

VANUATU LAND USE PLANNING & ZONING POLICY

RE- DRAFT

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1. INTRODUCTION

Using land is the basis of life for the people of Vanuatu. As the nation develops, population grows, threats of climate change intensify, and competition for land grows, there is an increasing need for appropriate and effective land use planning. It is of vital importance that Vanuatu's people adequately plan the use of their land, not only for today, but also the future.

Land and its use is, and has always been, a fundamental part of Vanuatu's culture and identity. What Vanuatu's people do on their land defines who they are, and as expected, the use of land is as diverse as Vanuatu's multiple islands and cultures. Because the Constitution of the Republic of Vanuatu states that the "rules of custom shall form the basis of ownership and use of land¹," no government policy will ever be able to mandate a universal land use practice. Rather this land use planning policy, reflects Vanuatu's multifaceted cultural heritage and is intended to enable its people to make good and sustainable decisions on how land is used.

The policy aims to guide land use planning by setting priorities and outlining legislative and institutional settings to enable land use planning that encourages the best current use of our land resources and at the same time allowing for future generations equitably benefit from the same resources. This Policy can be regarded as a framework for land use planning, which is clearly emerging as a critical tool in our country's development.

This land use planning policy covers land use planning from rural communities through to our urban centres with the intention of achieving benefits for all of the people of Vanuatu both now and into the future.

The policy sits strategically under Vanuatu's Land Sector Framework, and its development has included a comprehensive review of past land use planning activities as well as stakeholder consultation across the nation. Thus this National Land Use Planning Policy will help ensure that use of land in Vanuatu, in both rural and urban areas, will help us achieve the vision set out in the Priority Action Agenda (PAA) of "An Educated, Healthy and Wealthy Vanuatu".

While many of the directives given herein will be implemented by non-government organizations, the private sector, communities and civil society, results and implementation lessons should be tied to this policy reported back to the Government of Vanuatu.

¹ (Article 74)

2. A DEFINITION OF LAND USE PLANNING IN VANUATU

Land use planning is both a tool and a process that can be used to ensure that development happens in the right places and is sustainable. Land use planning is not the same as land ownership, but rather enables owners and users to develop and benefit from their land in line with their needs and in line with the country's development goals. Land use planning processes must accurately reflect the development priorities and values of the country, its communities, its people, including the various *kastom* practices found throughout Vanuatu.

In Vanuatu land use planning should be an integral part of the social, economic, environmental and cultural development of our country.

3. BACKGROUND

Much work has been undertaken to date on land use planning in Vanuatu², and several pieces of national legislation relate to the land use planning process.

Legislation and LUP activity development presuppose the existence of a national strategy on land use planning, and the people of Vanuatu expect government to develop such strategic documents. To date however, no national policy yet exists to guide land use planning, leading, at times, to incoherent development that is not always in the best interests of Vanuatu's country or our people.

Past debate about land in Vanuatu has most often focused on land ownership, with only recent discussion on the issues and ways forward for land use planning.

The National Land Summit of 2006 considered land and land use from three perspectives:

- Land Ownership
- Equity
and
- Sustainable Development

Outputs from the summit were drafted into a comprehensive Land Sector Framework by the Ministry of Lands simultaneously meeting the directives of Vanuatu's Priority Action Agenda 2006-2015 (PAA).

The Land Sector Framework 2009-2018 sets out the following Vision and a Mission for the Vanuatu Land Sector.

² See the Review of Land Use Planning activities in Vanuatu undertaken by SPC-GIZ.

Vision: “A Prosperous, Equitable and Sustainable Land Sector for Vanuatu”

Mission: “To provide an enabling environment for multi-stakeholder participation in the effective use, management and stewardship of Vanuatu’s land resources”.

The following elements in the Land Sector Framework Implementation Schedule relate directly to the development and implementation of this national land use policy:

1. A review of legislation relating to physical planning and development (2010-2012)
2. The preparation of statutory urban, rural and coastal management plans (2012 onwards)
3. Embedding land and environmental management policies into national and provincial development plans (2010 onwards).
4. Capacity building in planning from 2011 onwards.
5. The development of a national urban policy and guidelines by 2014.

This national land use planning policy, with its recommendations for legislative reform and accompanying review and consultation documents, provides the basis for implementing these elements of the Land Sector Framework, and so contributes to its overall vision and mission.

4. POLICY PRINCIPLES & INTENTIONS

There are four guiding principles contained within the Land Sector Framework to ensure that any land related policies (use, ownership etc.) align with broader Government of Vanuatu development agenda. These policy principles include:

1. Management of land resources will need to comply with broader social and economic objectives
2. Stewardship of land resources must guarantee environmental sustainability
3. Land sector organisations must be relevant, cost effective, efficient and sustainable
4. Planning and implementation, decision making and monitoring of the land sector activities must be participatory, transparent and accountable in order to protect the interests and rights of all stakeholders.

Accordingly, the results and priorities of the 2006 National Land Summit and the Lands Sector Framework have been incorporated within this national land use planning policy under the following policy principles

- **Kastom**
- **Equity**
- **Sustainable Development**

These three policy principles are cross cutting, and therefore can be found throughout the policy, although each has some general directives assigned to it. Other sections and headings of this policy set out more specific directives.

