEMENT PLAN

93.	SECTION 7	<p>7. A custodian immovable asset management plan must consist of at least—</p> <p>(a) a portfolio strategy and management plan;</p> <p>(b) a management plan for each immovable asset throughout its life cycle;</p> <p>(c) a performance assessment of the immovable asset;</p> <p>(d) subject to section 13(1)(d)(iii), a condition assessment of the immovable asset;</p> <p>(e) the maintenance activities required and the total and true cost of the maintenance activities identified; and</p> <p>(f) a disposal strategy and management plan.</p>
94.	COMMENT	Gauteng DPRTW: DPTRW is supportive of this provision.
95.	DPW RESPONSE	Noted
96.	PROPOSED AMENDMENT	None
97.	COMMENT	DEVELOPMENT BANK OF SOUTHERN AFRICA 7 and 8 – at first glance some of the sub-clauses appear misplaced. Much of clause 7 apart from (a) and (f) relating to portfolio management, appear to be better undertaken by the user, while clause 8 (b) and (d) relating to acquisition and disposal, appear to be part of the custodian's role in portfolio management. (see also comment on 13(2).
98.	DPW RESPONSE	None of the sub-clauses are misplaced. The wording reflects the intention of the DPW.
99.	PROPOSED AMENDMENT	None

SECTION 8: MINIMUM CONTENTS OF USER IMMOVABLE ASSET MANAGEMENT PLAN

100.	SECTION 8	<p>8. A user immovable asset management plan must consist of at least—</p> <p>(a) an immovable asset management plan;</p> <p>(b) an acquisition plan;</p> <p>(c) a maintenance and management plan; and</p> <p>(d) a disposal plan.</p>
101.	COMMENT	Council for the Built Environment: The drafting of this section is ambiguous. The paragraph requires that "a user immovable asset management plan must consist of at least an immovable asset management plan". Surely 8(a) can be omitted.
102.	DPW RESPONSE	A user immovable asset management plan is the collective term used for a set of management processes that relate to the strategic and supply-chain management of immovable assets in support of effective and efficient service delivery. As a collective set of

		<p>processes, immovable asset management includes strategic and supply-chain management dimensions of asset operation, maintenance, disposal and relinquishing of immovable assets.</p> <p>The plan referred to in section 8(a) is the strategic assessment of the user's need for immovable assets. The subparagraph (a) was an editorial oversight. The wording will be corrected.</p> <p>Furthermore, paragraph (d) could create an incorrect impression that users may dispose of immovable assets whilst in only surrender surplus assets to the custodian. As a result subparagraph (d) will be amended.</p> <p>A subsequent amendment is required in section 5(2).</p>
103.	PROPOSED AMENDMENT	See proposed amendments in DPW Proposal to Portfolio Committee.
104.	COMMENT	<p>Council for the Built Environment:</p> <p>Furthermore section 8(b) will only apply when a new immovable asset is under consideration, therefore it will not form an asset management plan. The requirement of <i>at least</i> cannot apply.</p>
105.	DPW RESPONSE	It is true that a user will not necessarily have to acquire immovable assets in every IAMP cycle. The acquisition plan will indicate that the service delivery objectives of the user require no immovable assets or require non-immovable asset format that the Minister prescribes in terms of section 19 will indicate how these scenarios are to be dealt with.
106.	PROPOSED AMENDMENT	None
107.	COMMENT	<p>Gauteng DPTRW:</p> <p>DPTRW notes that subsection (a) is confusing. It is not clear what the plan referred to is supposed to involve. An "immovable asset management plan" is defined in section 1 by reference to sections 7 and 8. Therefore the content of the plan referred to in (a) should be set out substantively.</p>
108.	DPW RESPONSE	<p>Please refer to comment above.</p> <p>Refer to the U-AMP guideline to be issued by DPW.</p>
109.	PROPOSED AMENDMENT	See proposed amendments in DPW Proposal to Portfolio Committee.
110.	COMMENT	<p>DOYLE/RIVETT-CARNAC PARTNERSHIP:</p> <p>Maintenance takes place on an ad-hoc basis. There is a need for medium to long term maintenance plans.</p>
111.	DPW RESPONSE	The need for the comprehensive maintenance of an asset throughout its life-cycle is an integral part of immovable asset management. In terms of sections 7 and 8 both the C-AMP and the U-AMP must contain a maintenance plan. The final plans will be issued at a later stage.
112.	PROPOSED AMENDMENT	None.

