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TA 7566-REG: Strengthening and Use of Country Safeguard Systems

Subproject: Strengthening Implementation
Capacity for EIA (Vanuatu)

INSTITUTIONAL CAPACITY ASSESSMENT

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TA 7566-REG: Strengthening and Use of Country Safeguard Systems

Subproject: Strengthening Implementation Capacity
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ABBREVIATIONS & ACRONYMS

ADB	-	Asian Development Bank
AVID	-	Australian Volunteers for International Development
CEMP	-	Contractor's Environment Management Plan
CSS	-	Country Safeguard System
CSR	-	Country Safeguards Review
CTI	-	Coral Triangle Initiative
DEPC	-	Department of Environmental Protection and Conservation
DFAT	-	Department of Foreign Affairs and Trade (Government of Australia)
DG	-	Director General (of a Ministry)
DGMWR	-	Department of Geology Minerals, Mines and Water Resources
DLA	-	Department of Local Authorities
DMC	-	Developing Member Country
EIA	-	Environmental Impact Assessment
ELS	-	Environmental Legal Specialist (to the TA)
EMP	-	Environmental Management Plan
EMMP	-	Environmental Monitoring and Management Plan
EPCA	-	Environmental Protection and Conservation Act
FDA	-	Foreshore Development Act
GOV	-	Government of the Republic of Vanuatu
IEE	-	Initial Environmental Examination
JICA	-	Japanese International Cooperation Agency
MCC	-	Ministry of Climate Change Adaptation, Meteorology, Geo-hazards, Energy, Environment and Disaster Management
MFAT	-	Ministry of Foreign Affairs and Trade (Government of New Zealand)
MFEM	-	Ministry of Finance and Economic Management
MIPU	-	Ministry of Infrastructure and Public Utilities
MOIA	-	Ministry of Internal Affairs
NEMS	-	National Environmental Management Strategy
NGO	-	Non-governmental organisation
NSDP	-	National Sustainable Development Plan
NZAID	-	New Zealand Aid Programme
PAA	-	Priority Action Agenda
PAM	-	Project Administration Manual
PEA	-	Preliminary Environmental Assessment
PMO	-	Prime Minister's Office
PNG	-	Papua New Guinea
PSC	-	Public Service Commission
PVMC	-	Port Vila Municipal Council
PVUDP	-	Port Vila Urban Development Program
PWD	-	Public Works Department
SEMP	-	Site-specific Environmental Management Plan
SSF	-	Social Safeguards Framework
TOR	-	Terms of Reference
VISSP	-	Vanuatu Inter-Island Shipping Support Programme
VPMU	-	Vanuatu Project Management Unit
VTSSP	-	Vanuatu Transport Sector Support Program

EXECUTIVE SUMMARY

1. **Background.** Asian Development Bank (ADB) has been assisting the Government of Vanuatu (GOV), in the implementation of infrastructure and transport projects financed by ADB and other development partners. To date application of safeguards has been project rather than procedure based, and as a result, safeguards outcomes vary across projects. There is a need for institutional strengthening at the sector level, and to develop over-arching sector guidelines and procedures to achieve a consistent approach across infrastructure development projects as well as strengthening underlying country safeguards systems (CSS).

2. **The technical assistance.** The government plans to address these challenges by strengthening the CSS framework and building the capacity of its key ministries. To this end ADB has provided support to Vanuatu through a subproject under the *Technical Assistance for Strengthening and Use of Country Safeguard Systems* (RETA 7566-REG). This technical assistance (TA) subproject is intended to support government initiatives to build capacity for strengthening the application of the CSS for environment in Vanuatu.

3. The TA includes the following main elements: (i) diagnostic of the legal regulatory framework for environment; (ii) institutional capacity assessment; (iii) strengthened procedures, capacity building and outreach; and (iv) action plan. The institutional capacity assessment is the topic of this current report.

4. The TA focuses on the infrastructure development sector as one of the priorities of the government most relevant to ADB's Country Partnership Strategy (CPS) with Vanuatu however the intention is to broadly support the implementation of an effective CSS in Vanuatu. Part of the country safeguards review (CSR) has been undertaken through the legal analysis (Final Report 1) examined the country safeguards in relation to the ADB Safeguards requirements. This report contributes to the CSR by examining the implementation (track record) and capacity of the institutions for enabling environmental and social safeguards. In a Vanuatu context this specifically involves the review and practice and/or procedures for obtaining development approval through the environmental assessment (EA) process through to monitoring, compliance and enforcement.

5. **Capacity to implement CSS.** The current capacity of DEPC to undertake CSS responsibilities is limited. The department lacks sufficient resources to effectively implement and monitor CSS. A review of capacity shows that staff in the EIA Unit are well qualified and have good experience in environmental safeguards for smaller development projects but only limited experience in safeguard assessments of larger infrastructure projects, preparation of safeguard plans, and implementation and monitoring of those plans. Inadequate budgets and limited institutional capacity also pose challenges in implementing safeguards in development projects.

6. A similar situation occurs in the Ministry for Infrastructure and Public Utilities (MIPU) where the Ministry's first Social Safeguards Framework (SSF) for a roading project in the provinces has only recently been adopted¹. While the SSF was prepared for a specific development partner funded project, the ministry would like to adopt and implement the SSF more widely.

¹ Vanuatu Transport Support Program Phase 2, funded by Department of Foreign Affairs and Trade, Australia.

7. The current SSF only briefly covers environment as one of seven elements within the framework meaning it is more focused on social elements rather than environmental safeguards. Currently the SSF is not yet embedded within the ministry or its operational department the Public Works Department (PWD) however a programme of training and capacity building in SSF is being rolled out in the provinces to PWD staff and local contractors. Although environment is included as one of seven elements within the SSF, it doesn't necessarily capture all environmental aspects of projects as the MIPU roading project is primarily the upgrading of existing roads.

8. The capacities of MIPU, DEPC, and the Vanuatu Project Management Unit (VPMU) are limited, and they lack sufficient resources to effectively implement and monitor CSS, particularly for larger infrastructure projects. A case study review of the development consent process for three major infrastructure development projects showed that allocation of responsibilities for safeguards are confused. Limited institutional capacity also poses several challenges in implementing safeguards in both larger infrastructure projects and other smaller developments, particularly in the provinces.

9. **Findings and recommendations.** CSS strengthening would require: i) a systems approach for putting in place appropriate frameworks, systems and procedures/guidelines for environment and social safeguards, and ii) appropriate training in these implements/resources. The revised systems and procedures will require to be supported by legislative amendments. The human resources of DEPC in particular but also of MIPU and VPMU must also be addressed in concert with these initiatives. Greater clarity in the institutional arrangements for working together on CSS implementation, especially larger infrastructure projects is required.

10. As the lead agency for environment safeguards, DEPC capacity strengthening recommendations include: i) guidelines to assist in decision-making in the environmental assessment process. This is for all stages of the process from pre-application screening through to conditions and enforcement of environmental management plans (EMP) to setting development consent conditions; ii) awareness-raising, education and training to line ministries, private sector and civil society about their roles in the environmental assessment process; iii) Linkages to outside experts to assist in PEA/EIA reviews; and iv) development of a tracking system for traceability and accountability. These recommendations are in addition to the gap-filling amendments to the environment assessment legislation and regulations as identified in the legal analysis to provide clarity to the process.

11. VPMU capacity strengthening recommendations build around their ability to function effectively in managing larger infrastructure development programmes. VPMU capacity strengthening recommendations include establishing a formal coordinating role to ensure CSS and project requirements are suitably managed.

12. MIPU capacity strengthening recommendations include awareness raising on the application of environmental safeguards; and targeted training for staff and contractors, particularly in project monitoring and compliance with EMPs.

13. Priorities for institutional strengthening in the final section of this report compiles the recommendations from this implementation capacity assessment to build a road map for implementation of priority initiatives to be realised during the term of this TA project, ie over the short term. Initiatives for medium-term, or long-term will be formally compiled in an action plan towards the end of the TA. Meetings on priorities for institutional strengthening have already taken place at DEPC and essentially form an outline work plan for the remainder of the TA.

1 INTRODUCTION

1. **Background.** Vanuatu is one of the fastest growing Pacific developing member countries of ADB. The country's national development strategy, the Priorities and Action Agenda 2006–2015 (PAA) is currently being reviewed and a National Sustainable Development Plan (NSDP) is being developed with three main strands. It is expected that a greater emphasis on integrating environmental and social protection in projects will be a result of the new NSDP.

2. The Department of Environmental Protection and Conservation (DEPC) in the Ministry of Climate Change Adaptation, Meteorology, Geo-hazards, Energy, Environment and Disaster Management (MCC) is the key government agency responsible for environmental safeguards in Vanuatu. The Ministry of Infrastructure and Public Utilities (MIPU) is the key government agency responsible for infrastructure development and the management of public works. The Vanuatu Project Management Unit (VPMU) looks after the project management of large infrastructure projects (over US\$10 million) and essentially acts in the place of MIPU for these larger projects.

3. Asian Development Bank (ADB) has been assisting the government in the implementation of infrastructure projects financed by ADB and other development partners by providing capacity assistance to a number of projects run by the VPMU and now DEPC.

4. Currently the capacity of DEPC, MIPU and VPMU is limited and they lack sufficient resources to effectively implement and monitor CSS. Staff of these agencies have limited experience in safeguard assessments, preparation of safeguard plans, and implementation and monitoring of those plans. This limited experience presents several challenges in implementing safeguards in infrastructure and other large development projects.

5. To date, any application of safeguards has been project rather than procedure based and as a result, safeguards outcomes vary across projects. There is an urgent need to develop over-arching sector guidelines and/procedures to achieve a consistent approach across transport projects and institutional strengthening at the sector level.

6. **The technical assistance.** The background of the TA is the need for Vanuatu to successfully apply CSS for a series of forthcoming infrastructure projects. The current environmental safeguards system was established in recent years and the director of DEPC is keen to review the performance of environmental safeguards with a view to improving them not only for the larger infrastructure projects but all activities subject to environmental assessment in Vanuatu. Therefore the goal of the TA is the development of environmental CSS capacity to assist the implementation of infrastructure and other projects so they can progress in an environmentally and socially responsible manner.

7. The outcome of the TA will be an improved environment CSS framework and increased capacity to implement environmental and social safeguards in infrastructure and other types of development. Therefore key outputs of the TA will be a legal analysis of the current system, an analysis of the current arrangements for safeguards (included in this report), a review of the institutional capacity for the implementation of safeguards (also included in this report), identification of key areas for review and reform. The TA will also assist in developing revised safeguards procedures along with supporting guidelines, checklists and templates for inclusion in a comprehensive operations manual. An action plan for further environment CSS development after the current TA is completed will also be produced along with options for implementing the action plan.

8. The review undertaken through the legal analysis report examined the legal basis of country environmental safeguards in Vanuatu.²

9. This report follows on the work of the legal analysis report by examining current implementation and capacity for enabling environmental safeguards. The implementation of CSS begins with a stock-take of the organisations and resources of DEPC, VPMU and MIPU followed by an assessment of the current practices of incorporating environmental safeguards through systems analysis and the use of selected case studies. This is followed by a brief comparison of current Vanuatu environmental safeguards system in comparison with the key elements of examples of best international practice (ADB and JICA), and examples of regional CSS procedures applied in other Pacific developing countries (Tonga, Fiji and Papua New Guinea).

10. An elaboration of the institutional and capacity strengthening measures necessary for improved safeguards integration and effective project and programme delivery is discussed. Discussion is concluded with the overall findings and a prelude to action plan initiatives for realising the safeguard strengthening measures over the term of the project.

² The review was undertaken in accordance with the *Guidance Note for Review of Country Safeguard Systems* (v9) (RETA 7566-REG), Manila, Philippines (2010).

2 INSTITUTIONAL ARRANGEMENTS FOR SAFEGUARDS

11. **Key agencies.** There are three key agencies that work together for safeguards on infrastructure projects in Vanuatu. These agencies are:

- Department of Environmental Protection and Conservation (DEPC), part of the Ministry of Climate Change Adaptation, Meteorology, Geo-hazards, Energy, Environment and Disaster Management (MCC);
- Vanuatu Project Management Unit (VPMU), part of the Prime Minister's Office; and
- Ministry of Infrastructure and Public Utilities (MIPU) through the Department of Public Works (PWD).

2.1 Department of Environmental Protection and Conservation

2.1.1 Organisation, Budget and Staffing

12. The DEPC is responsible under the Environmental Management and Conservation Act of 2002 to administer the Act which includes approval of environmental assessments. Since 2013 it has been part of the MCC. Prior to this the Department was located within the Ministry of Lands and Natural Resources and it became a full department in the Ministry of Lands in 2010 having been the Environmental Unit for several years prior. The MCC was created in 2013 and the DEPC was incorporated into the new ministry at the end of that year.

13. The MCC comprises four separate units or departments:

- Vanuatu Meteorology and Geo-hazards Department;
- National Disaster Management Office;
- Department of Energy
- Department of Environmental Protection and Conservation.