5. THE SCOPE OF THE LAND USE PLANNING POLICY

The Land Sector Framework identifies several important land use planning issues that this policy seeks to address, including

- Minimizing the impacts of economic development pressures on customary land.
- Acknowledging the importance and significance of multi-stakeholder processes in the governance of land.
- Highlighting the under-utilisation of Vanuatu's cultivable land for productive use.
- Looming effects of urbanisation and informal settlements in the major urban centres of Vanuatu.
- Emphasizing the role of the land sector as an important part of the framework for environmental and natural resource management.
- Mandating proper planning and development of the land asset; including the management of government and public lands, the management of common property resources, individual and community-based land use planning and urban planning and development.

Integrating the policy principles of kastom, equity and sustainable development and the Land Sector Framework's land use planning considerations, this document organizes the Government of Vanuatu's policies for land use planning under the following sections:

- Rural areas
- Urban areas including provincial centres
- Foreshore and coastal development
- Risk management
- Land leases
- Legislation
- Related policy areas
- Institutional arrangements & capacity building

6. IMPLEMENTATION, MONITORING AND EVALUATION

While the government of Vanuatu alone cannot realistically implement all of the directives outlined in this policy, it is expected that government departments will provide for and implement those parts of this policy that relate to their operational activities or fall within their areas of responsibility. Government is also expected to support all stakeholders (including non government and the private sector) with implementation responsibilities under this policy, particularly through the provision of information and advisory services as required. Accordingly the Government of Vanuatu expects all agencies and stakeholders to play their part in supporting and implementing this land use planning policy for the overall benefit of the nation.

Specific institutional arrangements for policy implementation are set out in the final section (Section 17).

In order to ensure appropriate monitoring and evaluation of policy implementation, the policy directives have been formulated in a way that can be readily assessed, either via quantitative indicators or milestones achieved.

Government agencies are required to include policy implementation actions in relevant ministry and departmental corporate plans and report against these annually.

The expected period of this policy's validity shall be five years, 2012-2017. The Policy will be evaluated continuously, and more comprehensively reviewed in 2017.

7. KASTOM

Policy Background

Enabling ***Kastom*** basis for land use planning requires that processes (including land use planning activities and related legislation) must recognize and validate traditional authority and customary uses of land.

While the Constitution of the Republic of Vanuatu declares that *kastom* shall govern the use of land, existing land-related policy documents not provide for this. This Policy directs government agencies to explicitly include *kastom* considerations in all land use planning processes, guidelines, assessments, and related discussions. The protection and preservation of *kastom* land use is a high priority under this policy.

Kastom differs both among and within the islands of Vanuatu. The specific mechanisms on how *kastom* is incorporated into land use planning are not universal, and depend heavily on the place-based practices of different communities and islands. Thus this policy provides directives on how the intrinsic diversity of *kastom* in Vanuatu shall be managed in the land use planning context, and how land use planning may benefit from the evolving concept *kastom* wherein its interpretation is subject to continuous revitalisation and renewal.

Policy Directives

In order to fulfil and enable the role of **kastom** in determining land use as emphasised in the Constitution of the Republic of Vanuatu, the following will be implemented:

- Ensure that kastom is formally included in all land use planning provisions, guidelines and methodologies developed under this policy, and ensuring that these provisions make allowances for the different ways in which kastom is manifested across provinces, islands or other customarily defined area. Specific consideration should be given to kastom aspects of land tenure, ownership, cultural boundaries, accessing tabu sites, the foreshore, the seabed, water supplies, landing places, fishing grounds, swimming areas, scavenging and hunting tracts as well as other sites where traditional activities are pursued.
- Formally recognize, through legislation or regulation, that the responsibility for kastom guidance on national land use planning processes rests with the Malvatumauri
- Build formal kastom consultation mechanisms with Malvatumauri and Island, Area and Community chiefs and/or kastom authorities into official land use planning processes
- Ensure that local level land use planning decisions *(are based on well-documented and comprehensive kastom guidance and consideration. The planning decisions include but are not limited to:*
 - the development of physical planning areas and zoning provisions
 - lease creation, lease determination, development of lease conditions, and application of lease categories
 - use of leased land
 - municipal and other urban planning and zoning
- Formally require (through legislation, regulation or other control measures) that kastom knowledge and practice related to climate change adaptation and disaster risk reduction is incorporated into land use planning activities at all levels.
- Develop formal processes to maximize transparency in and minimize potential conflicts of interests that may arise during land use planning engagement with chiefs or other custodians of kastom (e.g. during lease creation).

8. EQUITY

The principle of **Equity** is a cross cutting issue and includes well considered and transparent dealings in land related activities, including land use, land use planning and decision making. Land development undertaken in the absence of land use planning often has negative impacts on neighbouring areas, the general public and future generations. Issues of inequity in land use most

affect those most socially and economically vulnerable including women and youth. Equity issues related to the absence of or inadequacy of land use planning are already being felt by many in Vanuatu, especially in cases where there is competition among different land uses. Competing land use (for example privatization of the coastal zone by foreign investors blocking access to resources previously enjoyed by the wider public such as beaches and reefs) have impacted a substantial portion of Vanuatu's urban populations. Transparent land use planning process thus have a pivotal role to play in controlling development so as to preserve and maintain equity in complex land use contexts.