SECTION 9: SUBMISSION OF USER IMMOVEABLE ASSET MANAGEMENT PLAN

113.	SECTION 9	9. The accounting officer of a user must annually, on a date determined by the custodian, submit a copy of its user immovable asset management plan to the relevant custodian.
114.	COMMENT	Gauteng DPRTW: Where a custodian is also a user, this provision will require self-submission.
115.	DPW RESPONSE	This comment is covered by section 14(1)(a).
116.	PROPOSED AMENDMENT	None

SECTION 10: STATUS OF USER IMMOVEABLE ASSET MANAGEMENT PLAN

117.	SECTION 10	10. A user immovable asset management plan— (a) is the principal immovable asset strategic planning instrument which guides and informs all immovable asset management decisions by the user; (b) binds the user in the exercise of its executive authority, except to the extent of any inconsistency between a user immovable asset management plan and this Act or the immovable asset management guidelines published by the Minister under section 19, in which case this Act or those guidelines prevail.
118.	COMMENT	Gauteng DPRTW: DPTRW supports this provision and notes that it allows a user to breach the approach set out in a plan if intervening circumstances mean that the purposes of the Act can be best served otherwise.
119.	DPW RESPONSE	Noted
120.	PROPOSED AMENDMENT	None

SECTION 11: USER TO GIVE EFFECT TO USER IMMOVABLE ASSET MANAGEMENT PLAN

121.	SECTION 11	11. A user must give effect to its user immovable asset management plan and conduct immovable asset management in a manner which is consistent with this Act and its user immovable asset management plan.
122.	COMMENT	Gauteng DPRTW: DPTRW notes that this provision may be inconsistent with section 10 as it does not expressly give precedence to any guidelines issued under section 19 of the Bill.
123.	DPW RESPONSE	Please refer to the definition of "this Act" which includes the guidelines.
124.	PROPOSED AMENDMENT	None

125.	COMMENT	DEVELOPMENT BANK OF SOUTHERN AFRICA "A user must give effect ..." draws attention to the user's need for resources to carry out the functions in the plan. This reinforces the desirability of an incremental phasing-in with due regard to the capacity of the wide range of users.
126.	DPW RESPONSE	Section 23 of the Bill allows the Minister to implement the Bill incrementally.
127.	PROPOSED AMENDMENT	None.

SECTION 12: REVISION AND AMENDMENT OF IMMOVABLE ASSET MANAGEMENT PLAN

128.	SECTION 12	<p>12. (1) A user—</p> <p>(a) must annually revise its user immovable asset management plan after its budget allocations have been finalised by the relevant treasury and must incorporate the revised immovable asset management plan into its strategic plan;</p> <p>(b) may amend its user immovable asset management plan in accordance with the prescribed process; and</p> <p>(c) must submit its revised and amended user immovable asset management plan to the relevant custodian as prescribed.</p> <p>(2) A custodian must annually revise its custodian immovable asset management plan after receipt of the revised and amended user immovable asset management plan.</p>
129.	COMMENT	<p>Council for the Built Environment: Section 12(1)(a) requires that the user management plan be revised annually; this seems excessive as it presupposes that the plan will require alteration every year. This may not be the circumstance in which case the requirement should be for "review" and revision as required from time to time.</p> <p>The paragraph applies only to the user management plan and therefore presupposes that the custodian management plan needs no revision even if the user management plan is changed dramatically. This seems to be illogical at the least. Surely there must be some correlation between the states of the two plans.</p>
130.	DPW RESPONSE	<p>In terms of section 6 of the Bill a immovable asset management plan is necessary as "part of its [a custodian and user] strategic planning process contemplated in the Public Service Regulations, 2001," As part of that process annual review is a necessity.</p> <p>Subsection (2) requires that the custodian review its custodian immovable asset management plan annually "after receipt of the revised and amended user immovable asset management plan". However there are many factors which could impact on a C-AMP such as market forces, etc, It is therefore be necessary to amend section 12(2) to make provision for revision in circumstances other than amendment of a U-AMP.</p>
131.	PROPOSED AMENDMENT	See proposed amendments in DPW Proposal to Portfolio Committee .
132.	COMMENT	<p>Gauteng DPRTW: We note that the custodian plans form part of the strategic plan of the custodian, and assume that amendment of the strategic plan during a financial year in any way that affects the custodian plan will necessitate an amendment of the custodian plan. This has not been provided for in section 12.</p>