14. With the exception of DEPC, all the MCC's units and departments are housed in a purpose built office building in the Nambatu area of the city. The DEPC is located in the Pompidou government buildings on the other side of town close to the MIPU and VPMU offices but physically distant from its own Ministry.

15. DEPC has a Director who oversees the department which currently has a total of ten permanent positions, including the Director. All officers are permanent full-time staff. In addition to permanent positions there are a further seven project positions within the department plus two overseas volunteers.

16. According to the DEPC's 2013 annual report, the department consists of 4 units with 10 staff however the department's formal structure diagram doesn't include units or divisions. In practice the department is split up into four units: Biodiversity and Conservation (one staff member); Environmental Protection (Waste Management one staff member), Environmental Planning and Assessment (three staff with one being the Santo based department officer); Administration and support services (four staff including a principal environment officer); and the Director.

17. DEPC's budgeted expenditure in 2014 was VT 20,073,849 that is less than 10 % of its MCC's total budget of VT 234,984,043. The department's staff costs in 2014 were VT18.3 million leaving just under VT1.8 million for all operational and capital expenditure.³ This limited budget appears to date from before 2010 when the department was an operational unit within the Department of Lands. The DEPC budget has never been adjusted to take this change of status into account. As a result, the department's budget is still largely based on the needs of an operational unit within a department and so lacks the comprehensive budget normally found in a government department.

18. The department does raise revenue through its regulatory activities, however government rules dictate that fees generated by departments must be paid into the government's consolidated fund. This means none of the income generated by the department through various fees including EIA, CITES and Ozone is credited to the department. In 2014 these funds totaled over VT1.8 million, actually exceeding the department's operational budget.

19. The lack of an adequate operational budget has a significant effect on the effective functioning of the department. Unlike other GOV departments there is no departmental budget for IT, cleaning, power and utilities, office maintenance etc. A former arrangement with the Ministry of Lands paying the DEPC's utilities has now ended and the department now pays some VT1.2 million per annum or 65% of its general operational budget of VT1.8 million on electricity alone. This leaves the department's operations being run from a budget of VT0.6 million.

20. With this recent significant increase in fixed operating costs, the department's operational budget is now too low for effective operation. The remaining VT0.6 million of the annual operational budget is mainly used for fuel for the vehicle for meetings and site visits (around VT0.2 million), activities that department is already committed to, with a small amount used for some basic office supplies. In contrast to other GOV departments, DEPC staff members are required to use their own funds to pay for phone credit and other basic necessities required for work.

21. The DEPC units lack basic office consumables and tools such as toner for printers, keys for office doors, office chairs etc. One EIA Unit officer currently uses a laptop with a broken screen as there is no budget available for repairs or replacement. The department's project offices are slightly better off as some of the projects have operational budgets that cover some expenses such as toner or computers and project travel expenses.

22. In terms of effects on the EA process, a lack of any printing or scanning facilities in the EIA Unit means that decisions and records are only partially kept. All documents require to be saved to an external flash drive belonging to a volunteer and printed via the department administrator's computer however files are still mainly saved to individual computers with only a spreadsheet of applications being updated on the shared drive. Decisions and permits may only have a single printed copy leaving no file copies for reference. The lack of a shared, networked drive compounds this situation as not all files are saved onto the EIA unit's shared external flash drive. A request has been made to create a shared folder on the GOV network but this has not been progressed. As there is no departmental IT budget or IT officer, the current situation is likely to continue. The introduction of any system for tracking of current environmental permit applications under the TA will need to take this situation into account.

23. As with many ministries, staff recruitment is a challenge and is required to be undertaken through the Public Service Commission (PSC). It is the PSC that determines the suitability of proposals for organisational restructure and new positions.

³ Government of Vanuatu. 2014. Minister of Finance report to Vanuatu Parliament (Port Vila, Vanuatu).

24. In practice, it is not uncommon for government positions to be vacant for several years and public servants often go overseas on extended training courses and study leave without their vacant position being filled in the interim. These vacancies contribute significantly to a lack of capacity in government departments.

25. Of the ten permanent DEPC staff positions, no positions are technically vacant. However one (Director) is filled by an acting incumbent leaving the vacated position temporarily vacant until a new director is appointed and the incumbent can return to his original position. Two positions are temporarily vacant (around one year for each position) due to staff on extended study leave overseas. Two other positions are currently vacated by staff on leave for up to six months. This effectively means that the DEPC has a current vacancy rate of 50% with no arrangements in place to cover these vacancies as there are neither juniors nor budget available to fill the vacant positions. The remainder of the department comprises contracted project staff or volunteers.

26. DEPC has been successful in attracting development partner assistance on a variety of projects and has been the recipient of regular volunteer support through Australian Volunteers for International Development (AVID) and Japanese International Cooperation Agency (JICA) volunteers. Current development partner assistance to the department is provided by JICA for a volunteer assisting with waste management and from AVID with a volunteer giving legal support.

27. The Director's role and responsibilities are outlined in the Environmental Protection and Conservation Act 2002 as amended in 2010 (EPCA) and Environmental Impact Assessment Regulations (2011) as amended in 2012. The Director's role and responsibilities include administering the EPCA and advising the Minister on all matters relating to the Act as well as administering the EIA Regulations. The Director is responsible overall for managing the DEPC and the EIA process which includes decisions on the preliminary environmental assessment (PEA) and environmental impact assessment (EIA). The Director grants the environmental permit to a proponent pending the activity meets all procedural and technical requirements.

28. The DEPC holds a register of qualified consultants. Essentially all environmental practitioners undertaking EIA work are required to apply to the register and pay a fee to undertake EIA work in Vanuatu. Although usually used for individuals some overseas companies working on infrastructure projects have been accepted onto the register. Apart from providing a form of quality control for environmental assessment, consultants on the register are a resource that can be drawn on by the department although registered consultants are more usually used by applicants. Some consultants have been used for EIA review and some have also undertaken PEA on behalf of the department however the costs of the department engaging external help is prohibitive given current budget levels.

29. The DEPC is responsible for implementing environmental safeguards system across the country and achieves this through the operation of the EIA Unit. To assist in this the department has a single staff member located outside Port Vila at the Sanma provincial government offices in Luganville, Santo. This officer is responsible for all department functions in the province. Given low staffing levels, the lack of provincial staff provides significant challenges to the DEPC when administering the Act outside Port Vila and its island of Efate and on Santo. The department finds it difficult to implement the Act in other provinces. Similar difficulties arise with EIA and monitoring if a development takes place outside of Port Vila, its host island Shefa or on Santo. Sites visits cannot be undertaken unless a project proponent meets the DEPC's costs.

2.1.2 Current DEPC Policy Environment

30. The DEPC is the implementing agency for Vanuatu's environmental and conservation commitments and objectives.

31. The national planning instrument; the PAA expires in 2015 and currently the government is developing a NSDP and is obtaining technical assistance for this from the ADB.⁴ The PAA provides strategic direction for delivering a national vision and includes direction about the environment, particularly in relation to primary sector development.

32. The department has the following policies, plans and strategies in draft form:

- DEPC Strategic Plan 2014-2024
- National environmental management strategy (NEMS)
- National environment policy (NEP)

33. The DEPC Strategic Plan 2014-2024 includes a range of activities for the development of the department. Included in the plan is the intention to restructure to meet operational needs as well as have offices in all six provinces. The timeframe for the restructure and establishment of provincial offices is set in the plan to be achieved within the next five years (i.e. by 2019). Although optimistic in its aims, the plan is also pragmatic and points out that all formal requests for restructure and expansion of the department will need to be made through current formal government processes. The plan also notes that any such changes will be dependent on these requests being agreed to and then a suitable budget made available.

34. Work on the latter two documents, the NEMS and NEP is currently paused with the NEMS latest draft dating from November 2014 and the latest NEP draft dating from July 2013. The department has suspended work on these documents until the new NSDP is agreed later in 2015. It is intended that the NSDP will provide a basis for review and revision of the current drafts.

35. There are also other sectoral strategies and informal policies on mangroves, biodiversity, invasive species etc. The policy on invasive species has been signed by the Minister. It is unclear if any of the other policies or strategies have been formally agreed to by the government and implementation is patchy.

36. There is also legislation governing waste management, the use and import of ozone depleting substances and international trade in flora and fauna.

37. Other national policies of relevance to the environment include the National Land Use Planning Policy and a National Forestry Policy. Various other policies are in draft (e.g. Climate Change) and may be referred to during the TA.

2.1.3 CTI Institutional Review

38. In 2013, a subproject under the Coral Triangle Initiative (CTI) comprising a formal institutional survey and assessment of the DEPC was undertaken by an external expert.⁵ This review included a functional analysis of the work of DEPC in relationship to its legislated, governance and agreed requirements and recommended a revised and expanded structure for the department.

⁴ ADB.2014. *Technical Assistance for Supporting the Preparation of the National Sustainable Development Plan* (TA 8724-VAN, approved by the ADB Board on 23 September 2014 for \$400,000).

⁵ ADB. 2010. *Technical Assistance for Strengthening Coastal and Marine Resources Management in the Coral Triangle of the Pacific* (Phase 2) (TA 7753-REG, approved by ADB Board on 14 December 2010 for \$1.95 million).

39. The expert worked with a small team of DEPC officers to develop recommendations for a restructured and expanded department and the team consulted internally and with Public Service Commission (PSC) and Department of Finance during the process.

40. The recommendations were ambitious and proposed a staged increase in DEPC staffing from the current 10 permanent staff up to 14 in 2015, increasing to 21 in 2016 and ultimately to 42 staff in 2017. Around 10 of these new positions are essentially a conversion of current project positions to permanent staff.

41. The recommendations, including details on position descriptions and salaries were passed to the PSC for approval in 2014. However since then, the Director General (DG) of MCC has requested further discussions within the ministry and department before resubmitting to PSC for approval. To date the proposal for restructure has not been resubmitted to PSC.

42. It should be noted that even if approved by PSC, a budget has to be obtained for any restructure and this is by no means guaranteed given the competition for scarce government resources and limited public sector budgets with a predicted shortfall for 2015 of over 900 million vatu.

2.1.4 Intra Agency Cooperation and Coordination

43. As lead agency for environmental protection, DEPC coordinates with many line agencies, particularly relating to development consent applications and reviews. Collaboration occurs with many ministries, departments and regulatory agencies as set out in Table 1.

Table 1 – Inter-agency Coordination

Agency	Ministry	Area of Interest/Activity
Department of Geology Minerals, Mines and Water Resources (DGMWR)	Ministry of Lands (MOL)	Mining, Delegated powers for PEAs for quarries and sand mining
Department of Local Authorities (DLA)	Ministry of Internal Affairs (MOIA)	Physical Planning, Foreshore Development.
Department of Lands	Ministry of Lands (MOL)	Member of Land Management Planning Committee (land leases)
Department of Fisheries	Ministry of Agriculture, Livestock, Forestry, Fisheries and Biosecurity (MALFFB)	Fisheries, coral, marine mammals.
Department of Forestry	MALFFB	Forestry (native and plantation), Invasive species (Biosecurity Dept)
Department of Ports & Harbours	Ministry of Infrastructure and Public Works (MIPU)	Development in ports of entry.
Public Works Department (PWD)	Ministry of Infrastructure and Public Works (MIPU)	Infrastructure development & maintenance, building permits.
Vanuatu Project Management Unit (VPMU)	Prime Minister's Office (PMO)	Management of Infrastructure Projects over US\$10 million
Provincial and Municipal Government Councils	Ministry of Internal Affairs (MOIA) through DLA	Physical Planning, development applications

2.2 Vanuatu Project Management Unit

2.2.1 Organisation and Staffing

44. The VPMU under the Prime Minister's Office (PMO), is a dedicated unit for managing large and nationally significant projects with allocation of budget and core staff.⁶ Essentially the VPMU takes the place of MIPU for larger, development partner funded infrastructure development projects. The VPMU administers and coordinates those projects and acts as the interface between GOV, development partners and the consultants and contractors undertaking the design and construction work. VPMU acts as the executing agency of the government to oversee and manage these major development projects. The Council of Ministers originally approved the establishment of the VPMU by in 2010, supplemented by a further Council decision in 2011.

45. Currently, VPMU is managing projects with a combined estimated cost of more than US\$120 million including the Port Vila Urban Development Project (PVUDP), the Vanuatu Inter-island Shipping Support Project (VISSP), and the Port Vila Lapetasi International Multi-purpose Wharf Development Project (Lapetasi). VPMU is also managing the implementation of the proposed Vanuatu Tourism Infrastructure Project (VTIP).

46. The VPMU Steering Committee provides guidance and direction for projects managed by VPMU. The Director of VPMU is responsible for day to day management of the projects supported by VPMU staff, project consultants and the implementing agencies.

47. The VPMU comprises six permanent staff and has support from advisors paid by development partners and secondees from other agencies. Permanent staff include: Director, Environmental and Social Safeguards Officer, Financial Controller and Office Assistant, Communications and Public Relations Officer, and a Monitoring and Evaluation Officer.

48. VPMU is supported by an international consultant as project management advisor. JICA has provided two personnel to VPMU for its Lapetasi project.