Policy Directives

In order to promote greater **equity**, those with responsibility for land use planning will:

- Ensure that land use planning processes, guidelines or standards include formal and internationally recognized mechanisms to assess, prevent and minimise damage, risk or loss that occurs as a result of land development or changes to land use . These mechanisms may include but are not limited to:
 - Social and Environmental Assessments
- Require that land use planning processes to include stakeholder and public consultation with special attention paid to women, youth, minorities, disadvantaged groups and those who will be most affected by land use development proposals or changing land uses.
- Ensure, through specific regulation or guidelines, that any costs associated with land use planning, decision making and consultation are borne equitably.
- Develop, legislate and regulate compensation or penalization mechanisms by which those negatively affected by land use changes, loss of access to land or natural resources may seek retribution.
- Establish and enforce transparent mechanisms by which affected or aggrieved parties to voice their concerns and/or appeal land use planning outcomes, particularly in regards to
 - individual development decisions (e.g. lease conditions)
 - the declaration of physical planning areas and zoning provisions.
- Create a legislative and institutional enabling environment in which planning authorities at all levels shall undertake the land use planning process without fear, favour or conflict of interest.
- Develop and formally require, though the use of legislation or regulation, the use mechanisms to adequately and transparently cope with and solve land use conflicts

9. SUSTAINABLE DEVELOPMENT

Policy Background

Sustainable development in a land use planning context suggests the use of land that maximizes both current and future development outcomes. Land use decisions of today that compromise future benefits must be considered carefully and regulated accordingly. Weighing and valuing certain land attributes over others (tourism attractiveness versus environmental services) is often a leading factor in unsustainable land use in Vanuatu. Current valuation guidelines issued by the Valuer General rely on a thin land transaction market and are based on unimproved market values. Thus land use valuation process should be expanded to include non-monetary considerations. Sustainable development forms a cross cutting component of this policy, and certain directives are required to ensure its fulfilment.

Policy Directives

This Policy seeks to enable **Sustainable development** by requiring those with responsibility for land use planning will:

- Ensure that land use planning processes, guidelines, standards and decisions include formal and internationally recognized safeguards and mechanisms to assess, prevent and minimise the unsustainable use of land and its resources. These safeguards and mechanisms may include but are not limited to:
 - Environmental Impact Assessments
 - Cost benefit analyses
- Review and revise current land use valuation practices, including provision of support to support to the office of the Valuer General, to deepen the scope of government and private valuation services
- Strictly reserve, through legislation or regulation, cultivable and productive land for uses that contribute to the food and agricultural livelihood security of Vanuatu’s indigenous residents.
- Strictly reserve, through legislation or regulation, part of Vanuatu’s land heritage for the protection and conservation of rare, endemic or service providing land and seascapes.
- Adhere to and make specific reference to internationally-recognized principles of sustainable development as a part of land use planning and decision-making (e.g. the precautionary principle).

10. RURAL AREAS

Policy Background

Rural areas comprise the largest areas of land in Vanuatu, while also representing the least developed parts of the country. Land in rural areas must be developed sustainably for the benefit of rural communities and the country as a whole.

A long standing practice among Vanuatu’s rural land use planning stakeholders has been to encourage the full utilization of cultivable land for agriculture activities. This policy intends that the ‘maximum cultivation’ principle stands, while acknowledging the often complex and competitive

land use options suitable on good quality agricultural land. To achieve national sustainable **development**, rural areas will be required to meet national food security needs for generations to come.

In addition to food supply, rural areas also contain critical land uses and services including biodiversity conservation areas, forest plantations, agroforestry areas, and rural water catchments. Thus appropriate land use planning for rural areas is of paramount national interest.

Controlling land use in rural areas is not straight forward, as the Constitution of the Republic of Vanuatu cedes development authority to customary land owners. Relevant legislations (e.g. the Environmental Management and Conservation Act) do however place some restrictions on the rights of customary land owners regarding the type and process of development in rural areas. It is this policy's intention that land use planning in rural areas be undertaken by partnerships of stakeholders at all levels, including customary land owners.

Guidelines will be an indispensable part of the future of rural land use planning in Vanuatu. Guidelines developed will be expected to empower customary owners and planners alike, who often have little understanding of land use options and opportunities, to take control of and sustainably develop the land under their stewardship.

While land leases present complex and sensitive issues in rural areas, this policy acknowledges a land use planning opportunity in rural leases; decisions on lease type and conditions may be regulated to follow land use planning recommendations. Once rural land is converted to leasehold or is included within a physical planning area, formal planning and development controls come into force.

Although the Physical Planning Act provides for provincial-level decision making on land use, most stakeholders feel that land use planning decisions (including the determination of rural lease conditions) are made outside the province and often maligned with their interests. In contrast, this policy recommends that rural land planning should be seen as both a national and local process, assessed and undertaken in line with **kastom** and with the support of relevant provincial authorities.

