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CHAPTER 9

Vanuatu: New Directions in Land Development Policies

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New directions in land development policies are mainly aimed at producing an environment which encourages investment in land. The environment should instill confidence and certainty in potential investors. Without this, investors will choose to invest in other countries where the risk is not so great. Therefore new policies of land development should concentrate on providing a political, legal, economic and physical framework which encourages investment. Investment, however, needs to be controlled, so first I will look at how Government control of investment can be achieved, then at the factors which encourage private investment. I will then examine the progress and the moves the Government has made and is making to achieve new directions in land development. Finally I will look at the policy and programmes to be implemented during the Second National Development Plan period (1987-91) to enhance land development, both rural and urban.

Land development needs to be of benefit to the community, but some form of control is needed to ensure that this is achieved. Without control, developers would be influenced only by profit. This could lead to situations where unsuitable uses of land occur, for example, industrial uses next to residential. Some form of public control of land is therefore essential. Equally, developers must feel confident that land development will represent a good investment. They expect a good yield from their investment and will also look for other major factors such as the security of their capital, how easily the investment can be sold if they want to realise their money, the security of the income from the investment and the regularity of this income. A developer will consider all these factors before deciding to invest.

How can public control encourage development while ensuring community benefit? The more certainty that planners can provide the better. If land use plans and statements of planning policy are readily available, this will enable developers to quickly ascertain whether a proposed development is likely to be acceptable. It is therefore important that good quality plans are produced, showing proposed uses of land together with a statement of the types of development likely to be acceptable. In addition, the planners should be able to process a planning application rapidly. Following receipt of an application the planners may need to consult various parts of the community to gauge whether the proposed development is likely to be acceptable. This consultation and decision-making process, however,

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should be as brief as possible, one to two months perhaps. The speed of the decision will enable developers to move with certainty.

The planners, together with other Government professional bodies, can also encourage development by taking the initiative in identifying development opportunities. For instance it may be possible to identify and advertise sites where the Government wants certain forms of development. Any private developer interested in developing the site could thereby be encouraged. Sometimes development can be facilitated by bringing the land into single ownership, particularly Government ownership. Compulsory purchase of land can assist in assembling a realistic development site where land ownership is split between various parties. The land site can then be disposed of to the developer on mutually agreeable terms.

Before private developers invest, they will want to be assured that their investment will be secure in the long term. They will need to be assured that no one can relieve them of their property over this period. For this purpose a clearly defined commercial lease is essential which states the obligations and duties of both the lessor and lessee.

This lease should be carefully drawn out so that it is fair to both lessor and lessee. It often happens that the terms of a lease are more favourable to the lessor as he is in a more advantageous negotiating position. In Vanuatu, a standard lease has been made available which tries to avoid unfairness. In one example in Vanuatu a lessor has granted long term leases to lessees and has subsequently tried to impose a fine or premium when the lessees have tried to transfer their interest to another party. The law states that the lessor cannot unreasonably withhold consent to a transfer. In this situation the lessees will be able to transfer their leases without a premium if the courts decide that in the circumstances of the case the lessor is unreasonably withholding consent to the transfer.

The above example suggests that the developer will want to be assured that he can sell his development at any time without undue difficulty. Without this assurance he will be reluctant to invest. It is therefore important that the Government actively encourages fair leases and backs up the terms of the lease by court action where one party to a lease attempts to obtain an unfair advantage.

The Vanuatu Government have now developed a leasehold structure which is upheld by law and which provides security for leaseholders who can now proceed to invest in development. Urban leases contain a clause that the land must be developed within five years otherwise the lessor has the right to apply for forfeiture of the lease. The Land Leases Selection Committee now insists on an adequate description of the proposed development of the land together with proof of financial resources before giving consent for transfers or issue of new leases. This is to safeguard against pure property speculation and ensure that the land does get developed.

The type of tenure under which land is held will affect its quality as an investment. An investor will look for long term certainty. For instance in Western countries investors will look for freehold and long leasehold titles. In order to attract investment from abroad, Pacific countries will need to be able to offer suitable land tenure. These concepts can be foreign to Pacific minds as they tend to look upon land not as a commodity to be bought and sold but as part of their identity, an intrinsic part of themselves. The Constitution of Vanuatu allows only the custom owners and the Government to hold land in perpetuity. Foreign investors are only able to obtain leasehold titles. If the leasehold title is properly upheld in law then

this should prove satisfactory for foreign investors. The Government has passed laws that set out both express and implied covenants that must be included in the grant of leases so the interests of both lessor and lessee are protected.

