



23 April 2015

INQUIRY INTO GOVERNANCE IN THE INDIAN OCEAN TERRITORIES

JOINT STANDING COMMITTEE - NATIONAL CAPITAL & EXTERNAL TERRITORIES

Submission by Hervé Calmy

Term 1. The role of the Administrator and the capacity (and appropriateness) of the Administrator taking on a stronger decision-making role"

The Administrator appointed by the Governor General receives instructions directly from the Minister responsible to administer the *Territories Law Reform Act, 1992*.

The day to day administration of the IOT is in effect exercised by the public servants within the Commonwealth Department (the Department) reporting to that Minister (the Minister).

In the last decade the Department, in part through the actions of the then Deputy Secretary had taken a paternalistic approach to administer the IOT. It became the almost exclusive architect and or recipient of Ministerial directives and took minimum notice of advice provided by the Administrator or the IOT Local Governments.

This resulted in the reduction of the Minister's involvement, the marginalization of the Administrator's role, reduced and ad-hoc communication with the Shire Councils and a growing malfunction of governance.

At the same time the Department demonstrated no acumen to secure value for money from the WA State Service Delivery Arrangements (SDAs) or engage constructively and collaboratively with the democratically elected Shire representatives to address pressing socio-economic issues affecting the IOT communities.

With respect to "the role of the Administrator" I recommend that:

- 1. The Administrator be delegated to act as the "Minister's voice" in the IOT in all matters of Commonwealth strategic priorities and policies;***
- 2. The Administrator direct, evaluate and sanction the activities of the Department in the IOT and the Perth office and review the effectiveness of the SDAs output.***



- 3. The Administrator exercise, on behalf and in consultation with the Minister, discretionary powers granted to the Minister as they apply to the WA legislation to ensure that advice emanating from the WA departmental officers via the SDAs are truly relevant to the IOT specific circumstances.**
- 4. The Administrator consult officially and regularly the IOT Local Governments and ensure that the Department's Community Support actions reflect and align with the democratic representations of community aspirations and needs.**

Term 3. Local Government's role in supporting and representing communities in the Indian Ocean Territories

As shown in [Appendix 1](#), the carefully and progressively calibrated governance structure, applied to the IOT over its unique and at times tumultuous socio-economic history, has been designed to ensure that today the CI and CKI residents have the fundamental right and democratic power to determine land uses on the Islands they live on and preside over the determination of their communities' aspirations and needs.

The legislated protection of the common interest and well-being of the IOT resident communities constitutes a critical factor that underpins Australia's legitimate, moral and defensible claim of territorial sovereignty over the IOT. In the case of CKI the UN sanctioned self-determination process could provide a structure for (future) argument rather than a definite legal right.

This said it is appropriate to clearly differentiate between Local Governments "representing communities" and local Governments "supporting communities".

The IOT Shire Councilors have a democratic mandate to officially represent the communities of the IOT, this is the governance model historically chosen by Australia with the support of the local population. Any fundamental changes affecting the very existence of Local Governments have the potential to destabilize considerably the relationship between the Commonwealth Government and the vast majority of the IOT residents.

The Department has not felt systematically obliged to rely on the Shires to ascertain community sentiments and, at time, has allowed itself or other Government Agencies to run parallel consultation procedures with the declared or undeclared intention to obtain a specific result or a "mandate for action".

This approach has often resulted in adversarial situations with no tangible benefits to the Department, the Shires or the communities themselves with considerable loss in human and financial resources. The Department (or the Agencies) may have lost community confidence and the powers of the Local Government institutions have been adversely eroded.

This counter-productive situation should be remediated as it is arguably in the best interest of the Commonwealth to assist in strengthening the operations of the relatively "young" Local Governments of the IOT rather than not. In contrast if the Commonwealth was to abolish the Shires this would set back the IOT to the early 80's and risk activating separatist sentiments within segments of the IOT born communities.