Equity issues associated with changing land use regularly emerge in rural areas. As Vanuatu develops, land use is often changed from forests to agriculture, livestock or tourism. In cases of rural land use change, access to traditional hunting and gathering grounds, gardens, water courses and water supplies is of particular concern. Of special concern to stakeholders is the issue of subdivision, wherein land use commonly disregards **local aspirations and** benefits a select few.

Policy Directives

The following are key elements for implementation of this policy in rural areas:

- Produce and supply detailed land use capability maps and supporting information to rural land use planning authorities (including provincial councils). The maps and accompanying information shall include but not be limited to soils, geology, topography, vegetation, risks and hazards.

- Integrate formal mechanisms into land use planning processes that require (through legislation or regulation) key rural sector agencies to share information (including data, operational information and planning expertise)
- Develop guidelines and standards for land use and development in rural areas highlighting land use capabilities, use categories and technical recommendations. These guidelines should include recommendations on:
 - Planning processes and information appropriate for both provincial and national levels
 - the development of *kastom* land highlighting opportunities for adaptation to diverse island contexts.
 - how to avoid or reduce risk from natural disasters and climate change.
 - Options for resource use and sustainable development, including the establishment of conservation areas and catchment management
 - How to weigh or value different or competing use options in an area (e.g. agriculture versus residential housing)
- Decentralize land use decision making and enforcement by local government by specifically referencing provincial and sectoral development plans and priorities (e.g. agriculture, forestry, tourism, infrastructure) in nationally sanctioned land use planning processes.

11. URBAN AREAS INCLUDING PROVINCIAL CENTRES

Background

Vanuatu is rapidly urbanising which presents particular land use planning challenges. Around 30% of the population now lives in urban areas (including provincial centres). Population growth in urban areas is nearly double that of rural areas, as is their economic importance. Government, donor and NGO development focus centers strongly on rural areas, and while critically important, urban land use planning challenges are mounting. Competing land use options are most acute in urban and peri-urban areas. Tensions among urban expansion, peri urban development and agricultural uses are common. The need for infrastructural expansion and demand for housing must be balanced with the need for improved social services, public amenities, green spaces and recreational areas. While not fully solvable, these challenges can be managed with appropriate urban land use planning processes.

At present Vanuatu does not have an urban policy although some work has been undertaken in recent years including the development of a national urban policy statement. Given the increasing pressures put on land use in urban areas, a comprehensive national urban policy is now urgently needed to regulate and mitigate land use conflicts. A national urban policy should provide the framework for urban land use planning.

A sustainable development focus of land use in urban areas will most often be on land's economic and social capability (rather than agriculture), and ensuring that one land use does not compromise or preclude another in densely populated areas.

As Vanuatu's urban areas are typically comprised of people from many islands, land consensus may both rely on and challenge *kastom* land use planning practices and governance structures. Urban land usage, including in provincial or urban centres outside formal municipalities, needs to be planned in consultation with *kastom* landowners and local councils of chiefs.

To manage the complex land use contexts of urban areas, this policy recommends the re-establishment of an enhanced Urban Affairs Committee (UAC), whose roles and responsibilities are discussed more in detail in the institutional arrangements section of this policy.

Policy Directives

To successfully manage land use planning in our urban and surrounding areas, including provincial centres, the following directives shall be followed:

- Develop a National Urban Policy which outlines land use planning priorities in urban and peri-urban areas including municipalities and provincial centers. In regards to land use planning, this policy should include but not be limited to:
 - acknowledgement of multiple land use, ownership and lease arrangements within urban areas (in contrast to exclusive control by the municipal authorities)
 - Specification of the development outcomes expected from each planning area or zone, based on environment and stakeholder aspirations
 - Mechanisms to reduce or mitigate negative impacts from proximate but differing land uses, and protect amenity of existing land use
 - A determination of different urban land use options and an informed recommendation of optimum locations for various types of development
- Develop specific protocols on stakeholder consultation in relation to land use planning decisions in urban and peri-urban contexts. These protocols should specifically consider *kastom* governance representatives, minorities, women, youth, economically disadvantaged groups, churches and the private sector.
- Require (through legislation or regulation) that urban land use decision-making be based on comprehensive land use planning processes, and provide appropriate monitoring and enforcement mechanisms including but not limited to
 - development applications
 - zoning and development controls documents
- Formally incorporate growth and demographic projections in urban land use planning and expansion processes including growth considerations on transport, housing, amenities, green space, recreational areas, infrastructure, public services and the identification of physical planning areas and zones.
- Formally incorporate climate change projections and urban vulnerability assessments in urban land use planning processes.