49. VPMU's main activities and responsibilities include:

- Project and contract management activities
- Providing progress updates on implementation of projects under its management;
- Establishing and maintaining performance standards on all responsibilities and obligations of the GOV for efficient and effective execution of development project activities: and
- Managing all project funds and report to the Steering Committee and its development partners.

50. As the lead agency for GOV, the VPMU is responsible for establishing and maintaining performance standards those projects under its overall responsibility. In theory this responsibility will also include setting standards for CSS through the VPMU's Environmental and Social Safeguards Officer. However in practice the VPMU sets project performance standards through formal liaison with DEPC and MIPU's PWD. This is sensible as the VPMU as a separate entity cannot administer legislation that is administered by other ministries or departments.

⁶ Generally those projects over USD\$10 million in value.

2.2.2 Intra Agency Cooperation and Coordination

51. The VPMU steering committee meets regularly and consists of the Directors (Departments) or Directors General (Ministries) of the following government agencies: Office of the Prime Minister; Ministry of Finance & Economic Management; Ministry of Infrastructure and Public Utilities; Public Works Department; Ministry of Foreign Affairs; Finance Department; Department of Strategic Policy and Planning; and Secretary General of Public Service Commission. It does not include the Director of DEPC.

52. The VPMU also holds technical meetings for the programmes under its management. The PVUDP technical meetings are designed so departments can participate for their period of interest so increasing productive time. There are no regular meetings specifically on safeguards or environmental aspects of VPMU projects however planning meetings for the Port Vila Urban Design Programme (PVUDP) can include environment as an agenda item.

53. While VPMU is responsible for the management of the design and tender processes, it is less clear which government agencies are involved in the actual implementation of infrastructure projects and in particular safeguards monitoring. From the project administration manuals (PAM) for the ADB projects, it appears that VPMU is responsible for ensuring environmental safeguards are implemented however there is little regular liaison on the details of the safeguards for these projects with DEPC EIA Unit officers. Similarly there are expectations for enforcement and monitoring of these projects by DEPC in the PAMs but again these expectations have not been communicated to DEPC and there does not appear to be any project funds set aside for this function.

2.3 Ministry of Infrastructure and Public Utilities

2.3.1 Organisation and Staffing

54. The Ministry of Infrastructure and Public Utilities is one of the larger ministries within the government with over 250 employees. It is also one of the more established ministries with well-developed human resources functions and has had the benefit of donor support for capacity development through infrastructure development programmes.

55. MIPU comprises four divisions. These are: PWD which has 188 positions, including staff in works depots in all six provinces; the Civil Aviation Authority which has 17 positions; Corporate Services Unit with 10 positions, and the Department of Ports and Harbours with 56 positions.

56. MIPU, through PWD administers infrastructure development projects and infrastructure maintenance. PWD has recently developed a social safeguards framework (SSF) through the Vanuatu Transport Sector Support Program (VTSSP). The VTSSP is financed by the Department of Foreign Affairs and Trade (DFAT) of the Government of Australia and is now in its second phase. The VTSSP includes support for social safeguards and other institutional strengthening within MIPU such as human resource management and procurement.

57. The SSF for VTSSP is currently being implemented by PWD. Implementation includes capacity development and training for PWD staff and local contractors in the provinces and was developed partly in response to challenges face in the first phase of the programme. MIPU and PWD intend to apply the SSF to other infrastructure projects and PWD work programmes over time however currently the focus is on the VTSSP.

58. Environment is included in the SSF however understanding and capacity for environmental elements is relatively weak. The current emphasis is largely on social safeguards with only one out of the seven elements of the SSF being environment. As the PWD is one of the few central government departments with line staff in the provinces (where DEPC has no operational staff) it would be useful to improve understanding of environmental safeguards for PWD staff and contractors in the provinces.

59. A recent step towards strengthening CSS implementation is the PWD appointment of a Senior Safeguards Officer and also an Environmental Safeguards Officer. These are new appointments and these officers will be involved with this TA and the DEPC as it is progressively implemented in those areas of PWD work outside the VTSSP.

2.3.2 Intra Agency Cooperation and Coordination

60. DEPC staff work with MIPU and PWD staff collaboratively on various permits and regulatory processes as outlined in the table under section 2.2.4 above. This includes building permits and also developments in Port Vila and Luganville harbours such as the temporary wharf in Port Vila which is to be used when the main wharf is redeveloped. Building permits are issued by the Port Vila Municipal Council which relies on PWD to assess engineering elements of building permits.

61. Concern has been voiced by both the DG of MCC and Director DEPC on the lack of applications by MIPU or its departments for environmental permits for public works such as road development in the provinces. Both voiced hope that the TA would help to develop a good working relationship between the agencies to ensure that the EPCA was followed by MIPU and other local and central government agencies responsible for asset management and development. This may require specific legislative amendment in order to clearly bind the state.

3 ASSESSMENT OF ENVIRONMENTAL SAFEGUARDS CAPACITY IMPLEMENTATION

3.1 Overview and Legislation

62. **The existing legal framework for CSS.** Vanuatu has an existing CSS primarily through the development of EIA regulations under the EPCA. There is an established EIA process which allows for preliminary environmental assessments as well as controls for EIA processes. The full environmental assessment process is set out and supported within separate EIA Regulations. There is agreement within the DEPC that there needs to be some amendments to the regulations and EIA processes to ensure they work more smoothly as intended. Some internal guidelines have been developed to assist officers (mangroves and poultry farms) however these are in draft form and rarely if at all referred to.

63. Under the current legislation all activities or proposed projects that impact or are likely to impact the environment of Vanuatu must make an application for approval to DEPC. There is a schedule to the EIA Regulations that sets out the types of activities/projects that require an approval from the department. For all of these activities, once an application is lodged and fee paid, the DEPC EIA Unit officers carry out a PEA and determine whether an EIA is required or not. An EIA is required for those activities/projects that cause or are likely to cause significant impacts on “*environment, social and/or custom*”. The EIA report and environmental management and monitoring plan (EMMP) are submitted to the Director of DEPC for review by an EIA review committee, which makes recommendations to the Director. The Director can then: approve the application (with or without conditions); refer the matter back to the EIA review committee for further assessment; or reject the application.

64. It should be noted that the existing legislation does not fully support the current processes in practice. For example, where a full EIA is not required, the DEPC issues an environmental approval (with or without conditions) and such a step does not have a legal basis. The legal analysis has identified these gaps in legislation.

3.2 Summary of Findings and Recommendations of Legal Analysis

65. The first part of the country safeguards review (legal analysis – Final Report 1) concluded that Vanuatu legislation and policies are fully equivalent with most of the basic components of environment safeguards as established by international best practice.⁷ Comparison with ADB Safeguard Policy Statement 2009 (SPS) as benchmark for good practice indicates the overall objective of ensuring the environmental soundness and sustainability of projects and to support the integration of environmental considerations into the project decision-making process is provided by the EPCA and the EIA Regulations. It can also be found in legislation from certain line ministries, including legislation on forestry and mining (including quarries) and may also be seen in a number of policies, including the PAA, the DEPC Strategic Plan 2014-2024, the National Biodiversity Conservation Strategy 1999 (although this is now out of date and is currently being revised), the draft NEP and the draft NEMS.

66. The legal analysis shows that the environmental legislation of Vanuatu is fully equivalent with 26 of the 80 key elements (34.67%) of the ADB’s safeguard requirement 1: environment (SR1) principles, including most of the basic components of environmental assessment.

⁷ ADB. 2014. *Technical Assistance for Strengthening and Use of Country Safeguard Systems (RETA 7566-REG)*, Vanuatu environment subproject, Final Report 1 – Legal Analysis.

67. National legislation is partially equivalent with 24 of the key elements (32.0%), and not equivalent with 25 of the key elements (33.3%). The main recommendations to bring about full equivalence with the ADB environmental safeguards include revision to the EPCA and the Environmental Impact Assessment Regulations.

- A number of revisions to the EPCA;
- A number of revisions to the EIA Regulations;
- A number of revisions to the PEA format;
- The adoption of a format (minimum requirements) for the EIA report;
- The adoption of a format (minimum requirements) for the EMMP;
- Clarification of the interaction between the EIA process and the Pollution (Control) Act and the Public Health Act;
- Adoption of the implementing regulations under the Pollution (Control) Act;
- Adoption of the implementing regulations under the Waste Management Act; and
- Adoption of the implementing regulations under the Health and Safety at Work Act.

68. A number of the recommendations relate to the environmental impact assessment (EIA) procedure for projects likely to have significant environmental, social and/or custom impacts, while others relate to the initial PEA procedure. The TA will pick up on those recommendations from the CSR and address them as part of process improvements. Once improved process has been established then it will be supported by the necessary legislative amendments.

3.3 Analysis of Standard Environmental Assessment Process

69. The environmental assessment (EA) process is applied to those projects that come under the definition of the act (ie those that impact or are likely to impact the environment). A schedule to the regulations lists a wide variety of developments that need to be referred to the department for a preliminary environmental assessment by officers, some of these nominated developments are more to do with planning rather than environmental impacts, for example the need for PEAs for retail stores in urban areas. This has broad span of developments requiring PEA in large part comes about due to a failure of land use planning processes rather than the actual environmental impacts of activities.

70. The DEPC has developed a flow chart (now out of date) of the EA process and procedures and have published this on the Ministry of Lands website. An updated version of the flow chart is attached as Attachment 1 to this report. Although the process presented is generally what is followed, in practice the process as set out in the flow chart and legislation can often differ. The usual practice of the different stages of environmental permit application and assessment process are set out in this section. It should also be noted under legislation there is a great deal of discretion in terms of the EIA process, in particular for larger infrastructure projects. Examples of this discretion being exercised are set out in the case studies in this report.

3.3.1 Pre-application

71. There is no formal pre-application or screening process however proponents or developer enquiries to the department are responded to by officers. Officers also meet with

developers visiting the department to discuss proposed developments. Officers will typically refer colleagues with specialist expertise (eg waste management, invasive species etc) where required to give further guidance to developers. Currently there are no guidelines or additional information available to give to developers to assist them with their applications. Usually developers visiting the department are given an application form to take away and complete. The application form also includes the schedule from the EIA Regulations which sets out the range of activities requiring preliminary environmental assessment.

72. Therefore apart from general advice on whether a proposed development will have an impact on the environment or is included in the Schedule to the EIA Regulations, in which case an application is required, no screening of developments takes place. This means that all developments, large or small are required to follow the same overall assessment and scoping process. The department is keen to explore opportunities through the TA to screen developments in order to remove unnecessary applications and to categorise development types in order to better manage workflows and streamline the EIA process. The department would like to see such changes reflected in legislation and the current Schedule to the EIA Regulations amended as it includes a wide range of activities that often have no or little environmental impacts. The legal analysis in the TA also identified the current schedule as being too broad and that any amendments to improve the process under the TA will need to be supported in law.

3.3.2 Application

73. Usually the DEPC Administrator or EIA Unit officers receive environmental permit applications and payments. Environmental permit applications are called PEA Applications at this first stage of the assessment process.

74. Formal recording of applications only commenced in mid 2014 and responsibility for this currently sits with the EIA Unit which records application on a shared external drive. There is a general assumption by developers that applications can be passed to any DEPC officer or even the DEPC Director at their convenience and this has led to applications going missing or being accepted without the relevant fee. There is a clear need for a tracking system to not only record applications coming into the department but to identify where an application is in the EA process including final decisions and any permit conditions.

75. No checks are made of applications for completeness or quality meaning applications can be deficient in key information so making it very difficult for officers to undertake the PEA. This is a significant area of concern for DEPC officers and will be addressed through the TA and included in the operations manual.

76. The current application form does not guide applicants to consider environmental management in their project design nor are there any guidelines to assist in this. As part of screening, the department would like to see revised application forms and supporting guidelines for different categories of development. A checklist of required information would also be useful to officers to help ensure applications are complete. The current TA will assist in developing a revised process, including a revised application form requiring applicants to provide more information and undertake their own initial environmental examination of their development. Some generic guidelines for the different categories of developments will also be developed as part of the TA.

3.3.3 Preliminary Environmental Assessment

77. Once an application is received and registered, EIA officers then proceed to undertake a preliminary environment assessment of the application. The officers use the PEA to determine

suitable mitigation conditions for the proposed development. One of the other purposes of the PEA is to determine if there is a need for a full EIA. The current PEA is onerous and requires a large amount of input from DEPC officers. Additionally, the current approach takes responsibility for developing environmental mitigation measures from the developer and gives this responsibility to the EIA officers. This is an unusual arrangement and requires an undue amount of work by department officers.

78. The current PEA approach includes the officer reading through an application and checking any supporting documents and then making a site visit. Site visits are often but not always in the company of the developer or developer's agent. Once the site visit is made, officers then produce a summary PEA report with a recommendation for either requiring an EIA or granting an environmental permit. In practice, applications are often deficient and can lack even the most basic information. Apart from the headings in the application form, there are no guidelines for applicants on the information requirements to be contained in applications. This means the officer's site visit and meeting with developer are important in order to understand the scale and nature of the proposed development. Conditions to help mitigate environmental impacts are included in environmental permits to help ensure that straightforward developments with limited environmental impacts mitigate their impacts. The department is keen to ensure that the quality and standard of applications improves. This will in part be achieved by revising the current application form, having a checklist of required information to be included in applications and providing guidelines for applicants through the current TA.