With respect to “representing communities” I recommend that:

- 5. *The role of the Local Governments as legitimate representatives of community aspirations and needs be upheld and reinforced through recommendation No.4.***
- 6. *Unless exceptional circumstances identified by the Administrator, all community consultation activities in the IOT be coordinated by and through the Local Governments irrespective of who is commissioning the consultation.***

“Supporting communities” is less about democracy and more about financial resources. With very low population numbers, the rates collected by the Shires cannot possibly cover the costs of the necessary services expected to be provided to support the communities. The Local Governments are therefore highly dependent on Commonwealth financial resources.

This lack of resources allows the Shires to be criticized for not delivering quality and efficient services comparable to the main land whilst at the same time Shire Councils feel obligated to provide employment opportunities above “true need” to assist individuals unable to find work in the semi-closed economies of the IOT.

In this context the Department who contributes significantly to the Shires’ operations through the “Support to Community” and “Support to Local Government” Budgets (items in the Department IOT 2013-14 Budget) has the ability to adopt a big-brother attitude about how much money should flow, for what purpose and under which terms with the potential risk of:

- Making decisions contrary to the Local Governments aspirations;
- Making financial allocations for its administrative purposes rather the provision of tangible community services and
- Organizing private service contracts that are not automatically in the best financial interest of the Shires.

With respect to “supporting communities” I recommend that:

- 7. *The primary role and function of the Local Governments to deliver services to support the communities under the WA legislation is upheld;***
- 8. *The Administrator act as arbitrator to ensure that Commonwealth funds allocated in support of the communities are fully applied for such purpose and not used by the Department for other purposes;***
- 9. *A mutually agreed mechanism sanctioned by the Administrator is adopted between the Department and the Shires to secure practical collaboration in delivering effective and non-duplicated support services to the communities.***



Term 2. Existing consultation mechanism undertaken by government representatives including the IOT Regional Development Organisation, and best practice for similar remote communities' engagement with Australian and state governments

As advocated in term 3, the main consultation mechanism between the Australian and State governments and the IOT communities should remain associated with the Shires. It is the “on the ground” inevitable cornerstone of the Australian Commonwealth democratic system.

The temptation to move away from that model on the basis that the Shires may not be sufficiently capable politically biased, or incompetent is a false argument.

This view is often echoed by a minority of Australian citizens who have migrated temporarily or permanently to the IOT, who have experienced different local government standards and have not necessarily had the appetite to engage thoroughly with the locally born islanders who can easily align as “one voice” and have significantly more influence over the Shires.

It is my opinion that the Department could play an active and constructive role to facilitate the “bridging” of such divide. This is a significant challenge when behind the scene or openly some Department officers are advocating Shire abolition instead of Shire construction.

No other Australian communities can be said to be “similar” to the IOT. Climate, geology, environment, local resources, extreme distance from a “supply” Australian Capital City, ethnic mix and above all sovereignty pathway and governance history support that view.

Any community engagement mechanism should reflect this uniqueness whilst consolidating the existing governance model rather than giving reliance to the importation of a “best practice” applied elsewhere. The problem is not fundamentally with the Shires, it is with the lack of economic performance in the IOT and the Commonwealth Government can play a pivotal role in fixing it by reducing bureaucratic obstacles from the Department and other Agencies and creating appropriate technical incentives to attract investors.

The consultation mechanism undertaken by the IOT Regional Development Organization (RDO) is almost inexistent. This is mainly due to the limited funding the RDO can allocate whilst the need for direct engagement may not be as essential since the onus is on the funding applicants to demonstrate community acceptance and support in their applications.

Apart from the “Mining to Plant Enterprise” agricultural research known as MINTOPE, the RDO has not received submissions having any tangible prospect in advancing economic development in the IOT and has had to mainly allocate funds for community projects.

It is my opinion that the RDO should be only concerned with economic development initiatives and the allocation of community grants should be left to the Shires in close collaboration with the Department. This would send a positive signal to the community indicating that effective collaboration in governance can be restored.

The RDO would then need a balanced and more economically focused board membership open to Department and other relevant Agencies officials, Shire representatives, heads of local organizations, captains of industry and qualified economic experts thus allowing better interaction between government representatives and non-government representatives.



To further the effectiveness of the RDO the board should hold engagement meetings or “economic forums” at least twice a year to acquire direct and updated understanding of economic needs from IOT individuals and businesses operators alike.

