



30 September 2015

# INQUIRY INTO GOVERNANCE IN THE INDIAN OCEAN TERRITORIES

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JOINT STANDING COMMITTEE - NATIONAL CAPITAL & EXTERNAL TERRITORIES

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Thursday 10 September 2015 Hearing

Responses to QUESTIONS ON NOTICE by Hervé Calmy

Mr Calmy notes that '75 per cent of the CKI land mass is owned in fee simple under the 18 September 1984 deed made between the Commonwealth of Australia and the then Cocos (Keeling) Island Council being a body corporate to hold the land in trust for the benefit of Home Islanders' (p. 8).

## Question 1

**What percentage of CKI land mass is captured by the land trust?**

CKI includes the North Keeling Island National Park.

I believe this question relates to the South Keeling Islands (SKI)

The SKI atoll consists of 24 islands totalling 1,310 Hectares (see map in Appendix 1). There are three land ownership categories on SKI: Crown land, freehold land held privately and freehold land held by the land trust.

The Crown land portfolio audited as part of the *2009 CKI Crown Land Management Plan* identified 100 land parcels for a total land area of 197 Hectares.

The total area of privately held freehold land titles within the West Island expatriates settlement can be estimated at approximately 3 Hectares

The land trust representing the balance would be 1,110 Hectares.

On such basis and in summary:

- Land trust freehold 84.73%
- Crown land 15.04%
- Private freehold 0.23%

(Some 75%) was conservative, near **85% would be closer to the mark.**

**What proportion (of the land trust land) is developable?**

The ability to develop land differs with land uses. developable land for agriculture or horticulture may not be appropriate for residential use and land adequate for tourism would not suit industrial activities.



South Island, Horsburgh Island and Direction Island (all in the land trust ownership) with a combined area of 501 Hectares have been settled for durable periods of time in history. Some 50 hectares of trust land in several parcels on West Island close to services and or infrastructure could also find some form of acceptable development.

At present some 90% of the trust land is not developed.

30% could be assigned to agriculture/aquaculture immediately

If tourism development standards found in the Maldives Islands (I am referring to "Island Resorts") were applied one could argue that 30% of the trust land could be developed for tourism in a relatively short timeframe thus leaving 30% as environmental assets.

From a land law perspective that underpins the current trust operating regime I would suggest that the proportion of land to be developed is close to negligible.

From a physical aspect it appears that no specific research has ever been carried out to establish comprehensively land capability in terms of water resources, topography, coastal processes, and ecological sensitivities outside Home Island and West Island.

The constantly increasing accumulation of sand within the lagoon provides a sustainable resource that could be transferred to low lying areas of the surrounding islands in order to increase altitude thus mitigating storm surge threats whilst expanding developable areas.

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## Question 2

### **How does the land trust system operate today?**

The trust's operating framework is directly associated with the *CKI 18 of September 1984 Deed* between the Commonwealth and the then CKI Council (a body corporate constituted under the *CKI Act 1955*) where the Commonwealth:

*"Conveys and grants to the Council its successors and assigns in fee simple all the right title and interest of the Commonwealth in the lands specified" (see extent of the trust land in appendix 1).*

The objective of the grant is:

*"To have and to hold (the conveyed land) onto the Council its successors and assigns in fee simple upon trust for the benefit, advancement and well-being of the Cocos Islanders residents in the Territory"*

The conditions of the grant are:

- 1) The Council agrees to have no right of compensation for North Keeling Island becoming a National Park.
- 2) The Council permits access to the land and buildings and the establishment of infrastructure for the official purposes of the Commonwealth and
- 3) *"The Council its successors and assigns will not grant demise or otherwise alienate (except by will in favour of members of their family) the conveyed lands or any part thereof without the previous sanction of the Commonwealth"*

It is understood that in 1984 the Council was made exclusively of Cocos Malay residents.



With the introduction of *“The Territories Law Reform Act 1992”* in the IOT, the management of the trust shifted from the Council to the new Shire of CKI.

Today the only tangible reference to the land trust on the Shire’s website is found in Section 31 *“MAJOR LAND TRANSACTIONS”* in the 2012-2013 Annual report (page 49).

*“Council did not undertake any major transactions during the 2012/2013 period”*

This statement is followed by:

*“The Council is trustee for a significant portion of the land which is held in trust for the benefit of the Cocos Malay People”*

Given the above one would conclude that the trust is hardly operating.