Custom owners and the Government are able to hold land in perpetuity. In the case of custom owners they may wish to raise loans and obtain mortgages using their land as security. The Vanuatu Government is actively considering a system whereby custom owners are granted some form of land title giving them a perpetual estate. This will enable them to raise loans and mortgages. A serious difficulty, however, would arise if the custom owners obtained a mortgage and subsequently defaulted on payments leading to the mortgagee wishing to repossess the land and possibly sell it to another party in order to repay the mortgage. This could have serious implications for the life of the community. Suitable safeguards would need to be written into any loans/mortgages to protect against this possibility and further thought and discussion are required in this area.

Other factors which will encourage development are related to the tax and financial framework. Investment can be encouraged by offering tax and financial inducements. Vanuatu does not levy tax on profits, which provides a favourable incentive to invest. Favourable import and export concessions may assist a new business with limited resources. Initial rent free periods may encourage investment. The Government might request developed countries to give tax and financial incentives to their own nationals if they invest in a Pacific country.

The Government may wish to carry out research to identify profitable investment opportunities. This research might identify crops which are suitable for the land, for example different species of coconut are currently being researched in Vanuatu. Research might also identify fishing opportunities in offshore waters.

Government investment in infrastructure can also encourage development. The World Bank has invested in a scheme in Vanuatu whereby residential housing plots are made available with the infrastructure of roads, piped water, electricity and elementary sewage facilities provided. The plots are then sold and the local people have the responsibility of building in accordance with agreed standards and plans. Vanuatu has also benefited from investment in the telephone installations with plans to include the other main islands in the network, and improve the airport to provide international standard runways and airport terminal. All these investments in infrastructure, particularly in improving communications, will encourage investment.

Let us now examine the progress and intentions of the Government to achieve new directions in land development. During its Second National Development Plan the Government has made programmes of intended policy to facilitate land development, and meet the following objectives:

- increase the rate of determination of customary land ownership
- identify and resolve deadlocked lease negotiations
- promote awareness and a better understanding of land leases, environmental management and mineral exploration
- increase custom owner participation in development projects
- implement local staff training programme with a view to establishing a fully localised professional land management and land administration service
- regularise government and local government occupation of land in rural areas

- finalise outstanding issues relating to Government's acquisition and ownership of the urban areas of Port Vila.

Let us consider some of these matters under two headings, rural land and urban land.

Rural Land

The determination of customary ownership is crucial to land development. Rural land remains vested in custom ownership. The biggest single obstacle to rural development is dispute over custom ownership as opposed to land availability. In other words, there is enough land but custom ownership disputes prevent it from being developed because no one person or group has the right to make decisions involving the future of the land.

The Government is trying to resolve the problem of disputed land ownership by establishing various courts to determine ownership. Seven Island Courts were established in 1984 to deal with the problem but due to lack of trained staff they do not perform well. This has resulted in a number of land cases that are still to be dealt with.

To help these courts deal with the land cases quickly, the Government has amended civil procedure rules. Recent amendments were made whereby a Magistrate has to sit in the Island Courts with three Justices to deal with land cases only. Furthermore the Government has directed that regular training be provided for Island Courts staff who have magisterial or legal experience. This will help provide effective service to the rural people in dealing with and resolving land ownership disputes. Improved performance by these courts is essential for rural land development.

Difficulties can also arise where the ownership of the custom land is not in dispute but where a potential investor has to deal with a number of custom owners to negotiate a lease. In this instance the Lands Department can sometimes be of assistance by acting as the representative of the custom owners.

There do not appear to be any new policies towards the rural area in terms of attracting outside investors with the necessary capital for development. The custom owners and the Government are considering the best way for the land to be developed. But where is the incentive? The Government, through the Development Bank, has encouraged loans to the rural sector. However, through a lack of understanding of the lending system in the Development Bank, many, if not all, of the loans to the rural sector will have to be written off. Most of the money was lent to schemes that had no hope of success.

The latest direction in rural land development is the creation of "Industrial Estates". Santo is the first location to be tried. Also to be completed are eighteen regional rural business development centres to be administered by the local government councils.

