POLICY AND PROCEDURAL GUIDELINES FOR THE APPLICATION AND PAYMENT OF SURVEYING.

(Submitted by : Directorate: Redistribution Policy and Systems)

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1. BACKGROUND

Various difficulties with surveying, of both a policy and procedural nature, have been raised over the past few months. On the one hand procedure needs to be established with regard to the appointment and management of surveyors. On the other hand, policy regarding the payment of surveying is required.
The current position of the Department is that the survey costs (external and internal boundary survey) should be covered by the Settlement/Land Acquisition Grant.

In terms of the Land Survey Act, Act No 9 of 1927, all main corners of each registered parcel of land must be marked by beacons. If a land parcel is not already surveyed and registered with the Deeds Office, the legal entity, individual or person acting on their behalf, will have to instruct a surveyor to mark the parameter of the land with beacons and to produce a survey diagram. Once the diagram is approved and certified by the Surveyor-General, the Deeds Office can register it.

From the point of view of the Department’s policy and procedures, it is important to distinguish between the external and internal boundaries of land acquired for reform purposes. The external boundary refers to the outer boundary of the land parcel to be acquired - either from a private owner or the state, as the case may be. In many cases, this boundary may already have been surveyed. Where a landowner is selling only a section of his landholding, it is very often the case that s/he will survey the parcel before putting it on the market. The requirement for an external boundary survey is therefore the exception rather than the rule in land acquisition for redistribution. An important exception is in labour tenant cases, where the land parcel farmed by the labour tenant has to be excised from the property retained by the landlord. The need for an external boundary prior to transfer can also arise where the original survey diagram or boundary is unclear or inaccurate.

Internal boundary surveys may be needed to describe individual lots within the larger parcel if the owners acquiring them wish to register them separately. They may wish to have individual ownership to protect their property from invasion or encroachment, or for the annexation of their interests (including by the State). Further, they may wish to use the property for collateral for a loan. In these circumstances boundary surveys for the individual parcels will be required in a manner specified in the Land Survey Act. For the individual, the cost of the second survey (ie of the individual parcel) can be relatively high when compared with the cost of the external perimeter of the larger plot which is shared between all members of the group.

1.2 Commissioning surveys and contracting land surveyors
Any legal person can enter into a contract with a land surveyor to survey a land parcel prior to registration of a land title deed. However, it is a requirement of the Land Survey Act that the survey plan of the parcel be checked for accuracy and approved by the Surveyor General before the parcel can be registered. Where surveys carried out by private surveyors are paid for by the department, it is also expected that the process of preparing the survey brief, evaluating tenders and contracting the survey be overseen by the Surveyor General. In this way, the technical quality of the survey can be guaranteed (the cost of re-surveys avoided) and the survey fee kept within reasonable limits. This expectation applies to external and internal boundary surveys paid for directly or indirectly by the Department. If the Department's funds are to be used to pay for the survey, it is the Department's preference that the Surveyor General oversees the tendering process for the survey. There are a number of recent cases where survey fees could have been substantially reduced if tendering had been supervised by the Surveyor General. Since fixed statutory tariffs were abolished in 1994. The Surveyor General's Office has been able to negotiate much fairer costs for surveying.

1.3 The position with the National Housing Subsidy

Although the grants and services for land reform, made available by the Department of Land Affairs, are covered by Act 126 of 1993, it is considered important to align the grants and services as closely as possible to the National Housing Subsidy. We need to take note of the current policy of the Department of Housing (and the Provincial Housing Boards) when proposing any changes to the current requirement that survey costs be covered by the R15,000 grant. In this regard, it should be noted that the Department of Housing requires survey costs to be covered by the grant. The survey costs (external and internal) of the whole development, have to be divided between the number of grant applicants involved. The Department of Housing provides for the Provincial Housing Boards to add ten per cent contingency to the R15,000 grant where there are exceptional costs arising, say from the prevailing topographical or ground conditions. However, this does not cover the routine survey costs, which have to be covered by the basic grant.

1.4 The position with State Land

The Department's position with regard to payment for the survey of state land made available for redistribution has yet to be formally agreed in the Policy Committee. However, it is expected that the state, as vendor, would be
expected to pay the costs incurred in surveying the outer boundaries and any subdivisions where applicable. Such a decision would have implications for the Department's policy of standardising the benefits attached to the redistribution of both private and state land (compare the argument in the White Paper about the market-related valuation of state land for redistribution)

1.6 Problems with the current policy

The current position of the Department is that the survey costs (external and internal boundary survey) should be covered by the Settlement /Land Acquisition Grant. The case for changing this policy arises from the fact that the costs of boundary surveys, especially the survey of internal boundaries, eats into the R15 000 grant. A consequence of the present arrangement is that people choose to forego the survey of individual holdings. This is clearly unfortunate in those cases where people prefer individual title. It could be argued that this situation is undermining the deeds registration system and the operation for the land market. Even in those cases where people are happy to vest the title to their grazing land in a CPA, they often wish to hold individual title to residential plots and arable land. If they are unable to do so, a major benefit of land reform has to be foregone. The current policy is particularly unsatisfactory for labour tenants, who must find the perimeter surveys from their Settlement/Land Acquisition grant or borrow the money.

1.7 Options

Several proposals have been made to overcome these difficulties. No solution is without its problems. All of them raise questions regarding the alignment of the policies of the Department of Land Affairs and the Department of Housing. The main options are summarised below.