The first statement suggests that some minor transactions are taking place. It is my understanding that “the farm” together with other land trust parcels on West Island is leased from the trust through the Shire.

It appears that there is nothing in the Shire’s Annual report or any other publications on the Shire’s website that shows these transactions explicitly and it is difficult to ascertain if there is a formal procedure in place to direct proceeds (if any) to the Cocos Malays themselves. This question would be best answered by the Shire.

Condition No. 3 of the Deed shows that the Commonwealth has retained the power to sanction the trust transactions in land and the *WA Local Government Act 1995 (WA)(CKI)* where the WA Minister sanctions local government land dealings makes trust land decisions dependent of the three layers of governments. This appears to be a perfect recipe for inaction that calls for a complete review of the managerial operation of the trust.

Apart from the Home Island housing program, it seems that no major revenue generating development has ever been carried out on trust land since its creation in 1984. There is also nothing to suggest that the “trustee” (The Shire) has ever succeeded in facilitating/encouraging private investment initiatives and development on trust land.

The only tangible benefit (in-kind) derived from their land by the Cocos Malay are the family fishing and camping shacks also known as Pondoks scattered on the eastern and southern islands of the atoll. (See the location of the Pondoks in Appendix 1)

It is very clear that the intention of the Deed to provide the Cocos Malay community with a foundation for economic prosperity did not materialise under the regime of the current trustee. So what should be done for the land trust to operate effectively?

In my view **there is no evidence to suggest that there is any benefit in maintaining the Shire as the trustee any longer.** The land in fee simple does not belong to the Shire and decisions about its future should be carried out by a separate legal entity solely representing the Cocos Malay owners to eliminate the (perceived or tangible) notion of conflict of interest.

**The Commonwealth for its part should provide legal assistance to the owners in establishing such entity (with greater land disposal powers) to ensure that its constitution and operation are aligned with Australian laws and that the owners are fully responsible for the management of their land assets.** I support the notion that with full independence and responsibility, financially rewarding initiatives will materialise.



**The Shire, with the financial assistance of the Commonwealth, would need to focus on ensuring the town planning framework is sufficiently advanced to allow trust land assets to be developed and used in an orderly fashion.**

The owners of the trust land could then pro-actively input into the review of the town planning scheme through the formulation of a new Local Planning Strategy in order to achieve their own land use goals (together with those of potential venture partners) for each and every one of the Islands they own.

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Mr Bowman, CEO of the Shire of Cocos (Keeling) Islands said that that there is little developable Crown land on CKI and much of it is underutilised by the Department of Infrastructure and Regional Development (DIRD).<sup>1</sup>

### **Question 3**

#### **Can you comment on this?**

I would respectfully dispute the CEO's assertion that *"there is little developable Crown land on CKI"*.

As a town planner with architectural background I have assisted the Commonwealth in establishing within West Island two major strategic master plans on Crown land:

- a) *Quarantine Station Outline Development Plan (AGD May 2010)*
- b) *West Island Urban Expansion Draft Outline Development Plan (RDA July 2011)*

These plans with a combined area of 39 Hectares (see lots location in Appendix 1) have taken into account environmental conditions, coastal processes, proximity to services, topography, infrastructure requirements and community sentiments.

They have incorporated residential use on single blocks as well as medium density housing, a range of tourism accommodation, commercial use, agriculture and aquaculture research, a full size sports ground and community facilities.

The development expected value at completion may very well exceed a hundred million dollars and would accommodate at least 60 families, 300 to 400 tourists, a full research centre in equatorial food production (reuse of the quarantine station buildings) and a cluster of commercial lots.

**These plans have the demonstrated potential to set CKI in a sustainable economic trajectory and provide for the immediate needs of the elderly as well as the young local couples wanting to stay and work on CI.**

Given that DIRD has not given any indication that it will take the necessary measures to initiate the implementation of these plans one can only agree with the CEO that these Crown land assets are currently fundamentally *"underutilised"*.

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Mr Calmy asserts that the 'ad-hoc' application of the Shire of Cocos (Keeling) Islands Local Planning Scheme (2007) is inhibiting economic development and should be reviewed (p. 9). The scheme appears to have been amended in 2012, Shire of Cocos (Keeling) Islands Local Planning Scheme No 1.

#### Question 4

#### **Is the Scheme still hindering economic development?**

I maintain that the current CKI planning framework is weak, incomplete and inadequate for investors from the mainland or overseas.