One should not conclude that the future direction of rural land development policies in Vanuatu is unclear. During the Second Development Plan period, the following rural projects have been taking place:

- 30 rural dispensaries
- 4 junior secondary schools
- 11 local government council buildings, one in each local government council area

- 68 rural area council buildings
- the rural water supply and sanitation programmes
- the transport sector, which will require land to complete 150 kms of new rural roads, aerodromes and wharves
- the upgrading of the rural telecommunications network, which will require land to install repeater stations nationwide.

Policies and programmes of co-operative development are to achieve the following objectives:

- promote the development of commercial activities in all regions
- encourage and assist the rural population in establishing and operating profitable small businesses
- assist rural entrepreneurs to secure development loans to finance small commercial projects
- encourage the development of larger commercial and agricultural projects
- promote staff development and training in small business operations in the rural sectors.

Government policy and direction include incentives, and support services for industrial development will be made available to existing and potential investors. Further development of rural land in the tourism infrastructure such as hotels, resorts and restaurants will continue to be encouraged in the private sector. There are seven tourism projects on Efate and one on Espiritu Santo.

They need the Government's approval and should be implemented during the Plan period.

Urban Land

Urban land development policies are easier to identify due to the fact that investors are now developing the urban areas, especially in Port Vila. For example there has been a sudden interest by Japanese in land development, including tourist resorts and hotels taken up by Japanese investors. Recently a major Japanese project has been proposed to develop the capital, Port Vila. The Government welcomes any investor, especially to develop urban land, and has given a clear directive that there is to be no racial discrimination against non-citizen investment in land. The Government however, has had to distinguish between investment which adds to the resources of the country and unwelcome speculative investment which has been discouraged.

From the Second National Development Plan, the Government is to implement its policy in order for the following urban projects to take place:

- urban power development and wood fuelled power stations on Efate and Espiritu Santo
- low cost housing for the two urban areas with 400 houses in Vila and 100 in Luganville.

Most of the land in both towns is registered. Eighty percent of the registered titles held by indigenous Ni-Vanuatu individuals and companies are found in urban areas. Urban land title holders are uncertain about the future so they have paid considerable sums of money for the land they currently own. Most of these title holders have been engaged in business development such as constructing residen-

tial houses for rent, retail shops and other income-earning properties. These activities are carried out following the Government's policy on urban land development.

Certain departments are responsible for land matters, dealing with such areas as disputes, negotiations and surveying. These play a very vital role in land development. As the assistance they give is limited due to shortage of staff and funds, the Government has made moves to make available funds to recruit more staff to these departments to facilitate land development, especially in the rural sector.

The Lands Department has introduced the following strategies to help achieve its objectives:

- introduce more suitable procedures to speed up the resolution of land ownership
- improve administrative procedures and mechanisms
- encourage landowners to participate in development projects
- develop appropriate training opportunities for Ni-Vanuatu staff
- improve public awareness of land laws and policy
- a system to resolve issues relating to land owned and occupied by Government.

Under the leasehold structure introduced after Independence, any land to be developed must be surveyed and a survey plan attached with its lease document. Without this, no land development can eventuate. This is the responsibility of the Department of Land Survey. There is a high demand for this Department's services but again, due to shortage of qualified Ni-Vanuatu, it cannot meet the demand. The Government plans to recruit four surveyors. The Valuation Section is to be headed by an expatriate while the officer holding the post of principal valuer attends further training. Posts of valuer and second assistant valuer are to be created.

The Lands Referee Office plays an important role in facilitating land development. It was established in 1984 and it provides a new service by resolving disputes on value of improvements, value of lease rentals and the interpretation of lease provision. These disputes are between custom owners and alienators as well as between lessors and lessees. This office facilitates land development in that when a property's value is disputed there cannot be any further development. The property will only be released for development as soon as the Lands Referee issues his determination. That determination is final under the Lands Referee Act. Due to the vital service provided by the office, the Government plans to appoint a Ni-Vanuatu graduate to be counterpart to the present Lands Referee who is an expatriate, in order to localise this important post in the future.

The new directions in land development policies are part of the overall picture attracting an investor to a particular country. Investor confidence depends on many factors including political stability, and a legal and financial framework conducive to investment. This is a long term project which will be measured in decades rather than years and requires long term political motivation and will. It is very encouraging to see that the Government is introducing programmes to help achieve these objectives. To succeed, certain departments need staff recruitment, financial support and improved services. There is no reason to have doubts about one's future in relation to land as the Government always ensures that the landowners' interests are respected as well as trying to provide incentives and confidence for potential developers. There is a bright future for the new directions in land development.