With respect to “consultation mechanism between the Australian and state governments and the IOT communities” I recommend that:

10. An official consultation framework is devised to facilitate the effective operation of recommendation 6 and that the Administrator oversees the orderly and transparent functioning of such framework.

With respect to “consultation mechanism with the RDO” I recommend that:

11. The RDO economic focus is separated from the community focus and that the later be redirected to the Shires in close collaboration with the Department.

12. A transparent RDO board membership eligibility is established by the Minister taking into account advice from the Administrator, the Department and the Shires.

13. Resources are transferred from ineffective SDAs to provide the RDO with an operating budget and a permanent secretary with economic background and qualifications.

14. A regular “forum style” consultation procedure is established between the RDO board and IOT individuals, businesses and commercial operators for the purpose of advancing the IOT economy.

15. The RDO grants are increased so that IOT organisations or individuals can engage with external business partners and sponsors and present economically robust applications.

Term 4. Opportunities to strengthen and diversify the economy, whilst maintaining and celebrating the unique cultural identity of the Indian Ocean Territories.

The strengthening of the IOT economy is by far the most pressing issue concerning the IOT. A weak economy in the IOT implies automatically that more public funds are required from the Commonwealth to “run the show” and compensate for the lack of economic self-sufficiency within segments of the communities.

Because of its extreme isolation from Australia, modest size and ethnic diversity the IOT requires a tailor-made economic development model and the overarching strategic support from the Commonwealth Government as a whole to facilitate local as well as external private investments.

Ironically the IOT are ethnically and geographically relatively closer to some of the largest economic centres in Asia where opportunities for new investments are constantly in demand.



Beyond the seemingly unquenchable Asian market, investors are mainly focusing on three key “ingredients” to successfully establish a new business: people (knowledge + can-do), land and finance. Assembling a good team of designers/builders/operators is relatively easy accessing developable land is far more difficult and sourcing finance is almost impossible when people and land are not secured.

The Commonwealth Government is confronted with a vexing issue; it needs a strong IOT economy to assist in increasing rates and reducing its operating costs whilst there is a direct frustration of private investment occurring via green tape with the approval processes and via red tape in terms of land release.

Christmas Island

The green tape situation on Christmas Island is characterised by:

- The relentless determination by the Department of the Environment officers to render the whole of island a National Park (currently 65% of the Island) regardless of historic environmental realities ([see appendix 2](#)) or the community economic needs and aspirations (refer to the Shire Town Planning Scheme No.2);
- The lack of a whole of Government public position to support development on Crown land outside the National Park boundaries thus allowing the EPBC Act procedures to frustrate endlessly mining, threaten periodically the mine viability and prevent any potential investors to engage in project feasibilities on these Crown land assets.

The Christmas Island land supply and associated red tape situation should be understood within the following parameters:

- The amount of private land (1.25% of the Island) has marginal developable opportunities often constrained by the owners and in most cases not considered as “investment grade” for medium to large projects.
- The bulk of land development opportunities are within the Crown land portfolio.
- The unpublished policy of the Department that suggests that Crown land could only be released by the Commonwealth once all private assets are developed has no economical merit and is sending a very negative message to genuine investors.
- The land disposal policy used by the Department is contrary to the financial interest of the Commonwealth and has little relevance to the island’s circumstances;
- Without making land accessible to investors the opportunity for Christmas Island to ever reach a self-sufficient economy is fundamentally compromised if not impossible.

