

Submission regarding land issues Cocos Islands.

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I volunteered early in my tenure on council to research the land trusts and try and resolve the issues. I was authorised by full council to seek information on their behalf. I have reported back a couple of times, but as you will see in my submission there has been no good news to date.

Land issues

It is almost impossible to separate a single strand of the Cocos Economy. Land issues are tangled up with many other issues, as is economic confidence and the resultant growth.

I will address the land issues from the Land trust side.

As a time line the following are evident;

June 79 Commonwealth Executive Council resolve to transfer land to be held “upon trust” to Cocos Council.

Territories excise all land that they might require and lands under current. These remain in Commonwealth hands.

In September 18th 1984 documents transferring lands in fee simple are raised and signed. Ellicot and council sign. Excluding pulu gangsa.

The Cocos Council to be formed as a body corporate. Under the local government act 1960

When title system is created that the land was be granted in fee simple to the council.

The land is to be held upon trust by the council.

The terms of indenture are still valid, and any alienation will have to comply and receive sanction by the crown.

Shire legislation in 1992 created to hold the rights, assets and responsibilities of the old Cocos Council.

At this time the current Shire Council does not have the title of the described land under the Torrens system.

The territories reform act 1992 authorised this transfer. (I have doubts of the legality of the process that followed this).

The Original trust document is incompatible with the Local Government act.

Shire seek legal advice to amend the land trusts.

There is in existence a copy of the proposed “amended” Trust document. Dated feb 1996 though it must have been in existence since the cocos council was formed.

The Shire has leased land to both the Commonwealth and private citizens.

Some leases and actions are not compatible the trust document or the local Government Act.

Currently I am informed that the Cocos Shire is shown as owner with no encumbrances on the title.

Currently no original documents other than the executive council decision are available.

I had thought that this was an issue that could be sorted out by Shire Council but the originating authority is from the Executive Council of Commonwealth. So any resolution to this issue will need their co-operation and probably also some professional legal input.

The Home Island Community are reasonably satisfied with the way the Land trust deals with the Kampong area. There are some minor issues, but overarching response is positive. They appreciate the long term protection it provides to the community, and the ability to manage it through a representative Council. There is no need to make any great changes. There is an obvious requirement to formalise the Shire's relationship with the land that has to be held "upon Trust".

There were two trusts originally. The Kampong (Home Island) trust and the second (co-op) trust.

The Co-op did not take up the trust, so the second trust was eventually absorbed by Council.

This trust has all the land other than the Kampong and Commonwealth lands. This includes areas on Home Island. Importantly it includes most of West Island, Direction Island, Horsborough Island and North Keeling.

I have had wide ranging discussions with the community on Cocos and have had the advantage of picking my Father's brain too. The reasoning behind the trusts was to protect the Local Community from the more destructive influences of wider world by giving them inalienable land. The thinking was valid in the 70-80's as we were still based on the coconut industry.

The reality is that rural endeavours will probably not be significant employers in the short to medium term (if ever). So the large tracts of land put aside for coconut plantations in the original trusts are no longer strategic.

In the meantime Cocos has not been able to attract anyone other than tyre kickers for leased land for development. This is probably not only the land tenure issue, but I will go into other factors later.

What to do.

The resolution to this issue.

The land trusts need to be rewritten.

The HI trust be reformed to take in the whole island (other than freehold). This can be managed by council, but have separate responsibilities and no amalgamated revenue.

The second trust should be more discretionary. Be in line with the local government act. Technically in its current form, due to historical asset stripping it will be immediately insolvent (and always has been). So the Trust will need to divest some of the Assets to allow it to carry forward.

The Commonwealth have an interest in North Keeling and could purchase the land freehold. This would be a win to both sides, as the current lease is (to my mind) suspect. Direction Island would also be a commercially valuable Island, as would be some areas on West Island. The Home Island community are ambivalent regarding the “second” trust, as it has been of no noticeable benefit to the community.

The originating authority requires that the lands be held “upon trust for the benefit of the kampong residents” but a trust that is insolvent is not of “Benefit”. Land held unimproved or unused is also not of “Benefit”. My reading of the term “upon trust” has a different meaning to “in trust”, and should allow divestment/ alienation as long as it is to the benefit of the community.

My belief is that we need to ask for direction from the Executive Council;

- To resolve the alienation issues of the second trust to allow divestment of such land as required for its ongoing survival and to garner actual benefit to the community.
- To reform the Home Island trust to enhance the resilience of the home island community’s social fabric.