The *2012 Amendment No.1 of the 2007 Shire of CKI Local Planning Scheme No.1* (LPS1) is mainly focusing on relatively modest amendments on West Island and only makes generic reference to WA State Planning Policies.

Whilst the amendment represents an improvement, the Scheme remains short of presenting a documented and comprehensive case explaining the specific future socio-economic dispositions the Shire, with the explicit support of the residents, intends to establish and prosecute to encourage investment and create new CKI based employment opportunities.

This must be attributed to the fact that the LPS1 is NOT underpinned by a bona fide Local Planning Strategy to provide a strategic vision and associated land use plans to guide future development on CKI. This gap is acknowledged in the BACKGROUND section (page 5) of the *2012 Amendment No.1* itself:

*"The Shire of Cocos (Keeling) Islands Scheme No.1 was gazetted on 30 July 2007.*

*The Scheme has been prepared generally in accordance with the Model Scheme Text of the Town Planning Amendment Regulations 1999. A Local planning Strategy was also prepared along with the Scheme but it appears as though the Strategy has not yet been endorsed by the commission"*

According to the officers of the WA Department of Planning this 2007 Local Planning Strategy (who was in fact initiated in 1997-1998) will never be endorsed by the WA Planning Commission and, **in my opinion, a fresh Strategy is absolutely warranted to assist the Shire, land owners and potential investors in preparing projects for the future.**

**The need for a new Local Planning Strategy is further reinforced if the land trust is reformed and renewed consideration is given to the development potential of the key non-developed land trust assets i.e. South Island, Horsburgh Island and Direction Island which are currently completely ignored in the amended LPS1.**

It must be noted that Local Planning Strategies are now mandatory with the effect of the *WA Planning and Development (Local Planning Schemes) Regulations 2015*.

A new Local Planning Strategy would attempt to balance the needs of the natural environment, economic development and community expectations to ensure the long term sustainable prosperity of CKI. The land uses and development scenarios reflecting detailed economic aspirations devised in the Local Planning Strategy would then be incorporated into the Scheme through such proper Scheme review process.

Ultimately the Scheme well supported by an economically focused Local Planning Strategy should provide certainty and enhancement of the long term direction that better reflects the changing economic circumstances on the Cocos Islands as well as the unique land use challenges that will be faced by the Crown and the land trust.



If there was any further doubt that a Local Planning Strategy for CKI was needed as an essential tool to encourage investment and economic development one should consider the sobering conclusion made for CKI in the Acil Tasman report *Economic development opportunities for Christmas Island and the Cocos (Keeling) Islands* prepared back in September 2008 for the Attorney-General's Department:

*"The (CKI) economy is small, with an estimated Gross Product of only \$15M in 2005-06. It is driven by the provision of government services and complemented by a small tourism sector comprising around 100 beds. The official unemployment rate on the islands is high, and the additional underemployment substantial. Individual incomes are low, and there is a very low rate of full time employment. As a result of the lack of economic opportunities, young, prime working age people are underrepresented on the islands".*

#### **In conclusion:**

- a) **The trust land represents almost 85% of the South Keeling Islands land mass. Home Island apart, most of it is not developed whilst 60% of it could rapidly be developed for tourism and agriculture/aquaculture.**
- b) **Investing in land consolidation through sand transfer (on trust land as well as on Crown land) should be considered by the Commonwealth as a matter of National interest if the Commonwealth is serious about boosting the economic outlook of the territory and increase land development capability.**
- c) **The land trust does not play any part in the economic development of CKI and it appears that it does not provide any dividends to its owners. The day to day operation of the trust should be removed from the Shire and the Commonwealth should facilitate the creation of a new legal operating framework to provide the owners greater flexibility to lease land.**
- d) **Two technically robust and well publicised Outline Development Plans have been devised by the department for the West Island Crown land assets. The Commonwealth Government should give instruction to the department to activate the implementation of these plans in partnership with the private sector as a matter of priority.**
- e) **A new Local Planning Strategy should be introduced to reinforce the CKI town planning instruments and provide a fresh opportunity to increase land usage and investments in particular on trust land.**

**I have advocated to the JSCNCET in my 23 April 2015 submission to consider the introduction of a Crown Land Disposal Ordinance on Christmas Island.**

**I light of the above I now recommend that consideration be given to the creation of an IOT Land Disposal Ordinance comprising the following main sections:**