It is my opinion that the single most critical factor to enable the strengthening of the Christmas Island economy is the relaxation of green and red tape over Crown land (32.5% of the Island between mining and UCL) and its conditional disposal for the purpose of further mining, agriculture, tourism and affordable housing. For this to eventuate the Commonwealth Government would need to commit and publically declare that “Christmas Island is open for business”. The progressive release of Crown land could then easily be achieved through the introduction of a Christmas Island Crown Land Disposal Ordinance ([see appendix 3](#))



With respect to “strengthening the Christmas Island economy” I recommend that:

- 16. The Australian Government Cabinet explicitly and formally supports public and private economic development initiatives in all areas of Christmas Island outside the National Park boundaries and that such support is communicated to the relevant WA State Agencies via the Administrator.***
- 17. The Administrator oversee the draft of a Christmas Island Crown Land Disposal Ordinance (CLDO) in consultation with the Department, the Shire, Christmas Island Phosphates, other relevant Agencies, heads of local organizations, captains of industry and qualified land and economic experts.***
- 18. The CLDO acknowledges simultaneously the Administrator’s powers to dispose of Crown Land on behalf of the Commonwealth and the Shire’s statutory responsibilities in land development controls under the Town Planning Scheme No.2***

The opportunities to diversify the Christmas Island economy have been well articulated publicised and documented in the *Crown Land Management Plans for Christmas Island* (AGD Sep. 2009) and are now statutorily regulated through the *Christmas Island Local Planning Strategy & Town Planning Scheme No.2*.

The robustness of the planning instruments and their fundamental relevance as a framework to diversify the economy of Christmas Island is largely due to the whole of community’s input during the multiple public and private statutory consultation procedures sponsored by the Department and the Shire between 2009 and 2011.

To illustrate the point above, the Local Planning Strategy has this specific reference about the key long term opportunity for South Point:

“The technical and physical factors that made the Asia Pacific Space Centre (ASPC) possible at South Point remain unchanged”.

This simply indicates that in the future, should the Australian Government (alone or in partnership) decide to control the launch its own satellites in an optimum location close to the equator, Christmas Island would remain an “advanced option”.

The promising MINTOPE agricultural research initiative is essentially possible because it also has its roots and legitimate origin in the planning instruments.

However economic diversification will not be able to materialise adequately until the knowledge about the deep geology of the island is established. This requires the mapping of the basalt layer and cave systems accurately in order to define the underground fresh water aquifer in its extent and capacity and provide information about structural risk areas in the upper limestone formation.

The critical need for this investigation has been called for at all levels for the last six years with no action taken by the Department when it is common knowledge that this is an essential priority in order to proceed confidently with a range of diverse projects.



With respect to “diversify the Christmas Island economy” I recommend that:

- 19. The Administrator directs immediately the Department to investigate the Island Geology in order to determine basalt water catchments and potential structural limestone risks to developments.**
- 20. The Administrator take immediate action to expedite the WA gazettal of the Minister approved Town Planning Scheme No.2 (TPS No.2).**
- 21. The Administrator directs that the strategic vision of the Department is aligned with the Local Planning Strategy and TPS No.2 and that resources be secured for the amendment of the TPS No.2 should it be required for Government supported and or sponsored project.**

Cocos Islands

The ability for the Government to influence economic development on CKI is far less potent than on CI because developable Commonwealth land resources are solely limited to the immediate north of the West Island settlement up to and including the Quarantine station. The Department commissioned two Outline Development Plans in accord with the Western Australian Planning Commission guidelines. The first one focused on the conversion of the Quarantine Station for tourism together with public/private research in land and marine food production (2010) whilst the second established the structure for the residential expansion of the settlement (2011).

No action has been taken by the Department to initiate the early development stages of these plans. That said these plans, if activated, could play a significant role as “economic drivers” or in supporting economic development initiatives elsewhere in the archipelago.

Some 75% 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 the “Home Islanders”.

The Land Trust procedures have changed since 1984 but it is fair to say that the Home Islanders have not being able (or willing) to capture significant benefits out of their land given that a good majority of them remain registered in the welfare system.

The Cocos Cooperative (arguably the largest business entity on CKI and also under the collective ownership of the Home Islanders) cannot re-invest or develop partnerships to “grow” the business because of the systematic redistribution of profits to its shareholders.

This land and business vicious circle is exacerbated when the Home Islanders re-invest their own “savings” in houses in the Perth or Geraldton areas instead of consolidating their economic position locally whilst, of their own admission, many Home Island young couples are desperately looking for a new home on CKI.

A review of the operation of the Land Trust and the Cocos Cooperative and the establishment of action plans shared with the Department with the objective to facilitate/encourage investment initiatives and project development for the benefit of the Home islanders is necessary to improve the situation. Business as usual is not an option.