12. FORESHORE AND COASTAL DEVELOPMENT

Background

“Coastal areas” in Vanuatu’s land use planning context include land that is adjacent to the foreshore and the seabed below the high water mark. Lack of land use planning in these development-rich areas has attracted substantial public concern in recent years. Coastal subdivision, ad hoc land reclamation, new coastal infrastructure, and large scale alienation by foreign investors has led to an overall reduction of access to coastal land, marine resources and their use. Coastal land use concerns on islands such as Santo, Aore and Efate have entered into political, religious and cultural debates, particularly as these islands have the greatest proportion of their coastlines under registered leases.³ In order to achieve *sustainable development*, *land use planning* must enable a continuous flow of social, environmental and economic benefits from Vanuatu’s coastal areas. Cumulative effects of coastal development must also be considered in land use planning processes.

Poor precedents have been set regarding coastal land use in Vanuatu, and in response this policy mandates that coastal use and development decisions must be based on sound land use planning processes. This policy does not support unjustified or uncompensated coastal privatization that reduces access to the coast, foreshore or seabed by the public of Vanuatu, and recommends the development of a specific policy foreshore use and access.

Policy Directives

The following are key elements for implementation of this policy in coastal areas:

For many coastal developments the principle of *sustainable development* can largely be achieved by ensuring that there are adequate planning controls for coastal development. These planning controls should cover the design of developments as well as environmental and planning safeguards to ensure that risks to the environment or people are minimised at all stages.

Where economic benefits of a development are mainly private, a compensation instrument is possible through a series of charges and fees. Custom landowners and people of Vanuatu should be compensated (economically or socially) for the lost use of the foreshore and seabed.

³ Santo 17%, Aore 52%, Efate 40% of total coastline under lease (2010 analysis Department of Lands).

guidelines and controls to maintain public access to the foreshore and seabed. Controls are required to ensure that the people of Vanuatu have continued access to and along the foreshore and the seabed in order to pursue their traditional activities.

- Develop a national policy on use of the foreshore including but not limited to
 - access to the marine area below the high watermark
 - compensation mechanisms and processes for loss of access or use
 - access to and use of foreshore areas of cultural or *kastom* significance (e.g. tabu sites, coral reefs, traditional hunting grounds, lagoons, and estuaries)
- Legislate and provide guidelines on fees and charges that may be assessed for inappropriate foreshore land use including penalties, occupation charges, compensation for loss of access or use.
- Develop and implement land use provisions within national, provincial, municipal or community plans that
 - control or prevent some foreshore land use developments (e.g. coastal privatization)
 - control the scale and cumulative effects of foreshore and coastal land use
 - guide how risk is managed in vulnerable foreshore areas (e.g. climate change, tsunami, storm surge)

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13. RISK AND VULNERABILITY MANAGEMENT

Background

Vanuatu is prone to a range of natural disasters and vulnerable to the effects of climate change. These issues are reflected in various government policies and international agreements on disaster risk management (DRM), disaster risk reduction (DRR) and climate change adaptation (CCA).

Environmental degradation through inappropriate land use has increased the risk that climate change is predicted to have on the already-limited natural resources and community economies. Land use and resource allocation conflicts in the coastal zone, population pressure, degradation of coastal ecosystems, declining agriculture fallow periods, fish stock reduction and declining water quality from land-based activities have been intensifying the demands on natural resources, and limiting their the resilience to climatic changes. Many land uses, especially larger developments and associated infrastructure, have the potential to augment risk and vulnerability (e.g. through land slips, coastal erosion, loss of ecosystem resilience).

Land use planning thus has a pivotal role to play in helping to assess, manage, and reduce risk and vulnerability. Local knowledge and *kastom* frequently contain detailed strategies on how risk and vulnerability can be reduced through land use planning including the identification of reliable water sources, avoidance of risk prone areas, and promoting the best varieties of crops for different conditions. During the land use planning process, utilizing a combination of local knowledge, GIS tools and scientific information⁴ with enable decision makers to better manage risk and vulnerability.

Policy Directives

In terms of land use planning, there are several responses to manage risk these are to:

- Develop and formally integrate the use risk and vulnerability assessment tools, methodologies and associated information into land use planning processes at all levels. For example when:
 - declaring zones within physical planning areas
 - determining development controls and conditions
 - Assessment of land use and development applications
- Formally require a consideration of local knowledge and *kastom* as sources of risk and vulnerability mitigation in land use planning processes at all levels
- Refuse consent (through legislation or regulation) for land uses and development (public or private) that pose an unacceptable level of risk and vulnerability to Vanuatu's people, livelihoods, infrastructure or ecosystems.

14. LAND LEASES

Background

While the focus of this policy is on land use planning, there are strong and institutionalised links with the land lease process, including in the areas of subdivision, development controls on leased land,

⁴ For example modelling and projections for climate change under SOPAC or in the Department of Lands.

lease categorisation and classification. Minimal public resources have been made available to maintain the Register of Land Leases to pro-actively administer leasing arrangements and use conditions. This underinvestment of public resources has left inadequate monitoring of compliance with standard lease conditions and any special use provisions.

The Land Sector Framework highlights the need for social and environmental assessments and declaration of land use plans prior to lease approval. However, prior land use planning requirement may become a bottleneck when leases are proposed in rural areas outside of declared physical planning areas. Land leases often contribute to Vanuatu's social and economic development and so this Policy acknowledges that land use planning processes and requirements should not unduly hinder the administration of land leases. However, land lease processes must take into account national and local aspirations for land use, and at present no guidelines or standards currently exist or are applied to the granting and use of leased land. The current lease creation process is not linked to the environmental impact assessment requirements (EIA) associated with development activities that are likely to cause significant environmental, social and/or custom impacts.