79. The officers currently use a standardised format for undertaking the PEA which includes assessment of effects on 26 different elements, both environmental and social. These elements are: soils & geology; surface and ground water; air quality; noise; flora and fauna; foreshore development; unique, endangered, fragile or limited resources; aesthetics; demands on environmental resources (land, water air or energy); waste management; ozone; other neighbouring activities; climate change; disaster management; human health and safety; industrial, commercial and agricultural activities and production; quantity and distribution of employment; local and state tax base and revenue or fees; demands for government services; locally adopted plans and goals; access to and quality of recreational activities; density and distribution of population and housing; custom impacts; private property impacts; other relevant circumstances.

80. The officers then assess the magnitude of impact under each of these elements. This is actually assessed twice; first without mitigation measures; and again after consideration of any potential mitigation measures. The mitigation measures can be proposed by either the developer or the officer. Assessment of magnitudes are graded as: very low – only very minor harm over small areas, which can be easily restored by natural processes; low - some harm but generally only over small areas that is capable of being restored with a small amount of effort; moderate – harm that is capable of being restored with some effort and time; high – harm that occurs over a large area that will be difficult to restore without considerable effort, money and/or time; and very high – widespread irreparable harm. Given that this assessment covers even the most straightforward and minor projects, it is understandable that the EIA officers are keen to simplify the PEA and their reports.

81. DEPC officers are also keen to pass a greater level of responsibility to the applicants to identify and mitigate environmental impacts of proposed developments. Therefore the TA will help to develop an improved application form along with guidelines for applicants to address the environmental impacts of their proposed development. The PEA undertaken by officers will then be simplified with a reduced number of parameters.

82. While appearing to assess the magnitude of impact under each element in a methodical manner, the decision as to whether an EIA is required is not so clear cut and is usually decided on balance taking into account the location, scale and nature of the development. The PEA template is therefore a tool used for supporting decision making rather than a structured, decision making tool. There is considerable scope to use the PEA process to encourage mitigation of environmental effects and so avoid the need for a full EIA. While this could be achieved through an EMMP, for more minor projects specific conditions that mitigate environmental impacts may be preferable in the Vanuatu context. Sample conditions will be developed for the more common types of applications. For those activities that may no longer be included in the schedule then some performance standards will be set in consultation with planning authorities and others, for example stormwater management for small developments in urban areas.

83. While quite detailed, the elements and assessment of magnitude in the PEA template do not necessarily fit with the principles under the Act, for example coastal erosion or cumulative effects could be overlooked when following the template. Therefore the template should be reviewed to ensure that elements relevant to the act are considered and other, unrelated elements removed. The template for PEA will be reviewed by the TA and an amended version included in the manual. More detailed applications will also require the description of the current environment as well as neighbouring land use activities.

84. Unless an EIA is required, PEAs invariably propose that a permit be granted as only developments subject to EIA can be refused. Granting at this stage usually includes a set of conditions based on the type and location of the development and the assessment of magnitude of impacts under the 26 elements. Conditions attached to any permit are not currently supported by the legislation but nonetheless are expected to be complied with. This inability to refuse a permit or require additional information from an applicant is a significant gap in the legislation and was picked up in the legal analysis.

85. If a development requires an EIA, the developer is advised of the need for the EIA and a project-specific terms of reference (TOR) is prepared by DEPC officers and discussed with the developer. There is opportunity for the developer to discuss and appeal the TOR for the EIA. The development and agreement of the TOR is equivalent to a scoping stage for an EIA.

3.3.4 Environmental Impact Assessment

86. Once the TOR has been agreed, the applicant uses a registered consultant(s) to undertake the EIA and prepare the report. The use of registered EIA practitioners is a useful way for the department to ensure that EIAs are consistent in standard as they are prepared by qualified practitioners, this can be regarded as a rudimentary quality control system. There is also scope to review and standardise TOR for EIAs in order to improve quality and provide guidance for applicants. A standardised TOR template will be produced in this TA as part of the operations manual.

87. Public consultation on a development is required under law however its extent is to be determined by the DEPC director. In practice, public consultation is typically undertaken at a late stage in the project process meaning EIA reports do not tend to include concerns raised by those consulted with.

88. There have been a few exceptions to this where developers have been required to publicly consult on their EIA for some projects that have had a high level of public interest. These examples include a proposed development and reclamation within Fatumaru Bay in the centre of Port Vila and also geothermal exploration on Efate. However the general situation is a lack of requirement by the DEPC for developers to undertake public consultation and so developments tend to go ahead as originally planned without taking into account the results of any consultation.

89. For those developments that are granted a permit after PEA there is effectively no consultation required. Therefore in practice it is fair to say that currently there is a general lack of consideration for the views and concerns of impacted parties in minor developments.

90. This lack of consultation on project PEAs and EIAs also includes other government regulatory agencies so that a permit can be granted for a development under one piece of legislation but rejected under another. Some unscrupulous developers can use these differences as leverage to support the permitting of their developments or at least to avoid meeting development standards or conditions. Ahead of legislative amendments, revisions to the current process will highlight from the application stage on the need to consult with and provide evidence of affected parties and kastom landowners. Consultation guidelines will be included in the operations manual for the TA.

91. Along with the EIA report, an EMMP is also required under the EPCA to help address the environmental impacts of developments. The EMMP should be completed by the developer and submitted with the EIA. However in practice EMMPs are often of poor quality and usually fail to address the key environment impacts for the project's construction or operation. These deficiencies may be picked up through conditions or requests for further information and an outline EMMP will be included in the operations manual as part of the TA.

92. Despite the agreement of a TOR, the quality of EIA reports reviewed by the department varies considerably and EIAs are often deficient in key elements such as site rehabilitation, record of consultation etc. This is unsurprising as there are no guidelines or other means of raising public awareness for EIA and what is required to ensure that quality EIA takes place. The establishment of a register of EIA practitioners by DEPC in theory should result in an acceptable level of quality of EIAs however this is not always the case. Similarly there are no guidelines or templates for EMMPs and although these should be site and project specific. There is scope to develop some guidelines and an outline structure for developers to use. Therefore a guideline for applicants and regulators will be developed for the minimum requirements for EIA and EMMPs submitted to the department.

93. Once an EIA is received, it is reviewed by officers and a report prepared to go to the EIA review committee. The EIA review committee is a multi agency panel with ad hoc members depending on the type of project being considered. The standing members are from the departments of Lands, Public Works and Internal affairs (planning) with others from Fisheries, Ports and Harbours, Geology Minerals and Mines as required. For developments within Port Vila or on Efate a representative of either the municipal or provincial government is also invited to sit on the committee. The EIA officers also review if the EIA meets the agreed TOR and if not this is made clear to the committee. The structure of reporting to the committee and assessment of EIAs is not standardised and there would be some benefit in doing so to assist in consistency of decision making including standardising permit conditions. Assessing EIAs received is potentially included within the TA and the operations manual however standardised conditions and the development of training in a formal process for the EIA review committee and standard conditions for different types of development is unlikely to be achieved within the current TA.

94. For larger projects or when resources are lacking, the department on a few occasions has engaged an independent EIA reviewer who is registered as such on the EIA consultant's database. The proponent is meant to pay for the reviewer however as the reviewer is engaged directly by the department this extra cost is not always relayed to the proponent and so reviewers can remain unpaid for this work.

95. Once reports are completed, the EIA review committee meets to consider the application, the officer's presentation or reviewer's report and the EIA. The committee then makes a recommendation to the Director DEPC to grant or refuse the development. The committee has deferred recommendations based on the need for further information from the applicant.

3.3.5 Decision making

96. Decision making occurs throughout the EIA process. Most decisions on environmental permits are made by the director DEPC usually, but not always on the recommendations of officers or the EIA review committee. As a result, the director is often under pressure by developers to amend his decisions should process requirements or permit conditions be considered too onerous.

97. Decisions in the EA process are made as shown in Table 2.

Table 2 – Key Decision Points in Application Process

Stage	Decision
Pre-application (Screening)	Officers decide and advise verbally on the need for an application.
PEA	DEPC director decides to grant a permit based on the PEA or if the development requires an EIA.
EIA TOR	Director decides on terms of reference and consultation requirements
EIA	Panel makes recommendation to the Director who grants the permit with conditions.
Changes to Permit Conditions	Director decides and agrees to any amendments to permit conditions.

98. Once the EIA review committee makes a recommendation on the proposed development, the DEPC director then grants the permit in the form of a letter to the applicant. Permits are usually subject to a series of conditions and the requirement for an environmental management and monitoring plan (EMMP).

99. The challenge in running the EA process is that final decisions are not always in line with recommendations for example the TOR for an EIA can be amended through direct agreement between the director and an applicant. In such circumstances the permit letter may be filed in the general correspondence files. A similar situation arises when conditions of an environmental permit are amended by the director with any amendment letter being filed in general correspondence. Up to mid 2014 even the main decisions (ie permit letters) were filed under a different system from the EA process files. This makes it difficult for officers to find the permit documents for monitoring or other purposes as although the recommendations are usually held in the EA file, the actual permits are not and therefore details cannot be confirmed. This situation has improved since mid 2014 with decisions and any amendments now being filed in the EA process files.

3.4 EIA Process Capacity

3.4.1 Work Volumes

100. The department receives over 50 development applications each year and the rate of applications is increasing with an average of two per working week being received in the first two months of 2015. These applications are processed by the EIA Unit which has two permanent staff, one of which is primarily responsible for compliance monitoring but also undertakes PEA and EIA assessments. These officers are required to make site visits to all proposed development sites.

101. Applications range from relatively small planning type applications, for example for wholesale and retail stores in Port Vila, through to complex mining and extraction applications such as exploration for geothermal power generation. Exact numbers are difficult to determine as full records only started to be kept from mid 2014. From the records, 12 of the 51 applications to the DEPC in 2014 resulted in EIAs being required. However this proportion may be lower as it is unclear if all sand mining PEAs were included in these figures.

102. With some exceptions, notably larger infrastructure development projects, DEPC officers are required to undertake formal PEAs of all development applications. This requirement, coupled with a lack of sufficient information in many project applications means that officers are kept busy undertaking basic investigation and fact finding for PEA reporting, particularly for smaller private sector projects.

103. The level of officers' PEA workloads is kept high due to the wide range of development activities required to make a PEA application as set out in the first schedule to the EIA regulations. Many of these activities require planning assessments but are still subject to PEA. For example the schedule requires PEAs for retail and wholesale shops and warehouses. In practice, unless of very large scale, these activities never require full EIAs and it is difficult to see why they are included in the schedule in the first place as any environmental impacts of smaller retail and wholesale outlets, particularly in urban areas are minimal.

104. For larger or more technical development applications the department does seek external help from time to time. This assistance is usually from EIA practitioners registered with the department (as provided for in the country's EIA regulations). All EIA practitioners in Vanuatu must be approved and accepted onto the department's consultants register before being able to participate in the EIA process on behalf of applicants or the department. In this way the department can keep some level of quality control by ensuring that only suitably qualified practitioners prepare or review EIAs. This requirement extends to environmental experts on larger infrastructure project who must also apply to be registered as EIA consultants with the department. Donor agencies have also supplied funding for overseas experts to support the department on more technical and large development projects, for example geothermal exploration.

105. For larger infrastructure projects, the department lacks the technical capacity or staffing levels to undertake standard PEAs as it does with smaller projects. Instead the department prefers to defer to external experts and international donor safeguards to develop terms of reference and quality standards for IEEs to be prepared by the project proponents. The department then reviews these documents, sometimes with assistance from external technical experts for acceptability and completeness in the Vanuatu context. Three case studies are presented in this report that provide insight into the different approaches taken by the department for assessing large scale, donor funded infrastructure projects.

106. No guidelines or standard conditions are currently in use⁸ for the EIA process either for officers or applicants but DEPC officers would welcome the development of guidelines to help speed up the process and improve public understanding of both the process and DEPC requirements. The officers are also keen to improve the current system to allow for better EIA decision making and where possible reduce workloads. The analysis in the previous section identifies main areas for process improvement including the review of the schedule of activities and the potential introduction of categories for different types of developments to enable more efficient processing and reduced workloads. This categorisation will be included in the TA however standardised conditions for EIA decision making will not be included as capacity building and training of the EIA review committee must first take place.

3.4.2 Decision making processes

107. Under legislation the Director DEPC has a significant level of discretion. It is the Director who decides on the need for a development PEA application to proceed to full EIA. It is the Director who confirms the decision or refusal of an application after an EIA based on the advice of the ad hoc EIA review committee. Similarly when it comes to enforcement it is the Director that has the power and discretion to proceed with action for non compliance with either environmental permit conditions or the law. The introduction of categories and corresponding requirements for PEA and EIA will assist in supporting decision making and will need to be supported by legislative changes.