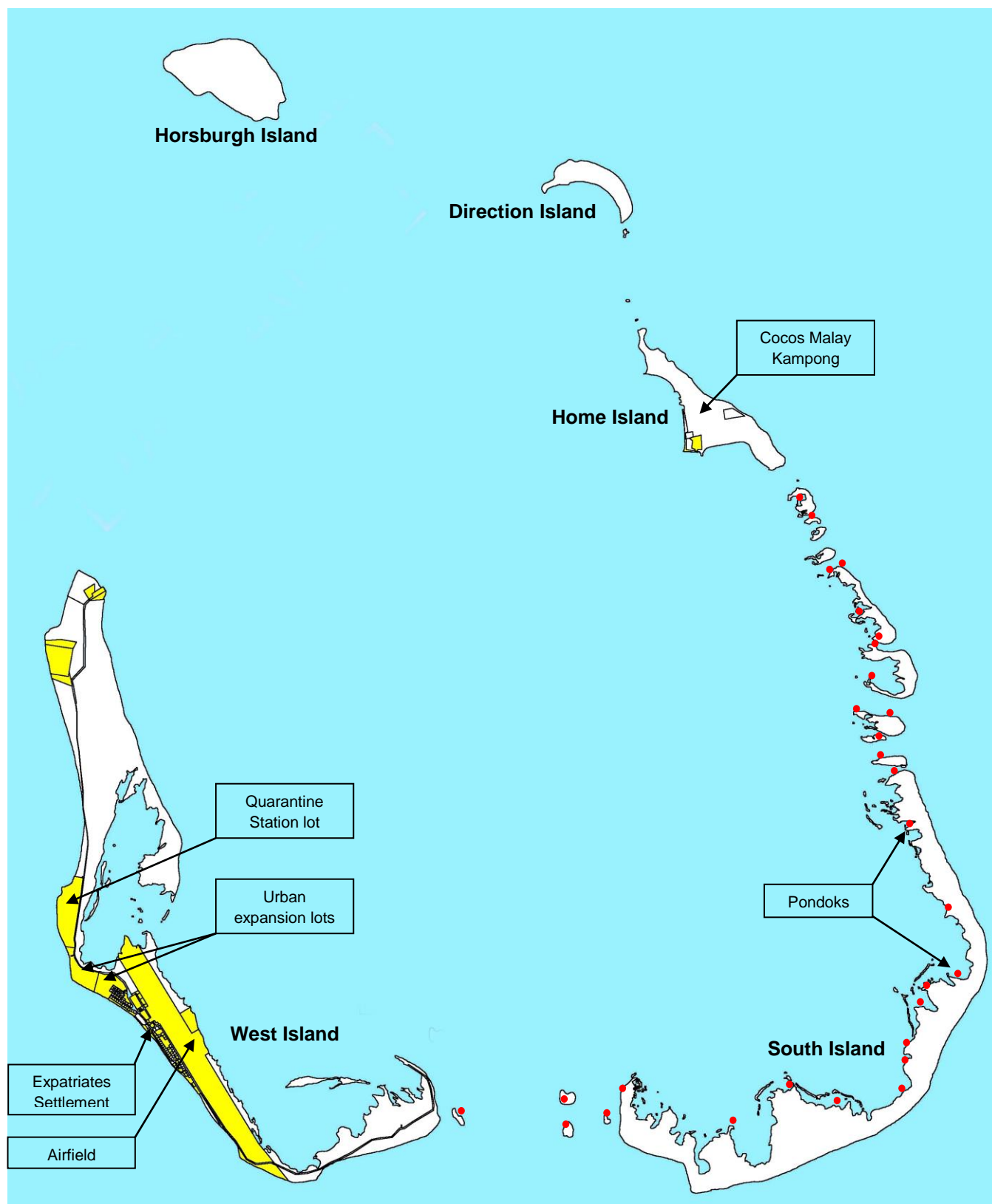
- **CI Crown land**
- **CKI Crown land**
- **CKI trust land**
- **Unsolicited proposals**

**I would finally assert that an Ordinance would clarify and simplify land proceedings rather than create a "new layer of complexity". Policies are subject to change and interpretation. Investments are rarely based on policies, they require legal certainty.**





## MAP OF THE SOUTH KEELING ISLANDS CADASTRE



### NOTES

- Crown land is shown in yellow
- Freehold land held by the Land Trust since 1984 is shown in white
- Freehold land held privately are residential lots all located within the Expatriates Settlement
- The red dots shown depict the location of the Cocos Malay Pondoks