(A) Separate 'survey grant' line item in the budget

This would remove the 'hidden costs' in the Settlement/Land Acquisition Grant and reserve it for land and basic needs. The line item could also cover the costs of surveying state land for redistribution. Problems could arise with the Department of Housing, however, who might argue that if the Department of Land Affairs was to pay for boundary surveys for beneficiaries of the Settlement/Land Acquisition grant, they should also pay for surveys (and
secure title) for beneficiaries of the Housing Grant. Further, such a line item would have to be negotiated with the Department of State Expenditure. Because issues of principle involving the Department of Housing might be involved, these negotiations could be protracted.

(B) Include the payment of survey costs under the Professional and Special Services line item

This option is similar to (a), but is, perhaps, less transparent. It would require a significant increase in the Prof Spec line item.

C) Include the cost of the external boundary survey under the Settlement/Land Acquisition Grant and the internal boundary survey under the Settlement Planning Grant

This position is logical in so far as the price of the initial boundary survey is normally included in the selling price of the land (covered by the Settlement/Land Acquisition Grant), even if the survey was done many years ago. Without a boundary survey, it would not be possible to sell (ie transfer) the land. The vendor must pay the cost, even if s/he passes it on to the purchaser in the selling price of the land.

Under this option, the internal boundary survey is seen as part of the planning of sustainable land development. The cost of this survey are relatively high and should not fall on the individual land owner and should be deducted from the settlement Planning Grant.

Under this option, where the land parcel has to be newly registered and the external boundary survey has to be done for the first time (or redone because it is unsatisfactory), there is potentially a legal stumbling block. The survey costs cannot be paid from the Settlement/Land Acquisition Grant because, without the external boundary survey, the parcel cannot be described for the purpose of the Designation Notice in the Government Gazette. Without this being done, the Settlement/Land Acquisition Grant cannot be awarded.
D) Include the cost of survey under the Settlement Planning Grant

Advocates of this option recommend that, in the rare cases where it is required, the cost of external boundary survey should be covered from the first tranche of the Settlement Planning grant (ie the 3%) prior to the designation and transfer of land to the group, and that costs of internal survey be covered by the second tranche (ie the 6%) as part of the detailed design stage. This would remove the burden of survey costs from the Settlement/Land Acquisition Grant. It would resolve questions relating to the payment of costs for the survey of State land. However, the option raises the issue of whether land survey can legitimately be called ‘planning’. It also raises procedural difficulties. If the Surveyor General was to oversee the tendering system (which seems advisable given the technical nature of survey), there would have to be a separate system for the selection of land surveyor that the one presently proposed for planners under the PROPS system.

2. RECOMMENDATIONS

The following recommendations are made:

2.1 Recommendation 1

*Payment for all surveying (external and internal) should be deducted from the Settlement Planning Grant (ie option 1.6 (D) above)*

2.2 Justification

The argument for and against adopting either option C or D is finely balanced. The case for option D is as follows:

a) Option D overcomes the stumbling block that would arise where an external boundary survey was needed for the specification of the land parcel in the designation notice (ie in advance of the approval of the Settlement/Land Acquisition Grant)*
b) In cases where labour tenants are acquiring land and where external boundary survey is required, it would ensure that external boundary survey costs do not greatly cut into the R15 000 grant.

c) Agreement as to what constituted an external and internal boundary will not always be straightforward, especially in Land restitution and Land Tenure Reform cases.

D) For the sake of simplicity, the survey costs in all programmes should be paid from the same grant, namely the Settlement Planning Grant.

2.3 Recommendation 2

The respective offices of the Surveyor General appoint and manage surveyors on request from Department of Land Affairs Provincial Directors, and where provincial governments or local authorities execute surveys using funding from the Department, a condition be laid down with the transfer of funds requiring consultation with the Office of the Surveyor General in order to obtain reasonable and acceptable quotations:

2.4 The following procedure to effect surveying is suggested.

The Office of the Surveyor General is informed by the Provincial Director that surveying is needed for a specific project. The Surveyor General renders a support service and assists with the cost estimates to be reflected in the project business plan;

The Surveyor General then invites tenders from approved surveyors for the work in terms of a standing Tender Board delegation and awards the work to the lowest tenderer. (about two weeks can be allowed for bidding prior to appointment, another two weeks can be set aside to award the contract whilst the actual survey can, depending on the complexity, be completed in less than a month;

A surveyor is appointed to conduct the work according to specifications laid
down by the Surveyor General;

The designated portion of land is then surveyed and the subdivision diagrams approved by and registered with the Surveyor General within 20 working days from the date of submission;

A conveyancer arranges for the transfer based on the approved diagrams. The account for surveying should be settled by the provincial office within two weeks from the date of approval by the Surveyor General.

2.5 Recommendation 3

In labour tenant and restitution cases the office of the Surveyor General will draw up preliminary diagrams required for claims submitted to the court and also execute the actual surveying once a court order has been given:

In labour tenant and restitution cases, the Office of the Surveyor General will, based on a request from the Provincial Director, appoint a surveyor to draft preliminary diagrams in preparation for submission to the pre-trial conference. The Office of the Surveyor General will have to be requested two weeks in advance whilst the actual survey diagrams should be completed within a week. Accurate preliminary diagrams will greatly assist with the actual submission to the Land Claims Court and once the court order has been awarded, surveying of the beacons can commence. Unless it is a very large assignment, the Office of the Surveyor General will carry out the surveying. If the Surveyor General decides to appoint an outside land surveyor, the appointment procedure will be the same as stipulated under 2.3

3. FINANCIAL IMPLICATIONS

As suggested, the payment for surveying will henceforth be deducted from the Settlement Planning Grant. Treasury approval will be obtained for increasing the Settlement Planning grant to 9% when the Grants and services document is submitted for approval.