When land is converted from *kastom* stewardship into leasehold, it enters into the realm of formal land use planning processes. Thus the leasing process presents opportunities to enforce compliance of the land use planning directives of this policy. Thus through the application of land use planning, this policy seeks to ameliorate the loss of control and unanticipated use of leasehold land.

Policy Directives

As the land lease system is reviewed and revised, the following land use planning considerations shall be incorporated

- Elaborate lease conditions based on and making specific reference to comprehensive land use planning processes to ensure compatibility with the aspirations of *kastom* landowners, leaseholders and local governments (e.g. province) and existing strategic or development plans.
- Require that land leases unambiguously set out and are guided by land use conditions. Land use conditions may either be contained within individual leases or built into national guidelines for leased land.
- Revise the standard lease agreement template to include clauses that offer greater recognition of customary land use rights (e.g. group access to the sea; protection of cultural heritage; user rights etc)
- Revise the lease creation process to trigger public communication and community-based land use consultation activities including not limited to
 - the application for a Negotiator Certificate (NC) should trigger the issuance of a public notice (through radio, newspaper and direct correspondence) and basic awareness raising such as distribution of relevant land use planning information to custom landholding groups of the area.
- Require consideration of land capability and risk within lease creation processes such that the application for consent to lease triggers planning considerations and an assessment of the need for formal impact assessments.
- Develop and enforce regulations for land use and development on leased land including but not limited to:
 - Defined use categories of land leases and subdivisions

- Mandatory assessment of use impacts (social, environmental, economic) under the different lease categories utilizing analytical tools such as cost benefit analysis.
- Adherence to mandates and advice from land use planning authorities
- Review and amend the lease category designation process to include the power of approval and veto on certain land uses by landowners, consultation with affected parties as well as alignment with relevant planning regulations and provincial development plans.

15. LEGISLATION

Background

The successful implementation of this national land use planning policy requires a supportive and enabling legislative environment. At present, the legislation most directly concerned with land use planning includes the Physical Planning Act and the Foreshore Development Act. However there are many other policies, acts and regulations that relate to and encourage land use planning. This policy aims to ensure that over time, land sector relevant policies and their supporting legislation are well coordinated and increasingly harmonised.

In addition to lease related land use issues, stakeholders are particularly concerned with the use of the Strata Titles Act as a vehicle for inappropriate land use (e.g. subdivisions). A lack of subdivision legislation has been highlighted as a work area under the Land Sector Framework and prior to that during the National Land Summit. This land use planning issue needs urgent legislative attention and should be one of the priority implementation areas of this policy.

Two key Policy implementation areas include:

1. *legislative reform* to enable national land use planning to be mainstreamed into land development processes . and
2. *the creation of new legislation* around subdivision and other land use planning issues not sufficiently addressed under existing or reformed legislation.

Policy Directives

- Review existing legislation with relevance to land use planning and amend as necessary to achieve the objectives of this policy; including but not limited to the
 - Physical Planning Act
 - Foreshore Development Act
 - Land Leases Act.
- Ensure that authority for land use planning processes is outlines in the Physical Planning Act and the Foreshore Development Act, removing conflicting authority in other legislations.
- Develop new legislation to control and administer land use in subdivisions, and other land use planning concerns

- Ensure that the cross cutting components of land use planning highlighted by this policy are enabled in legislative reform and development, including but not limited to equity (consultation), sustainable development, *kastom*, and risk and vulnerability reduction.

Physical Planning Act

Amend the Act to align with the following policy directives:

- Include and provide for all relevant policy directives and the policy principles of sustainable development, equity and *kastom*
- Require that risk and vulnerability, including that arising from climate change and geological activities, is formally considered in planning processes (such as the mandated use of risk assessment tools).
- Stipulate the participatory public consultation process required during the development of physical planning areas and zones (including with community representatives and *kastom* chiefs).
- Produce development controls and plans for zones within one year of the gazetting of a physical planning area.
- Require the definition of clear development outcomes allowable in each zone including but not limited to intensity of land use and amenity values
- Require a clear land use planning benchmark for the assessment and approval of all development applications.
- Require the development and enforcement of development controls for zones (e.g. to minimize conflict with alternative land uses in neighbouring zones).
- Provide powers of entry to officials for the purposes of monitoring, assessment and enforcement of land use plans.
- Develop regulations to determine
 - the form and standard of planning applications
 - the creation and standardization of development controls
- Establish a national land use planning office within the Ministry of Internal Affairs.
- Establish an urban affairs committee to oversee urban planning
- Enhance and expand the role of the Land Management Planning Committee to oversee rural planning, clarifying the roles of the LMPC, provincial and municipal government councils.
- Emphasize the dependency of development permissions on other legislations (e.g. Environmental Management Act), that may affect the status of their approved land use or development.
- Allow for the development of other land use planning regulations as required