108. The EIA review committee is based on a core group of representatives with others requested to attend based on the application eg Ports and Harbours for projects within their area of responsibility. While the EIA review committee members are technical experts or representatives from their agencies, they have not received any formal training on EIA decision making or drafting conditions for environmental permits. This lack of training should be remedied in order to support the panel and increase its EIA technical capacity. Some standardised templates, conditions or checklists would also assist the committee and officers to make recommendations that clearly set out environmental management requirements for permitted developments.

109. The basis of any amendments to conditions varies but may include direct discussion with the applicant. Changes are generally not discussed with committee members or officers prior to issuing the amended permit but agreed between the director and the applicant. This is an issue of concern for the MCC's DG who would prefer to see process and legislative changes introduced for more robust decision making and a requirement for the director to act on the advice of officers or the EIA review committee.⁹

3.4.3 Monitoring and compliance

110. Monitoring and conditions for environmental permits both after PEA and EIA can be inconsistent and often lack the required details to demonstrate the need for the condition or to mitigate, avoid or remedy environmental impacts. This lack of detail means that it is difficult for conditions and requirements to be complied with by developers or enforced by DEPC officers. The standardisation of and improvement to permit conditions is a fundamental part of meeting the objectives and intent of the EPCA. This is an important area for improvement and will support the quality of developments, their environmental impacts and enforcement.

⁸ Two draft guidelines for officers were developed by a volunteer in 2012 for mangroves and poultry farms but these have not been finalised and are not currently in use.

⁹ Pers. Comm. DG Jotham Napat at TA project meeting 9 February 2015

111. The lack of staff or budget for monitoring and compliance is a major limiting factor on the department's ability to effectively monitor its environmental permits and conditions. Although there is the potential for charging for audits, in practice the department finds this difficult to justify to developers as monitoring rarely takes place. Any monitoring fees charged would in any event be paid into the government's consolidated fund and not credited to the department. Therefore in practice any monitoring that does take place is undertaken by the single compliance officer often in response to public complaints and costs covered under the department's overall operational budget.

112. The same officer is responsible for compliance and enforcement as well as monitoring permitted developments. The officer also undertakes PEAs including site visits meaning there is constant competition for the single vehicle currently available to the department and visits are made based on when the vehicle and budget for fuel is available rather than to any programme of monitoring. There are lists and templates for use by officers monitoring projects however as monitoring is at best sporadic, these have fallen out of use.

113. The single DEPC officer in Sanma province takes up this monitoring role for the department in Sanma however monitoring of projects on other islands in other provinces usually doesn't take place. Linkages with other agencies such as PWD, particularly through their safeguards officers and also provincial councils should be explored to identify opportunities for delegated monitoring arrangements. Any such arrangements will certainly require training and capacity building. Such capacity building should be built around a formalised approach to monitoring and enforcement that is currently lacking.

3.4.4 Delegation and collaboration

114. EIA Unit officers are constantly busy and required to participate in a wide range of regulatory and policy committees, working groups etc. Collaboration while commonplace does not necessarily add value to or assist in meeting DEPC or other departments' objectives. Regulatory decision making responsibilities are often shared between departments, for example the EIA review committee. However unlike the EIA review committee, many of these other committees or panels do not alter their membership based on what is being discussed and decided on. As a result many of these collaborative meetings are cancelled or postponed due to a lack of attendees.

115. One of the main types of regulatory permits EIA officers are also called upon to collaborate on and review are physical (land use) planning applications to ensure consistency with EPCA. There is certainly scope to reduce DEPC officers' workloads by setting environmental performance standards for planning permits. For example officers are included in all planning decisions within the Port Vila physical planning area. By setting some performance standards for the planning authority to administer, DEPC officers only need to review and audit adherence for the standard from time to time.

116. Some delegated decision making does take place under the current EIA process. Currently applications for sand mining and quarries to the Department of Geology Minerals, Mines and Water Resources (DGMWR) also include formal delegation by the DEPC to DGMWR officers to undertake PEAs. Officers from the DGMWR have incorporated PEA into their assessment processes for sand mining and quarries and they then send these PEAs to DEPC for approval. The EIA unit checks the PEA and recommends approval to the Director DEPC along with conditions, including some standardised conditions. DGMWR also requires quarry operators to follow its quarry guidelines; although it is not clear if these guidelines are actually enforced by the DGMWR.

117. The EIA Unit has never challenged DGMWR recommendations for quarries and since 2013 there has been an agreement between the two departments that all new quarries now require EIAs meaning that applicants have to prepare an EIA and deliver to the DEPC for approval.¹⁰ This arrangement does not include applications for local sand mining. Although aware of the general requirements for PEA, DGMWR officers have not been formally trained in PEA or EIA processes.

118. There may also be scope to have similar collaborative arrangements with other regulatory agencies for example for foreshore development applications and physical planning processes and also for monitoring and enforcement in the provinces by provincial council staff. Such collaboration has the potential to reduce the regulatory burdens for some development activities particularly those requiring multiple permits. Provincial Councils have a coordinating role for development in their provinces and to assist this convene meetings of provincially based government departments and other provincial representatives to coordinate developments and work programmes. The Provincial Councils have constituent Area Councils, essentially appointed community councils which are increasingly playing a role in development planning within their areas and to assist in coordination of provincial development. If trained councillors and provincial staff have the potential to support and monitor environmental safeguards and permit conditions within their geographical areas.

119. The EIA Unit officers are currently required to be included in the assessment of all foreshore development applications to the Department of Local Authorities (DLA). This input is required even though the departments agree that environmental permits and the EIA process should be applied for prior to the foreshore development application being submitted to the DLA. This is essentially double handling by the EIA Unit officers for no obvious benefit. There is increasing support from both DEPC and DLA, that applications for planning decisions such as foreshore developments be made in advance of any environmental assessment in order to determine the suitability of any developments in the coastal area.

3.4.5 Other related regulatory functions

120. DEPC officers also participate in other departments' regulatory functions where there might be environmental impacts. The current regulatory climate in Vanuatu is improving with regulatory functions being better coordinated between agencies. However the more unscrupulous developers try to make the most of potential gaps between different regulatory requirements and unauthorised development is still quite common. For example a quarry permit recently granted retrospectively without consideration of any environmental impacts. Pressure then comes onto the DEPC to grant environmental permits retrospectively rather than prosecute under the EPCA.

121. It is also common for developers to apply for one permit when other permits are also required from other authorities. Once a permit is granted by one authority then the other regulatory authorities are pressured to grant permits for the development. To help solve this problem the DEPC is considering requiring developers to obtain outline planning permission and provide evidence of this prior to accepting applications for permits under the EPCA.

¹⁰ That is quarries being newly established require EIA. In practice most quarry permits are extensions of current quarries and therefore not subject to EIA.

3.5 Priorities for EIA Process Improvements

122. The following activities are seen as priorities for the current TA by the DEPC. In addition a preliminary list of additional support and process improvements that may be considered. A timetable and work plan is included in the final section of this report. All changes, guidelines and other information on any changes to the current processes will be incorporated into a single operations manual for use by the department. The manual will include guidelines for applicants as well as DEPC officers.

123. **Streamline and categorise applications coming to the department and reduce the number of minor applications.** This will be achieved by reviewing the current categories of activities on the Schedule. The intention is to remove unnecessary applications for minor types of development and to categorise different types of development that have potential environmental impacts. By reducing the number of unnecessary applications and clarifying the types of activities requiring assessment, workflows can be better managed and the EA process streamlined for different types of development. The department would like to see these changes reflected in a revised schedule to the EIA Regulations. In addition to improving the process for the majority of applications DEPC would like to confirm a process for large infrastructure projects. This will be developed based on the lessons learned from the case studies and other projects and included as a category in the operations manual.

124. **Improving the quality of applications,** the current TA will assist the department in developing a revised EA process. This includes a revised application form that requires applicants to provide more information, a checklist of required information to be included in applications, providing guidelines for applicants through the current TA and requiring applicants to assess the environmental impacts of their project prior to application. Some generic guidelines for the different categories of developments will also be developed as part of the TA.

125. **Revise the current PEA template** to ensure that elements relevant to the act are considered and other, unrelated elements removed. The amended template will be included in the operations manual. More detailed applications will also require the description of the current environment as well as neighbouring land use activities.

126. **Review and standardise the TOR for EIAs** in order to improve quality and provide guidance for applicants. A standardised TOR will be produced in this TA as part of the operations manual and will set out the minimum requirements for EIAs to be received by the department.

127. **Improve consultation practices** through guidelines to be included in the operations manual for the TA, primarily focused on consultation for EIA it will also have guidelines for consulting with affected parties in minor projects subject to PEA.

128. **Improve understanding and the use of EMMP** through guidelines and an outline structure for developers to use.

129. **Develop guidelines for assessing EIAs** received are potentially included within the TA and the operations manual however the development of training in a formal process for the EIA review committee and the development of standard conditions for different types of larger developments are unlikely to be achieved with in the current TA.

130. **Improve setting of permit conditions** to meet environmental objectives, reduce environmental impacts and assist compliance is required and is potentially included in the TA. This requires training as well as developing some standardised conditions for both PEA and EIA. The development of standardised conditions for permits granted after PEA may be possible under the current TA.

131. Once the process improvements have been agreed, the DG of MCC would like to advance relevant amendments to legislation as soon as possible as he wishes to ensure that EA decision making is supported by both improved process and legislation. Therefore as processes are revised and agreed through the TA, the DEPC legal volunteer will identify and confirm the corresponding legislative changes for each stage of the EA process. By so doing the required legislative changes will be ready to be sent as drafting instructions for legislative change. The outputs for the Legal Analysis Report will be used to inform the recommendations for legislative change.

4 CASE STUDIES

4.1 Introduction

132. In consultation with DEPC, a set of three case studies were chosen all of larger infrastructure projects in order to review how CSS processes were implemented/applied in each case. The three case studies chosen were:

- Vanuatu Inter-Island Shipping Support Project (VISSP)
- Vanuatu Tourism Infrastructure Project (VTIP)
- Port Vila Urban Development Project (PVUDP)

133. All these case study projects are managed through the VPMU and two (VISSP and PVUDP) are ADB financed projects. Each is set out in separate subsections with a separate subsection for comparison.

4.2 Vanuatu Inter-Island Shipping Support Project

134. The VISSP is aimed at improving inter-island shipping services in Vanuatu primarily through the upgrade and construction of wharves on islands in the central and southern parts of Vanuatu and support for subsidized shipping services to remote islands. This ADB administered project is co-financed by New Zealand's Ministry of Foreign Affairs and Trade (NZMFAT).¹¹

135. The VISSP comprises seven jetty-wharf sub-projects involving the following: South Paray wharf (Port Vila, Efate), Simonsen wharf (Luganville, Santo), Loltong wharf (Pentecost), Lolowai wharf (Ambae), Port Sandwich and Litzlitz wharves (Malekula), and Lenakel wharf (Tanna).

4.2.1 VISSP Safeguards Process

136. The VISSP safeguards process commenced in 2011, largely following the ADB's requirements as set out in the SPS with the development of initial environmental examinations (IEEs) for eight proposed sub-projects.¹² A general project description was submitted to the department in late 2011 and the DEPC director advised the Maritime Affairs Office of MIPU accordingly on the requirements for PEAs.¹³

¹¹ ADB. 2011. Approved by ADB Board on 30 November 2011 for \$11.3 million under Loan 2820-VAN and Grant 0273-VAN (Project No. 42392-013)

¹² The proposed wharf at Waisisi, Tanna is no longer included in the VISSP. The decision to exclude it was made by the VPMU Steering Committee as a result of increased cost.

¹³ Letter from Director DEPC to Mr Markmon Batie, Maritime Affairs Office, 31 October 2011.

137. The eight IEEs were formally submitted to the DEPC for review and assessment in February 2013. The high level of detail in the IEEs enabled the Director DEPC to determine in April 2013 that there was no need for EIAs for the sites based on the designs presented in the IEEs.¹⁴ The IEEs also specified that the IEEs (including EMP) would be updated during detailed design, the updated EMP would be included in the tender documentation, and that site-specific EMP (SEMP) would be developed for each sub-project site by the contractor, following award of the contract and before works commence at the sites. It is noteworthy that the IEEs for the sub-projects presented to DEPC were of high quality and generally surpassed the quality and detail of many EIAs typically received by the DEPC from smaller, private sector developments.

138. Since the 2013 approval some of the VISSP sub-project designs have been amended. Two of the amended sub-projects are significantly different in scale and nature from the designs originally presented in the 2011 IEEs. The original proposal for the South Paray wharf in Port Vila specified has been amended to include dredging and the original design for the Simonsen wharf in Santo has also been amended and now includes partial reconstruction rather than repairs as specified in the original IEE.

139. In March 2015 the VPMU requested that DEPC review these changes and give recommendations on requirements for EIA. The department has responded requiring an expansion in the terms of reference for coastal study for the South Paray wharf. The department has also advised the VPMU that a revised IEE is required for the Simonsen wharf rebuild and that an EIA or additional studies will likely be required.