133.	DPW RESPONSE	See comment above.
134.	PROPOSED AMENDMENT	See proposed amendments in DPW Proposal to Portfolio Committee.
135.	COMMENT	DOYLE/RIVETT CARNAC PARTNERSHIP: The result of this section is that the budget will dictate what maintenance is required rather than that health and safety standards dictate what the maintenance requirement should be. This approach will not address maintenance backlogs either.
136.	DPW RESPONSE	The purpose of this section is to protect the users from breach of the Bill should Treasury not be able to allocate the requested budget to a particular user.
137.	PROPOSED AMENDMENT	None.
138.	COMMENT	DEVELOPMENT BANK OF SOUTHERN AFRICA 12(1)(a) – this highlights another apparent mismatch on who does the costing. It seems that a user is told of his budget allocation which has been determined on the basis of activities and costs prepared by the custodian in clause 7(e) and clause 13(d)(v) and (vi).
139.	DPW RESPONSE	User departments focus on their particular service delivery objectives and do not necessarily have the required skills in-house to assess and cost maintenance requirements of their accommodation. GIAMA requires custodians to provide users with all relevant information required to compile their U-AMPs [as embodied in section 13(2)].
140.	PROPOSED AMENDMENT	None

SECTION 13: FUNCTIONS OF ACCOUNTING OFFICER OF CUSTODIAN

141.	SECTION 13	<p>13. (1) The accounting officer of a custodian must, for all immovable assets which that custodian is responsible for—</p> <ul style="list-style-type: none"> (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, including— <ul style="list-style-type: none"> (i) managing an immovable asset throughout its life cycle; (ii) assessing the performance of the immovable asset; (iii) assessing the condition of the immovable asset at least every fifth year; (iv) identifying the effect of the condition of an immovable asset on service delivery ability; (v) determining the maintenance required to return the immovable asset to the state in which it would provide the most effective service; (vi) estimating the cost of the maintenance activities identified; (e) establish and execute a performance measurement system as prescribed. <p>(2) 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.</p> <p>(3) A custodian may dispose of a surplus immovable asset—</p>
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153.	PROPOSED AMENDMENT	See proposed amendments in DPW Proposal to Portfolio Committee.
154.	COMMENT	Gauteng DPRTW: It is not clear whether subsection (3) is meant to be a function specifically of the accounting officer. This should be made clear in the drafting. Indeed, if it is a function more generally of the custodian rather than that particular official, it would make sense for this provision to be moved to its own section.
155.	DPW RESPONSE	Section 3 is the function of the Minister. In order to clarify any misconception which may exist, the heading will be amended to reflect that the section relates to both the Accounting Officer and the Minister.
156.	PROPOSED AMENDMENT	See proposed amendments in DPW Proposal to Portfolio Committee.
157.	COMMENT	Doyle/Rivett-Carnac Partnership Key public assets should be developed with a view to the State retaining ownership on a partnership or joint venture basis with the private sector. This is to ensure that the State reaps the maximum benefit from cash flows by entering into long lease in terms of which the State retains the benefit of reversions and does not merely sell the assets for a one-off capital profit. This is particularly the case for key property assets where the full development potential only matures over time. There is ample international evidence of how this method of development has resulted in the maximum benefit accruing to the State (especially with reference to the UK).
158.	DPW RESPONSE	Disposal is seen as one cog in the life cycle of an immovable asset. Effective immovable asset disposal planning achieves a balance between all of the government policies and objectives, other government departmental requirements, community needs and expectations, asset value optimization and sound environmental management. It allows custodians to dispose of immovable assets which might otherwise influence or reduce the efficient and effective service delivery by users. To give effect to this particular vision, the Bill requires that a custodian develops an immovable asset disposal strategy before disposal takes place. Such strategy will assess the immovable assets which have been identified as surplus, as well as the most suitable method of disposal (eg. Long term lease, donation, commercialization, etc.). The custodian will also have to take into consideration whether the immovable asset concerned can be used by another user or jointly by different users, for social development initiatives or for socio-economic objectives. In terms of the Bill user departments will have to develop a "surrender strategy" as part of its Immovable Asset Management Plan.
159.	PROPOSED AMENDMENT	None.
160.	COMMENT	BUILT CARE: The condition assessment interval is every 5 th year. This period is too long. It should be three years according to international best practice (Queensland). Federal Accounting Standards Authority has annual condition assessment. Bridges-assessments are done every two years. In Canada it is a three year cycle. Two provinces in SA (KZN and Limpopo) are doing assessments every two years. MTEF, JIPSA, CIDB, PFMA requires three year periods.
161.	DPW RESPONSE	This section does not prohibit any custodian from revising condition assessments annually, if it so desires. However, this section makes it an obligation to do so at least every five years. The motivation for the time-frame was largely informed by the cost implications for detailed assessments.
162.	PROPOSED AMENDMENT	None