Foreshore Development Act

Amend the Act to align with the following policy directives:

- Include and provide for all relevant policy directives and principles of sustainable development, equity and kastom
- Require the foreshore development applications formally include an assessment of:
 - the cumulative effects of proposed foreshore developments
 - the risks and vulnerabilities that may arise from proposed development
- Develop regulations to determine
 - the form and standard of planning applications
 - the creation and standardization of development controls
 - compensation for lost use of or access to or along the coast
- Provide powers of entry to officials for the purposes of monitoring, assessment and enforcement of land use plans.
- Clarify foreshore development decision making processes for applications made under this Act
Emphasize the dependency of development permissions on other legislations (e.g. Environmental Management Act), that may affect the status of their approved land use or development.
- Allow for the development of other land use planning regulations as required

16. RELATED POLICY AREAS

Background

Land use planning encompasses all sectors, seeking to evaluate competing land uses and find suitable compromises that will provide the greatest benefit to current and future land users. All agencies have a role to play in land use planning, and thus all have a responsibility to uphold the directives in this policy, not just the stakeholders traditionally considered part of the lands sector. This policy directs all actors to identify their sectoral legislations, strategies or policies that may lead to unnecessary land use competition and unsustainable land use. It requires harmonization both in land use administration and land use implementation. Policy coordination is also required at different levels of government, and across urban and rural contexts.

The development of this national land use planning policy has included a review of all land use sector planning activities, legislation and sectoral arrangements. This policy is the outcome of broad stakeholder consultation in all provinces. Relevant sector policies have been considered and the provisions of this policy are either in line with or can be harmonised with this. Similarly new government policies affecting land use must consider the provisions of this policy and seek to harmonise with it.

Land use planning in rural areas has strong links to the **Decentralisation Policy** which provides for the creation of provincial development plans. As provincial councils are ultimately responsible for physical planning, it follows that they must develop and follow sound land use planning processes.

As the Department of Local Authorities in the Ministry of Internal Affairs is responsible for administering both the Decentralisation and Physical Planning Acts and the Foreshore Development Act, opportunities for harmonization abound.

Although not yet developed, a **National Urban Policy** should provide a strong platform for land use planning in urban centres. Similarly any future Population and/or Housing policies should be developed in accordance with land use planning policy directives.

The newly revised **National Forest Policy** highlights the need to identify land uses most suitable to forest characteristics and landforms, which is reconfirmed in this policy. Similarly the overarching **Productive Sector Policy** emphasizes the agriculture-focused land capability planning directed here.

Effective implementation of this and other land use planning enabling policies will require ongoing consultation with and collaboration among all agencies and actors, including customary leaders and communities. Sharing of relevant information and data required in land use planning processes will be paramount (e.g. demographics, natural resource inventories, land information, risk modelling)

Policy Directives

In order to harmonise other government policies with this land use planning policy, stakeholders shall:

- Regularly undertake reviews of relevant legislation, policies, strategies and plans (including those at the provincial and community level) with the view to harmonization
- Review and propose action-oriented mechanisms by which national and local land use planning and decision making processes can become better harmonized.
- Ensure implementation by formally placing policy administration under the oversight of the Department of Local Authorities in the Ministry of Internal Affairs.
- Support further policy debate on options for recognizing group land use planning rights in a legal context
- Formalize collaboration mechanisms (e.g. via MOUs) between and among different government agencies, in particular the Ministries of Internal Affairs and Ministry of Lands and Natural Resources and local governments to
 - share and/or make freely available any information/data that is required by those with responsibilities for land use planning
 - harmonize land use planning activities and implementation plans
- Produce strong guidance for donor partners and non-governmental organisations to make freely available data and information that is required by those with responsibilities for land use planning including the Ministry of Internal Affairs, the Department of Lands, and provincial and municipal government councils.
- Require that any on-ground land use planning exercises formally recognize, consult with and make reference to the overall development priorities in each province as identified in provincial development plans. The on ground activities include but are not limited to the design of physical planning areas, zones, lease classification and community plans.

17. INSTITUTIONAL ARRANGEMENTS & CAPACITY BUILDING

Background

INSTITUTIONS

Revised and strengthened institutional arrangements will be required for policy implementation. The principle government institutions with authority and implementation capacity for land use planning include the the Ministry of Lands and Natural Resource, the Ministry of Internal Affairs, Provincial and Municipal government councils.

According to the current Physical Planning Act, the Physical Planning Unit within the Department of Local Authorities holds implementation responsibility for land use planning (Minister of Internal Affairs). In practice the Physical Planning Unit supports provincial councils in their planning activities and implementation of the decentralization policy, assesses applications under the Foreshore Development Act, and has spearheaded development of the National Urban Policy Statement.

Provincial Councils are currently required to simultaneously consider development planning under the Decentralisation Act as well as ensure that land use planning takes place under the provisions of the Physical Planning Act. With the introduction of this national land use planning policy, local governments will require increased support from the Department of Local Authorities to effectively meet its mandated planning responsibilities. This includes support for Area Councils within individual provincial governments.