140. Additional studies have been undertaken over the design period with reports being submitted to the VPMU. These include a January 2014 report¹⁵ from the project's international specialist in his report to VPMU which recommended that dredged materials for the adjacent Lapetasi International Wharf be utilised as fill for the South Paray wharf. The report also gives a detailed template for sub-project SEMP's and specifically excludes dredging for the South Paray Wharf. Baseline studies for fisheries and coral were required as part of the need for information to be included in the EMP. This additional study was undertaken by the Department of Fisheries in May 2014.¹⁶

141. In terms of monitoring and enforcement of EMP's; project documents held by VPMU suggest that MIPU or PWD will be responsible for monitoring of progress including any safeguards monitoring in the provinces with DEPC undertaking environmental monitoring in Port Vila on the South Paray sub-project. The individual IEEs confirm DEPC as having overall responsibility for monitoring but this will be undertaken by MIPU through an Environmental Safeguards Unit (ESU). The Director DEPC is also to be the final point of appeal in any complaints via the grievance redress mechanism. DEPC is expected to undertake auditing of the projects' environmental monitoring.

142. A small budget has been identified for this purpose to cover some of the project sites.¹⁷ However this has not been confirmed to DEPC and it is unclear if there is any budget for DEPC to undertake this work although the department is referred to in the Project Administration Manual (PAM) and IEEs as undertaking monitoring "as required".

¹⁴ Letter from Director DEPC to J Wabaiat, VPMU 23 April 2013

¹⁵ Roughton International Ltd., End of First Input Report, (International Environmental Specialist), Draft, Jan 2014.

¹⁶ Department of Fisheries. Marine Assessment of Habitat Flora and Fauna for Lolowai Bay Jetty Development - Baseline Survey Report, May 2014.

¹⁷ According to project IEEs, some project budget is set aside for DEPC auditing and direct monitoring: \$750 for Lilitz, \$4,000 for Lenakel, no budget for Simonsen, Lolowai, Loltong or Port Sandwich. The Port Vila budget of \$2,000 includes water quality testing which is undertaken by Dept of Lands.

143. In summary, the preparatory stages of the programme have followed the process requirements as required by the ADB and now as it enters implementation phase it is following the Vanuatu CSS as set out in the EPCA and EIA Regulations including the updating of IEEs for amended projects. Some additional elements are also included to ensure compliance with SPS.

144. The CSS process would have gone more smoothly if communication to DEPC by VPMU and MIPU had been more frequent and clear with reports and design changes delivered to the department. This need for effective communication becomes especially important as the individual projects progressed through the project design stage. Additionally, original arrangements for monitoring and the setting up of a specialised unit within MIPU have not been communicated to DEPC so even now after the programme has been tendered, it is still unclear on what basis the MIPU ESU officers will undertake their environmental monitoring responsibilities.

4.3 Vanuatu Tourism Infrastructure Project

145. The VTIP is co-financed by Government of New Zealand through NZMFA and GOV. Once completed the project will be operated and maintained by the Port Vila Municipal Council (PVMC). The purpose of the project is to rehabilitate two areas (precincts) important to tourism in the capital. The two areas are the Seafront Precinct, the main waterfront park in the centre of town; and the Portside Precinct the location where cruise ship passengers disembark.

146. The project work includes capping several hundred metres of the existing seawall which is in disrepair and the construction of some jetties and amenity water access from the waterfront park as well as beautification, park furniture etc. The work in the Port Precinct is some minor road works and widening and altering the landside entrance to the port to allow more room for disembarking cruise ship passengers.

147. A steering committee was formed to guide the project and includes all the main government and municipal council stakeholders. It is chaired by the director of the DLA.

4.3.1 VTIP Safeguards Process

148. A consultant--Beca International Consultants Ltd (Beca)--began work on the project for MFAT and GOV in 2012 and prepared a number of concept design options. Beca then undertook extensive stakeholder consultation on the concept design options with government departments, PVMC, other stakeholders and the general public. This consultation included press releases and advertising and a public display of design options in the centre of Port Vila.

149. After the consultation was completed, the preferred options for the precincts were confirmed by the Steering Committee in December 2013 and the project's preliminary designs completed in early 2014. These preliminary designs were first presented to DEPC in January 2014 along with a draft scope for an EIA as at that point Beca presumed (correctly) that works in the coastal marine area of Port Vila would require a comprehensive EIA study and report.

150. The DEPC used a registered EIA review consultant to work with the DEPC EIA officers and Beca to confirm the scope of the EIA and also to advise Beca on what was expected under each of the agreed sections of the EIA in order to meet departmental requirements.

151. Once the scope and detail of the EIA was confirmed, Beca prepared the EIA. The final document included a detailed EMMP framework for the project. Both the EIA and EMMP were delivered to the department in March 2014 for approval. The department approved the EIA and EMMP without any delay or requirements for further information. The EIA included details and concerns arising from its public consultation on the project design.

152. The construction phase of the project will be subject to EMPs and these are included as a requirement in the tender documents for the contractor to prepare SEMP. However the roles and responsibilities for monitoring this are unclear. The VTIP project was reviewed by the project steering committee in late 2014 to early 2015. The project went to international tender in early March 2015 and construction is due to start later in 2015.

4.4 Port Vila Urban Development Project

153. The PVUDP is an ADB financed project which is co-financed by DFAT.¹⁸ The PVUDP is intended to improve drainage, roads and sanitation systems in greater Port Vila. The PVUDP will implement some of the recommendations of a drainage and sanitation master plan prepared through a project preparatory technical assistance in 2010 (PPTA – TA7345 VAN).¹⁹ The PPTA reports identified priority interventions for improved access to, and delivery of drainage and sanitation services to the residents of Port Vila and the PVUDP commenced in 2013.

154. The project has three main elements: road improvements; drainage; and the provision of community sanitation facilities. A further element is the development of a suitable facilities for the disposal of sewage sludge from Port Vila's septic tanks (the town has no municipal collection or treatment system). The project was preceded by significant level of planning and assessment through the PPTA. Once construction is completed it is expected that an improvement in environmental quality will result through better management of stormwater runoff. Improved facilities for sanitation, in particular the treatment of septage sludge will also improve environmental quality and reduce current environmental effects.

4.4.1 PVUDP Safeguards Process

155. Similar to the VISSP, during preparation the project followed SPS. A project IEE—covering both the sanitation and roads and drainage components was prepared in 2011 which described different options for design and locations for works. Following detailed design, the project has become more tightly focused with priority areas for drainage and roading agreed and the original idea for a sludge treatment plant in Mele being discarded.

156. A request from VPMU in December 2014 that the original 2011 IEE be still acceptable as a summary of the project's environmental effects was rejected by DEPC. The DEPC determined that although parts of the 2011 IEE may be useful as a general overview, it could only be used in a significantly revised form as a background document on environmental impacts as it was largely focused on the amended sanitation component and did not provide sufficient information on the road works packages. It should also be noted that a requirement of the PAM and IEE is that following detailed design, the IEE be updated to reflect any changes in assumptions and details provided by the design that were not available on the earlier preparatory work.

157. In response to the request from the VPMU regarding the 2011 IEE, the department confirmed that it requires individual IEEs for each of the PVUDP sub-projects and that each must contain an outline EMP. The department was agreeable to accepting completed IEEs for the project components as the designs are progressively completed. The department also emphasised that any point source discharges of stormwater into Fatumaru Bay in Port Vila harbour will need to be carefully assessed and may well require EIA to be undertaken.

¹⁸ ADB. 2011. Approved by ADB Board on 13 December 2011 for \$5 million under Loan 2832-VAN and Grants 0275 and 0276-VAN (Project No. 42391-013).

¹⁹ ADB. 2010. *Drainage and Sanitation Master Plan* prepared under *Technical Assistance for Preparing the Port Vila Urban Development Project* (TA 7345-VAN, approved by the ADB Board 2009 10 September for \$600,000).

158. This approach proposed by DEPC means that environmental safeguard requirements can be met without unnecessarily disrupting the staged approach to designing and implementing the project components.

159. DEPC is now attending weekly project design meetings in order to further advise project design engineers on environmental issues as designs for the project components are completed; the department awaits the revised and updated assessments (the specific requirements for these have been communicated to the VPMU).

160. In terms of roles and responsibilities for environmental safeguards, these appear in the PAM which essentially delegates responsibility for environmental safeguards to the MFEM as executing agency and MIPU as implementing agency, presumably through the VPMU which was located in the ministry at the time the project was set up. However according to the PAM, monitoring of site specific EMPs during construction is to be the responsibility of DEPC as is the preparation of design guides for the design consultants. It is unclear of the requirements of the PAM have been communicated to the DEPC which in any case lacks the resources to undertake this work as it will span several work sites at any one time.

4.5 Comparison of case study safeguard processes

161. The case studies along with the stages of EIA process are set out in Table 3.

Table 3 – Application of CSS to Case Study Projects

STAGE	VISSP	VTIP	PVUDP
PRE APPLICATION	DEPC outlines process to MIPU	Extensive discussions with DEPC	PPTA included a volume on environment (2010)
PEA	IEEs (following SPS) prepared for each site (2011) submitted in lieu of PEA	None, straight to agreeing TOR for EIA	One general IEE covering entire project (2011) requires revision. Individual IEEs required for sub- projects.
EIA	EIA required for amended designs at two sites.	Met DEPC requirements.	IEE needs to be updated as EIA detailing sanitation and road components (1 EIA covering both or separate EIA).
EMP	None received yet.	Included with EIA.	None received yet – to be completed by contractors.
MONITORING	As per EMP in IEEs and to be updated in EIAs DEPC in Port Vila, Others unconfirmed.	Likely DEPC.	Requires further clarification, PAM states DEPC but likely in an overview role.

162. It is apparent that the EIA processes have differed between the projects. At pre-application (screening) stage all projects were discussed to a certain extent with the DEPC. The VTIP was discussed in the greatest detail and resulted in the agreement that an EIA would be necessary. This meant that consequent meetings were focused on discussing the contents of the EIA so resulting in a straightforward approval. The VISSP produced high quality IEEs that presented the potential impacts and mitigation measures in sufficient detail so as to avoid the need for full EIAs. Since then, changes to designs at two sites mean that a revised IEE is required for one (Simonsen). The DEPC reserves the right to require a full EIA for the amended design should the assessment of the revised IEE require this.

163. A targeted EIA is required for the other amended project as it requires dredging and potentially the dumping of dredged materials in Port Vila harbour.

164. The PVUDP, despite having extensive PPTA studies including environmental studies, has probably been the least successful process to date. The request from VPMU in December 2014 that the 2011 general IEE be acceptable for the project is surprising and possibly demonstrates a lack of understanding of the purpose of EIA and safeguards processes. The response by DEPC to accept a general IEE with site specific IEEs and EMP demonstrates flexibility on the part of the department to try to ensure that environmental safeguards are suitably covered while trying to enable the project to go ahead as planned.

165. In terms of EMPs or EMMPs, there is reticence on the part of VPMU and supervising consultant to complete these beyond a basic template or outline. Instead they prefer to leave any details to contractors and their CEMPs. This is strange given the clear requirements in the PAM and IEE for updating the EMP following detailed design and integration of the same into the bidding documents (prior to any contract award). This might be the result of miscommunication between VPMU and development partners. It needs to be addressed to ensure correct information and requirements are relayed to the supervising consultant and eventual compliance with both CSS and SPS. EMPs need to be more than a general template and should be sufficiently detailed so as to make it clear to contractors exactly what environmental impacts are to be mitigated on a site by site basis in line with either the EIA or IEE.

166. Responsibility for monitoring the construction stage of the projects is currently unclear and buried in PAMs that have not been communicated to the DEPC. There is also a lack of clarity of who is responsible for ensuring environmental safeguards are followed in the PAMs. As the agency responsible for environmental management, the DEPC has to be advised of monitoring arrangements for these larger infrastructure projects. VPMU needs to advise DEPC how the monitoring will take place and confirm with DEPC that proposed arrangements are acceptable.

167. The DEPC is generally accepting of environmental experts on the development partner funded infrastructure projects determining standards and identifying environmental risks to be managed on a project. The case studies also demonstrate that the department is adaptable and sympathetic to large infrastructure project needs. As the legislation allows for flexibility in EIA processes if required, the development of a suitable process should be agreed at the outset (ie project inception or screening stage).

168. The development of a standardised approach to EIA process for larger infrastructure projects should be included in the TA as a special project category to enable a level of understanding across agencies involved in these types of projects. Even where development partner safeguards process need to apply in preparatory stages (to ensure approval by those organisations) there is still the need for consultation with DEPC to make sure that compliance with CSS can be aligned and that once in implementation stages the correct procedures as per the EPCA and EIA Regulations can be followed.

5 COMPARISON WITH OTHER COUNTRY SAFEGUARD SYSTEMS

169. At the workshop presentation of the legal analysis by the international legal expert, the DEPC director requested that the TA explore opportunities for categorising the different types of environmental permit applications in Vanuatu. The current schedule to the regulations has a long list of different types of activity that require environmental permits. All of these projects, large or small have to go through the same assessment process. The government is satisfied with the overall environmental safeguards that Vanuatu has in place and does not wish to adopt a radically different approach. Instead the government wishes to improve the current system so it is more efficient and effective.