I see that this will probably be a generational issue so a review mechanism would be sensible too.

This will allow a more normal and reasonable response to development proposals.

Non trust issues re land and development.

Land release has been rather ad hoc by the Commonwealth. There has been a stated intent to encourage the private sector. Things have gone a touch off target. Most residential properties sold have either gone to absentee landlords, or the tourist sector. This has inflated the weekly rental to the state where a blue collar worker is hard put to afford to rent a reasonable home. There is an immediate and long term housing shortage. I can name two workers that require a small affordable unit to live in. The numbers are low, but the situation is still distressing for those affected. I also believe that if units became available it would ease the current shortage of service staff the existing tourism sector.

I have noticed that the land/housing releases were;

- Very long lead time.
- Inflexible.
- Seemingly expensive development methodology.
- Unpopular with the public servants.
- Inexpertly managed.

Much of this is due to the Commonwealth having to follow due process. DIRD and its precursors have little (no) experience in land release or management. I would not believe that they are not the body to be in charge of the process.

Land sales revenue has gone back to Federal amalgamated revenue. Under most state processes a component of the sale would have gone to address public housing.

What to do.

Any Commonwealth land, especially unused land or unallocated land should be transferred to Shire (this was obviously the intent of the original Executive council decision). This will provide an asset base and stable income for the Shire Council decreasing its reliance on the vagaries of a Commonwealth Grants system each year. It would release DIRD from non-core business on island. It would bring the tools for social change into the authority of the local community.

Services.

Air services

We are advised that the airfreight service will cease around year's end, we have already had a cut back of passenger flights to Christmas, causing on-flow problems.

This is very damaging to the business confidence to the islands. The most significant issue for air passage is the state of the runway. If this is addressed then a more commercial/economic aeroplane can be flown in. Currently restrictions apply to wheel loading. The residents and businesses on Cocos could cope with a once a week service IF the plane could carry all that was required. There is no plane with a suitable configuration with the runway in its current state.

Resolution. Fix the runway.

Shipping.

My family have extensive experience in shipping and a good reputation for it in the territories. I asked my sister Joy to canvas the businesses on Christmas Island, and I canvassed them on Cocos Islands. We did this at our own cost as Senator Back's had requested further information and his personal experience allowed him to appreciate its importance.

It is important to residents that ships leave and arrive on schedule. It is important to the community's and business outlook that the service is regular and of reasonable frequency. This voyage (August arrival) some containers were packed in April.

Our findings as dot points;

- There is much dissatisfaction with the current service.
- Container consolidation and stevedoring has got more and more inefficient and costly.
- Dird do not believe they have a part to play in shipping. (though their involvement in the airfreight sector seems contradictory).
- Dird do not believe that there is a value for money issue. (or if there is, that it is *their* issue)
- Commonwealth budgeted cargo is approx 50% of volume.
- The ship cycle should be approx 6 weekly.
- Current sailings cannot be regarded as regular.
- The ship needs cranes for Cocos capable of 50 ton lift.
- The ship needs Amsa recognition.

- The current ship is unsuitable.
- A suitable vessel is available.
- The businesses on both Cocos and Christmas Islands are not cohesive enough to take the lead in this issue.
- The vertical integration of consolidation services and ship chartering has created an anti competitive environment.

Dird needs to take the lead on this. Support should be given to a service that reflects the community's requirements. The community should be supported in accessing their requirements. Dird needs to act like a good corporate citizen.

Resolution: Dird ask for expressions of interest in the transport of Commonwealth goods and project cargos to the IOTs.

Insurance and finance.

Both are not available to us and both have a massive impact on business growth and confidence. This much more input than either of the island communities have. It requires much more than just a phone around. I would suggest a Mutual Insurance be licensed, but I have no experience in such things, so cannot offer a solution.

Submission regarding insurance.

I have long thought that a mutual insurance would be the best way to address the insurance issues in the Cocos Islands.

I would like to suggest a hybridised version of mutual insurance. A model that can be adopted whatever the insurance shortfall in whatever market or state.

On start-up each cell (collective or mutual) should have their risks independently assessed.

This would then generate what level of premium needs to be paid.

It would also show the level of underwriting (reinsurance) that might be required.

I would suggest that the Commonwealth might be required to underwrite cells until the funds held ameliorate the capital required for catastrophic payments enough to attract the private sector.

The private sector might then take on the underwriting from that point.

Even further down the track when the cell is fully insured by capital in can be de-mutualised, this will reward the investors in each cell.