Although the current institutional arrangements for formal land use planning work adequately, there are already resourcing problems due to high work volumes and low staffing levels. For the achievement of this national land use planning policy's objectives, institutional arrangements in the Ministry of Internal Affairs will require reorganisation and strengthening. This policy recommends the establishment of a central office for land use planning within the Ministry of Internal Affairs, similar to or an expansion of the Physical Planning Unit. Clearly a central land use planning office would provide an institution home for the administration of this policy, as well providing a source of human and material support to land use planning practitioners at all levels, urban and rural. All other government agencies would have a responsibility to ensure that their activities support the implementation of this policy.

The National Land Summit of 2006 strongly recommended⁵ that a committee be established to provide oversight on all land use and management processes. The now functional Land Management Planning Committee has as its core role advice-giving on leases and lease conditions. However, this role should be expanded to provide and advice and recommendations on land use planning issues, and provide oversight on the work of the central Land Use Planning Office. However, as the LMPC is unlegislated, its recommendations have not yet been enforceable.

⁵ National Land Summit Resolution 18.

CAPACITY BUILDING

There is a general shortage of land use planning expertise both nationally and across the Pacific, representing a significant challenge for widespread and holistic land use planning. While the University of the South Pacific does train land use planners, these tend to have an urban planning focus. For stakeholders in other sectors there is a widespread lack of knowledge on what the land use planning process entails, the potential benefits and outcomes of comprehensive planning and where information can be sources.

Public ignorance of basic land use planning concepts is a barrier to encouraging its use among sectoral actors and communities. Little support or information is available to custom landholders to guide decisions on whether to lease land or pursue alternative development and land use paths.

The development of a national planning association has been suggested as an additional way to help build capacity of land use professionals and practitioners. Donor support must be mobilised to assist in building both institutional and individual capacity of national and provincial land use planning stakeholders.

POLICY RESOURCING

Policy implementation will have financial implications, and will resourcing both from national government budget allocation and foreign development support.

Policy Directives

INSTITUTIONS

In order enable the best institutional arrangements for land use planning the following policy directives shall be implemented:

- Establish a central land use planning office within the Ministry of Internal Affairs with a mandate to undertake land use planning in rural and urban areas
- The Land Management Planning Committee's role and recommendations must be legitimized and made enforceable through legislative amendment or regulation
- Ensure that the Vanuatu Land Governance Committee (VLGC), through its thematic working group on Land Use Planning & Zoning, revise roles and procedures of the land management planning committee including but not limited to:
 - monitor and report on the implementation of this policy, including continuous review
 - provide oversight on the land use planning activities of the Ministry of Land and Natural Resources and the Ministry of Internal Affairs, and specifically the central Land Use Planning Office
 - work with the Land Sector Framework's Thematic Working Group on Land Use Planning and Zoning to guide the guidelines, methodologies and tools recommended in this policy
 - advise and make recommendations on land use planning consultation processes

- advise responsible implementing agencies on their roles in policy implementation, and clearly articulating links between this policy and processes, plans, strategies and policies of sectoral agencies.
- Develop and enforce processes that determine the sharing of information and data that is of relevance to land use planning among various government and non government stakeholders
- purpose of the land management planning committee
- schedule, regularity and rules for committee meetings
- appropriate membership and appointment for a set period of time
- development of regulations for approving applications to lease
- identification of issues that would trigger impact assessments
- development of regulations for verification that conditions to lease have been fulfilled prior to lease registration
- appropriate training of committee members on new regulations
- Re-establish an Urban Affairs Committee to provide specific advice on land use planning coordination and process and action in urban contexts, specifically with a mandate to develop a National Urban Policy. The committee shall be made up of director-level members.
- Develop clear roles, responsibilities and standard operational procedures to direct various government agencies to fulfil their land use planning roles (e.g. Vanuatu Meteorological Department to provide planners with climate risk information)
- Review and constrain Ministerial power over or political influence in the land use planning and decision-making process.

RESOURCING

- Ensure that agencies involved in land use planning allocate budget and human resources towards policy implementation, through inclusion in business and corporate plans, and changes to Job Descriptions.
- Provide a recurrent budget for the central land use planning office within the Ministry of Internal Affairs

CAPACITY BUILDING

- Produce awareness materials on land use planning, and land use related laws to the general public and specific stakeholders (focused for example on communities, NGOs, schools, and kastom land owners)
- Provide access to affordable land use planning and advisory services for landholding individuals and groups
- Encourage development partners support for the development and implementation of hands-on training programmes for land use planners at all levels including on
 - The roles and responsibilities of different land use planning agencies and institutions
 - Using and implementing LUP guidelines
 - Land use planning considerations in environmental, social and development impact assessments and cost benefit analyses
 - Land use planning in kastom contexts

- Integrating climate and disaster risk assessments and tools into land use planning process
- Utilizing land information systems in planning
- Provide increased Government scholarship support for formal training on land use planning
- Develop and promote research opportunities for planning students (domestic and international) to undertake planning research in Vanuatu, specifically action research whereby outputs and results will further enhance land use planning processes

FINAL DRAFT