170. The current schedule to the EIA Regulations is extensive and includes activities that are unlikely to have any measureable environmental impacts, for example retail stores in town require PEAs. Many activities appear to be a form of control for town planning purposes rather than environmental protection. For this reason the DEPC director and TA focal point would like to see examples of different approaches to project categorisation and screening to see if Vanuatu can adopt a similar approach. In so doing, minor or non-impacting activities can potentially be exempted from the current EIA process so reducing workloads and unnecessary barriers to development. At the same time major projects can be recognised and be fast tracked to full EIA and so avoid delays arising from the current PEA process.

171. The TA consultant was specifically requested by the DEPC director and focal point to examine the Japanese (JICA) and Fijian schedules and categorisation of different types of development. The current AVID volunteer at DEPC previously worked with the EIA processes in Tonga which takes a different approach to project categories that may be useful when reviewing the Vanuatu EIA processes and so the Tongan system is also included in this section.

5.1 ADB Environment Safeguards

172. **Screening and categorisation.** Under the SPS, activities to be financed or administered by ADB are screened according to type, location, scale, and sensitivity and the magnitude of their potential environmental impacts, including direct, indirect, induced, and cumulative impacts.

173. Projects are classified into one of four categories:

- Category A - a project is likely to have significant adverse environmental impacts that are irreversible, diverse, or unprecedented. These impacts may affect an area larger than the sites or facilities subject to physical works. An environmental impact assessment (EIA), including an environmental management plan (EMP), is required.
- Category B - a project's potential adverse environmental impacts are site-specific, few if any of them are irreversible, and in most cases mitigation measures can be designed more readily than for category A projects. An initial environmental examination (IEE), including an EMP, is required.
- Category C - a project is likely to have minimal or no adverse environmental impacts. An EIA or IEE is not required, although environmental implications need to be reviewed.

174. A fourth category – FI – covering financial intermediaries is not relevant to Vanuatu system and is not discussed.

175. The purpose of the screening and categorisation is to clearly identify the level of assessment required (either IEE or EIA) and time and resources to properly prepare the appropriate assessment. Both IEE and EIA require consultation with affected people, communities and stakeholders, however, for category A projects, the draft EIA must be disclosed for review 120 days before the ADB Board considers the project.

176. **Application to Vanuatu context.** For Vanuatu, activities equivalent to Category A projects would benefit from being fast tracked to EIA with initial discussions between the department and the developer focusing on the scope and TOR for the EIA in a similar manner to the process followed in the VTIP case study that is the project proponent draft the TOR for discussion with DEPC who agrees the final TOR.

177. DEPC's main challenge with its current schedule is the need to further divide those development projects that would fall under category B under the ADB system. Impacts from larger category B projects could be more than minor and in Vanuatu would likely require an EIA. Larger Category B projects would benefit from undertaking an IEE to determine if other studies, including an EIA are required. A screening guide and development of categories suitable to Vanuatu will be useful for projects equivalent to ADB category B.

178. It is hoped that those development projects that equate to ADB Category C would either not require a permit or be able to be granted permits with standard conditions for project and environmental management. An alternative would be for DEPC to set some performance standards for common planning and building applications to other regulatory authorities so reducing the regulatory burden on development. Therefore for those activities on the current schedule that essentially just require planning or building consent, environmental performance standards should be developed in consultation with the planning authorities to be applied through the planning and building permit process.

5.2 Tonga Environmental Safeguards Systems

179. **Requirement for EIA.** EIA in Tonga is part of the government's approach to sustainable development²⁰ and is provided for in the *Environmental Impact Assessment Act 2003* and the *Environmental Impact Assessment Regulations 2010*. The Act defines a development activity as any new project, including extensions and additions to existing projects, undertaken in the private or government sectors, and which requires any licence or other government approval. An example of a development activity is the construction of a new office building. This means that all permit applications are required to fill in an application form for an environmental assessment of their project as part of the obtaining a permit under any government legislation.

180. Once the application form has been received, the environmental regulatory authority has 30 working days to determine what level of assessment is required (screening).²¹ The development activity is classified as either a major or minor project. The authority must decide on the classification or ask for additional information within the initial 30 working days after which the proponent is entitled to assume that no EIA is required.²²

181. If an application is deemed minor a permit can be granted with conditions. If considered a major project then the proponent must fill out a more detailed application form with a fee and undertake an EIA. Regulatory authorities can grant (with or without conditions), decline, or defer an application.

²⁰ See, for e.g., *Tonga Strategic Development Framework 2011-2014*, Outcome Objective 7.

²¹ EIA Regulations section 10.

²² EIA Regulations section 11.

182. **Application to Vanuatu context.** The Tongan system is interesting in that it sets up an integrated permit system that covers the range of relevant permits for a development (building, environmental, tourism etc). This integration of regulatory permits is an area that Vanuatu struggles with and developers can and do exploit the differences between the various regulatory requirements. Officers from different departments are constantly called upon to give input into other department's regulatory processes which can prove a distraction and a drain on resources. Once the core process is revised and confirmed it will be worth exploring the opportunities for better integration of regulatory permits that already require collaboration between regulatory agencies in Vanuatu.

183. The Tongan system also provides for the opportunity to request further information in order to make a decision. This is something that does not take place in Vanuatu and there is a problem with incomplete and poor quality applications. The Tongan system has a checklist for applicants and this is an improvement that can be introduced into Vanuatu relatively easily along with an amended application form. Both of these will be developed early in the TA's process development.

184. The division of projects into major and minor is also of relevance and corresponds to the intention of DEPC to ensure that major projects progress directly to full EIA. The categorisation will take some examination for the types of developments encountered in Vanuatu and will also include a review of the current schedule of activities that currently exists. This will include considerations of scale, intensity and possibly location of the development.

5.3 Fiji Environmental Safeguards Systems

185. **Requirement for EIA.** The Environmental Management Act 2005 is the governing legislation for EIA processes in Fiji. The approach is similar to Tonga in that the need for an EIA is triggered by an application for any permit, license or other regulatory requirement. If the relevant approving authority determines that the proposal does require EIA, no government authority may issue an approval in relation to the proposal until the EIA process is complete and an EIA approval has been issued.

186. Under schedule 2 of the Act, three lists of activities are presented for the purposes of screening applications and then determining what process they need to follow. These are included in the three parts of the schedule:

- Part 1 - sets out activities that must be processed by the Department of Environment (DOE). Part 1 activities are larger scale developments including nominated activities such as airports, large industrial developments or those types of development that may cause significant environmental impacts.
- Part 2 – identifies activities that can be processed by the approving authority, essentially any other regulatory agency of government. These are activities that may have environmental impacts but the approving authority has the responsibility of assessing these potential impacts. If an activity is not deemed to have a significant impact then the authority may grant approval. If it is deemed to have a significant impact it must have an EIA and be referred to the DOE.
- Part 3 – sets the limited range of activities that may be exempt from the EIA process.

187. There is an exhaustive list to be used by regulatory authorities for the three parts of Schedule 2.

188. Part one includes: airport; hotel or tourist resort; mining or mineral processing; dam, hydro-electric scheme or irrigation project; heavy or noxious industrial development; commercial logging or saw milling; landfill, marine outfall or waste treatment plant; dredging or excavating a river bed; residential subdivision for more than 10 lots; a *proposal that could*: cause erosion of the coast, beach or foreshore; pollute of any water resource; contaminate or degrade agricultural land; alter the natural processes of the sea; introduce of harmful pollutants to the air; jeopardize the continued existence of any protected, rare, threatened or endangered species, its critical habitat or nesting grounds; deplete populations of migratory species; harm or destroy designated or proposed protected areas including, but not limited to, any area designated by a written law; destroy or damage an ecosystem of national importance; result in the introduction of genetically modified organisms or invasive species; lead to depletion of non-renewable resources; contravene established customary controls over the use of natural resources; or result in trans-boundary movement of waste.

189. Part two of the schedule essentially sets out the types of development that must be approved by an “approving authority” being a regulatory agency of government. Therefore the activities within this section are mainly concerned with planning, public health, heritage or smaller scale developments that can be suitably controlled by the relevant approving authority.

190. Part three of the schedule is limited to minor works that is: construction or extension of a family home; construction of traditional village structures; emergency measures to prevent loss of life, property damage or environmental harm.

191. As can be seen Part 1 is a technical list and it is by no means straightforward for departments to determine the environmental effects of any development if it does not fall under one of the nominated activities in the first half of the schedule but requires to be assessed for its impacts. In Fiji, government regulatory departments are aware of and have established lines of communication for other agencies involved in a particular type of development. As a result the DOE is advised by other departments about developments that may have environmental impacts as per the Schedule.

192. This is straightforward when a development is a nominated activity on the schedule. However assessment becomes more complicated when officers of another agency are required to assess if a development is not a nominated activity but has potential environmental impacts as set out in second part of the schedule. For those developments not specifically listed in Part 1, departments contact the DOE to confirm if a development falls under Part 1. If the development does require an EIA then it must be passed to the DOE. However if the activity is listed under Schedule 2 Part 2 then the approving authority must process the application including assessing any statements of environmental impacts. This arrangement suggests there needs to be a high level of skill and understanding of environmental impacts within approving authorities.

193. The Fijian system requires a high level of public consultation and the project proponent must conduct public consultation on both the project and the EIA report, including at least one public review meeting held in the vicinity of the proposed development site. Once the EIA report has been submitted, the processing authority must make the report available for inspection and comment by the public. Consideration of issues raised through public consultation is mandatory and if the approving authority fails to consider these issues, its decision may be challenged in court.

194. The officers’ recommendations report and the formal decision on the EIA is formally recorded and is entered onto an EIA register that is open to the public for viewing.

195. **Application to Vanuatu context.** The Vanuatu environmental safeguards system appears to have been developed with some reference to the Fijian system. For example at screening stage the Vanuatu schedule some activities have similar triggers such the 10 hectare subdivision trigger and some of the consultation requirements are word for word the same as the Fijian, but with less requirement to consider public views on an application. In Vanuatu as in Fiji there is a register of qualified EIA practitioners who undertake EIAs. In Fiji however EIA Reviewers recommend the final decision on an EIA whereas in Vanuatu an EIA Reviewer makes recommendations to the EIA Review Committee or DEPC director who then use the reviewer's recommendations as part of the decision making process.

196. In Fiji the use of a list of activities that must require an environmental permit is a similar approach to that which currently exists in Vanuatu however where the Fiji schedule differs is that it also defines the types of environmental impacts that trigger the need for an environmental permit. Any development or change to the current schedule in Vanuatu should also consider how to present environmental impacts arising for development that may not be included in the schedule or that push one type of development into another category due to the location, scale or nature of the development and its environmental impacts.

197. Another approach of note in Fiji is the use of other regulatory agencies to advise the DOE about developments that may have environmental impacts. The Fiji system requires that all developments requiring an approval must undertake screening for environmental impacts as per Schedule 2. This would be of great support for environment CSS in Vanuatu but would prove difficult to introduce as a mandatory practice. However the trigger to formally inform other departments on applications received by regulatory agencies would be worth exploring as this would help keep track of developments that are implemented without all the required permits. Such information exchange does happen from time to time in Vanuatu but only on an informal basis.

5.4 Papua New Guinea Environmental Safeguards Systems

198. **Screening and categorisation.** Papua New Guinea (PNG) has an Environment Act is administered by the Conservation and Environmental Protection Authority (CEPA).²³ The Act provides a framework based on three levels of regulation depending on the magnitude and significance of the proposed activity. Level 1 activities are those that are unlikely to cause environmental harm and for which the proponent must satisfy existing guidelines and codes. For Level 2 and 3 activities, the proponent will require an environmental permit. The Environment (Prescribed Activities) Regulation 2002 indicates the type of activities that fall into activity levels:

- Level 1 Activities require a minimum level of environmental protection. Regulations on such activities will be based on standards, codes and regulations that set benchmarks for environmentally acceptable activities.
- Level 2 Activities require environmental approvals that will be regulated by conditions in environmental permits, environmental improvement plans, and environmental management programmes. Some Level 2 activities may be required to follow EIA process as Level 3.
- Level 3 Activities are those with the potential of major environmental impact and are projects of national significance or of large scale. Such activities will be subject to a process of public and detailed considerations of environmental implication through the EIA process.

²³ Previously the Department of Environment and Conservation, its status changed in April 2015.

199. Level 1 activities are required to submit a short report to the department and do not require an environmental permit. The department has gazetted various codes of practice for commonly operating industries in PNG and so Level 1 activities are expected to comply with any relevant codes of practice and number of which have been formally developed including: Sanitary Landfill Sites; Vehicle and Machinery Workshops; Hydrocarbon Fuel Storage and Re-sale; Palm Oil Processing; Guidelines for Roads and Bridges; Logging; Commercial Forestry Harvest Operations; and Roads and Bridges.