163.	COMMENT	DEVELOPMENT BANK OF SOUTHERN AFRICA 13(2) – on the same point, it is suggested that in many instances the user of an asset will have information on its maintenance needs and costs thereof, and a vested interest in quality maintenance, and so the user may assist the custodian rather than the other way around.
164.	DPW RESPONSE	Noted.
165.	PROPOSED AMENDMENT	None.
166.	COMMENT	DEVELOPMENT BANK OF SOUTHERN AFRICA 13(3) – it seems odd that there is nothing in this clause on disposal of assets about consulting with, or concurrence of, the user. How is a "surplus immovable asset" defined? It appears that the custodian's decision is final, as implied in clause 14(2) in which the user "must surrender" the asset apparently without recourse to any procedure.
167.	DPW RESPONSE	The assumption is not correct. The user must develop an immovable asset surrender plan which identifies assets that no longer supports the performance of its service delivery objectives. Once the surrender has taken place the custodian decides on the method of disposal.
168.	PROPOSED AMENDMENT	None.
168A	DPW RECOMMENDATION	It is advisable that the definition of "strategic plan" be amplified the requirement of annual submission of strategic plans. This recommendation affects both section 13 and 14.
168B		See proposed amendments in DPW Proposal to Portfolio Committee .
168C	DPW RECOMMENDATION	The amended heading is required to give effect to the Minister's power to dispose of an immovable asset in terms of the State Land Disposal Act [in subsection (3)] vis-à-vis the operational powers of the accounting officer in subsections (1) and (2).
168D		See proposed amendments in DPW Proposal to Portfolio Committee .

SECTION 14: FUNCTIONS OF ACCOUNTING OFFICER OF USER

169.	SECTION 14	<p>14. (1) The accounting officer of a user or custodian must, for all the immovable assets that it uses or intends to use—</p> <p>(a) compile, in accordance with section 8, a user immovable asset management plan that will form part of the strategic plan of that user;</p> <p>(b) jointly conduct the immovable asset strategic planning process with the relevant custodian;</p> <p>(c) submit its user immovable asset management plan to the relevant treasury as part of its corporate plan;</p> <p>(d) submit a copy of the user immovable asset management plan to the relevant custodian in accordance with section 9; and</p> <p>(e) establish and execute a performance measurement system as prescribed.</p> <p>(2) A user must surrender a surplus immovable asset under its control to the relevant custodian.</p>
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