200. For Level 2 and 3 activities, the Environment Act requires the proponent to submit a 'Registration of Intention to carry out a Preparatory Work' (s48) at least one month before that work project commences. The Director of the CEPA will require an environmental impact assessment for some types of Level 2 activities and for all Level 3 activities.

201. For Level 2 Category B and Level 3 activities these need to follow a formal EIA process. The process is detailed and involves the public notification of the EIA terms of reference and consultation. The applicant prepares a full description of the project including an Environmental Inception Report (Level 2, Category B activities) or an Environmental Improvement Report (Level 3 activities) which is assessed by the department. If accepted the applicant then prepares an Environmental Impact Statement. The Environmental Impact Statement is publicly notified and consulted on. After this the CEPA makes a recommendation, along with recommended conditions which is then assessed by a statutory body; the Environment Council, whose recommendation is made to the Minister for the Environment to approve the proposal and the assessment of the proposed project's environmental impacts. Once approved, the applicant is required to apply for an environmental permit which may require further information as decided by the preceding assessment and approval process or further information as required by the CEPA.

202. **Application to Vanuatu context.** The PNG environmental safeguards system is clearly set up for a larger country with a significantly larger industrial sector. In contrast Vanuatu size and scale of development is small and with far fewer extractive industries. However there are some elements of the PNG system that are of interest to a review of the environment CSS in Vanuatu.

203. The split of categories is of interest to Vanuatu. Level 1 in PNG roughly corresponds to the lowest category in Vanuatu, albeit on a much larger scale. Options for Vanuatu may not include the development of formal sectoral or industrial guidelines but there is certainly scope for standardising conditions for more commonly encountered minor types of development in Vanuatu as part of the evolution towards reducing the numbers of minor applications required to go through the EA process.

204. For Level 2 activities, the option of separating "standard" applications into two streams based on scale or nature is broadly comparable what Vanuatu is now applying in terms of its current EA process and schedule of activities although all applications are still required to follow the same process. There is an intention in Vanuatu to separate out the equivalent of PNG's Level 3 to a separate category which at this point looks to include larger infrastructure and other projects, which in the Vanuatu context are usually donor funded.

5.5 JICA Environmental Safeguards Systems

205. **Screening and categorisation.** The JICA environmental safeguards system takes a similar approach to that of ADB in that it requires screening and categorization of activities/projects into one of the following:

- Category A: if likely to have significant adverse impacts on the environment and society. Projects with complicated or unprecedented impacts that are difficult to assess, or projects with a wide range of impacts or irreversible impacts, are also classified as Category A. These impacts may affect an area broader than the sites or facilities subject to physical construction. Category A, in principle, includes projects in sensitive sectors, projects that have characteristics that are liable to cause adverse environmental impacts, and projects located in or near sensitive areas. A list of sensitive sectors, characteristics and area is provided for decision makers.
- Category B: Classified if their potential adverse impacts on the environment and society are less adverse than those of Category A projects. Generally, they are site-specific; few if any are irreversible; and in most cases, normal mitigation measures can be designed more readily.
- Category C: if they are likely to have minimal or little adverse impact on the environment and society.

206. In addition to the above classification, the JICA system includes an illustrative list of Sensitive Sectors, Project Characteristics and Sensitive environments as being contributing factors to the classification of a project. Although these are used in conjunction with Category A the application of these additional criteria can move a project from a lower category to a higher category based on the type of activity (sensitive sector), the scale of the activity and how it affects the environment (project characteristics) and the location of the proposed project (sensitive environments).

207. In addition to the initial classification based on the project description, when necessary, JICA can change a category even after the formal screening stage if a new significant impact has come to light as a result of the project process, or in other specific situations.

208. **Application to Vanuatu context.** As with the ADB system, the rapid definition of major projects will enable a process that leads directly to an EIA however the Japanese system refers to large-scale projects within sensitive sectors and it will be difficult for Vanuatu regulators to determine what constitutes a large scale development as there are few examples of these in the country. However there is a need for the straightforward processing of large scale infrastructure projects which are usually donor led. The use of additional determining factors may be useful in Vanuatu as a project in an urban setting may not have the same adverse impacts as a similar project in a more sensitive environment.

209. DEPC is keen to advance a process that comprises three general categories of project:

- **Large scale infrastructure projects** usually donor funded with an outline EA process commencing with initial discussions and decisions on the required process elements including either proceeding directly to EIA (relates to ADB category A and some category B projects in sensitive locations); or IEE (relating to ADB category B), retaining the option for further studies as required including detailed environmental assessments (DEA) of specific elements or even EIA in some instances. All projects will include comprehensive EMMPs prepared by proponent and approved by DEPC.
- **Standard projects** similar to the current system, the intention is to use screening to categorise projects as minor or major, in a manner similar to Tonga. For major projects all must lodge a good quality detailed application with an outline assessment of effects by the applicant.

- DEPC officers will undertake PEA of the application to determine if the project can be granted with conditions or requires additional environmental assessments (either EIA or DEA). Major projects require the proponent to develop a EMMP to be approved by DEPC. For Minor projects a similar high quality, detailed application is required and the PEA will determine conditions for the permit including any mitigation and monitoring requirements.
- **Minor projects** smaller scale projects with limited impacts. Will require a permit but assessment based on a good quality application with full description of environmental impacts. DEPC officers review the application, usually with a site visit and permit granted with standard conditions for mitigation and monitoring.

210. The ability to reclassify a development at a later point in the process is an important power to retain in Vanuatu and more frequently used, particularly in the context of any changes to the schedule used for screening. Also for the schedule, an approach similar to the JICA system of identification of sensitive characteristics and sensitive areas as part of project screening could certainly be used by Vanuatu regulators for those projects that may be smaller in scale but have the potential to adversely impact the environment.

211. The list of sensitive sectors, characteristics and areas, along with those of other countries will also be useful for Vanuatu to draw from when revising its current schedule of projects subject to the EIA process.

5.6 Potential for Application of other CSS Procedures in Vanuatu

212. The assessment of different approaches to managing and categorising projects is of great interest to DEPC when reviewing its current schedule and supporting the development of EA processes.

213. For screening it is clear that the number of minor projects currently subject to environmental assessment is too high, particularly those planning type projects in urban areas. The Tongan approach of dividing applications into major and minor is therefore interesting for DEPC as is the PNG approach that relies on industry standards. DEPC will need to determine if an application for a minor project supported by a reasonable assessment of impacts as part of the application should even be subject to a PEA or instead simply progress to an environmental permit with suitable conditions. The ability to reclassify projects (as provided for in the JICA system) exists in Vanuatu but needs to be more formally integrated into the current EA process. This should certainly be use in Vanuatu, particularly if the scale or nature of a project is not presented clearly in an application or if PEA site visits identify that a project is sited in a sensitive area.

214. It will be useful for Vanuatu to consider carefully whether to continue to use a list of activities to categorise projects or whether further classifications based on scale or nature or location should also be included in project classification. The final approach will be determined through the TA in consultation with DEPC officers. The legislative changes will follow once the revised process is confirmed.

215. Further support for establishing the revised process and classifications such as workshops and educational materials will be identified over the course of the current TA and included in a proposed action plan as one of the TA's outputs.

216. Lessons from other countries that can be applied to Vanuatu can be split into different categories for the TA:

- **Process improvements** will form a large part of the TA and will follow the current EA process stages. In terms of Screening, the categorisation and separation of different activities will be developed as part of the TA with the intention of minor categories being dealt with in a more straightforward manner than is currently the case. Most of the country case studies will be able to inform this process. In terms of Scoping, improved information received from applicants will be of great importance in helping DEPC officers assess applications through PEA and both speed up the PEA process and more clearly define the TOR for EIAs. The EIA requirements will also be reviewed as part of the TA and recommendations be put forward for change. The country examples along with other examples of application forms and the use of checklists will all help to ensure that the quality of applications to DEPC will improve.
- **Support for changes** will also be a large part of the current TA and guidelines and flowcharts for both applicants and process administrators will be developed. Recommendations for institutional changes will also form part of the support as many agencies in Vanuatu are better resourced to take into account environmental impacts of projects within their purview.
- **Legislative changes** will be required to support any process or institutional changes in Vanuatu but do not form part of the current TA. While lessons from overseas are important to ensure that similar levels of legal certainty are achieved in Vanuatu as overseas, some of the current problems in Vanuatu EA process have actually been created by the adoption of parts of overseas legislation that has not been suitably adapted appropriately to the Vanuatu context. Therefore as the EA process develops under the current TA, notes for appropriate legal support will be made at the same time to more easily support legislative change when this takes place.

6 PRIORITIES FOR INSTITUTIONAL STRENGTHENING

217. Through the initial stages of the TA, and the work comprising this ICA, the engagement of DEPC officers has been encouraging. Officers are keen to improve current processes and adapt their approach to help ensure the country's environmental safeguards systems are optimised.

218. The inception report also outlined key activities for the TA (based on the TOR developed for the TA) including the preparation of an operations manual including guidelines and checklists to assist applicants, DEPC EIA Unit officers and others involved in CSS. Clearly guidelines and operations manuals can only be finalised once the current EIA processes are revised and so improving EIA processes is a priority.

219. A workshop in November 2014 confirmed that there will be three categories of activities/projects:

- Large infrastructure developments requiring EIA and where the end of the process is either the granting of an environmental permit (with or without conditions) or the refusal of the application as soon as possible in the process;
- Activities requiring PEA (and some level of EMP) where the end of the process is either the granting of an environmental permit (with or without conditions) or the refusal of the application; and

- Small-scale activities where an environmental permit is still required, but the application is assessed on a fully completed application form and granted with standard conditions.

220. There will also be some small projects that the department currently receives applications for that they will not need to see in the future as they will be removed from the schedule. Some of these such as minor developments in urban areas may be assessed by planning authorities which will ensure planning permits include the relevant environmental controls, typically storm water management.

6.1 Improved EIA Processes

221. A meeting with EIA Unit Officers and the Acting Director in early March 2015 confirmed the DEPC's preference for the following stages and timelines for improving EIA processes.

- Confirm a revised process for large infrastructure projects based on the experience from the case studies in this ICA report. This process will be confirmed by mid to late April 2015.
- Work through current schedule 1 of the EIA Regulations to recommend how the current projects schedule could be divided into the new categories. This will include meetings with all relevant stakeholders (DLA, MIPU, PWD, PVMC etc). To be confirmed by end April or early May 2015.
- Develop and propose revised application forms for PEA including options for the different categories of projects. This will be confirmed by end of May 2015 for intended introduction from June 2015 onwards.
- Develop a checklist for information required in PEA applications. This will be completed by the end of May 2015 and introduced from June onwards (partly dependent on revised PEA application forms).
- Develop some standard conditions, standards and guidelines for those smaller, standard project applications and permits commonly received by DEPC. This will include standard requirements for other related regulatory processes that require DEPC input (eg planning and building permits). To be completed by end of June 2015.
- Focus on improving the EIA decision-making process with a particular focus on: Role of the EIA review committee; identifying issues regarding good decision making and reducing liability; Development of permit conditions; Delegations to other agencies and working through detailed process for amended applications etc. This work to be undertaken over the period June – August 2015.
- Focus on improvements to administration and process management arrangements including: collaboration with other departments and integration of other regulatory processes; roles and responsibilities for monitoring. This work to be undertaken over the period June – September 2015.

6.2 Guidelines and support for regulators and applicants

- Document a proposed process for large infrastructure projects. Introduce this to stakeholders through either a series of meetings or a workshop. Process to be completed by early May 2015, workshops as soon as possible afterwards.

- Develop guidelines for applicants for the new Application Form. To be completed by mid May 2015.
- Workshops to develop and introduce the proposed revised schedule and categories of projects to DEPC and other stakeholders. To be completed in late May to early June 2015 for introduction in June 2015.
- Guidelines based on sector and publicity materials to be developed for applicants and businesses. Over the period June to August 2015.
- Revise current PEA template in line with revised schedule and categories. To be completed by late May 2015 for introduction in June 2015.
- Standardised permit conditions for more common applications for minor activities. To be completed by late June 2015.
- Training for provincial staff and others involved in EIA process on the revised approach. To be completed by end of July 2015.
- Develop an operations manual for DEPC revised EIA process. To be completed by end of August 2015.
- Develop guidelines for DEPC officers and other regulators for managing and monitoring safeguards for large infrastructure projects. To be completed early August 2015.
- Training for the EIA review committee in decision making and setting enforceable conditions. To be completed by end of August 2015.

6.3 Legislative Change

222. Based on the recommendations of the legal analysis and further discussion with DEPC, prepare, in conjunction with the DEPC's AVID Legal Volunteer, a summary of legislative changes arising from the process amendments. To be completed by early September 2015.

6.4 Additional Activities Required

223. There will undoubtedly be a range of additional activities and inputs required after the project's end in September 2015 to ensure the ongoing success of the TA project. The TA experts shall identify these in partnership with DEPC officers and focal point and compile an ongoing list of potential additional support to present to donors.

ANNEXES

1. DEPC structure diagram
2. Schedule to EIA Regulations
3. EIA Process Diagram