Well calibrated action plans have the potential to significantly assist in improving the long term economic position of the Home Islanders; in turn it would strengthen the CKI economy and consequently reduce the Commonwealth welfare exposure.

CKI has experienced significant interests from external investors and like in CI they have also failed to succeed for lack of opportunities to “land” their projects.

The other impediment to the orderly development of the CKI economy is the ad-hoc way in which Town Planning is applied. The 2007 Town Planning Scheme needs a full review with the formulation of a dynamic and bona-fide Local Planning Strategy.

This would officially reposition the debate amongst the Home Islanders and the West Island communities and oblige these two distinct communities to focus on how best address the needs and expectations of the CKI community as a whole.

With respect to “strengthen and diversify the Cocos Islands economy” I recommend that:

- 22. The Administrator requests the Department to initiate and resource a full review of the Cocos (Keeling) Islands Town Planning Scheme and the establishment of an economically focused Local Planning Strategy.***
- 23. The Administrator requests the termination of the “leasing arrangement” of part of the Quarantine Station by the department of Immigration with the view to activate the implementation of the Department’s Outline Development Plan and facilitate private investments in tourism accommodation, agriculture, horticulture and marine aquaculture.***
- 24. The Administrator activates a review of the Land Trust decisions and procedures to encourage the trust owners in maximising revenues from their assets through an action plan sanctioned by the owners and the Department.***
- 25. The Administrator activates a review of the Cocos Cooperative operation to encourage the owners in growing the business through an action plan sanctioned by the owners and the Department.***



Appendix 1

Historical synopsis of governance in the IOT

Cocos (Keeling) Islands (CKI)

CKI were annexed by the British Crown in 1857, Queen Victoria granted the islands in perpetuity to the Clunies-Ross family in 1886. The Fall of Singapore in 1942 obliged the United Kingdom (UK) to shift the administrative control of CKI to its Ceylon (Sri Lanka) Colonial Office.

The ultimate governance transfer from the UK to Australia was prosecuted through a double promulgation: The *Cocos Islands Act, 1955* (UK) and the *Cocos (Keeling) Islands Act, 1955* (Australia).

Following the Australian Government dissatisfaction with the Clunies-Ross feudal style of rule over the population of “Cocos Malays” a UN sponsored self-determination referendum through secret ballot was offered to the CKI residents in 1984.

The overwhelming majority (229) voted for “Full integration” to Australia thus rejecting “Free Association” (21) and “Independence” (9).

The Cocos Malays are descended from East Africans, Chinese, Javanese, Indians and Singhalese amongst others. In recent times new family ties have been established with Malaysian Nationals.

Christmas Island (CI)

CI was annexed by the British Crown in 1888; phosphate mining began in the 1890s with indentured workers from Singapore, Malaya and China. The Island was administered jointly by the British Phosphate commissioners and the UK Singapore Colonial Office.

At Australia’s request the UK transferred sovereignty over CI to Australia in 1957 subsequent to a compensation payment for lost revenue (from phosphate resources) to the newly constituted State of Singapore.

The Christmas Islanders, in large majority descendants of the original phosphate miners, had no say in this politico-economic “transaction”.

IOT

The *Australian Citizenship Act, 1984* granted to the IOT residents eligibility to apply for Australian citizenship, voting in Commonwealth elections and social services payments.

The *Territories Law Reform Act, 1992* amended the *Cocos (Keeling) Islands Act, 1955* and the *Christmas Island Act, 1958* were laws in force in the IOT were aligned to Western Australian Laws with the clear intention to afford the CI and CKI Islanders the same rights responsibilities and obligations as those experienced by their fellow Australians.

This was reinforced by the introduction of the *Local Government Act, 1995 (WA)* in the IOT to ensure that the CI and CKI Shires had responsibilities identical to any Local Government on the Australian mainland including the management of their own Town Planning Schemes.



Appendix 2

Historical disturbance of the Christmas Island Environment

In recent times environmental researchers and academics have fancied rebranding Christmas Island the “*Galapagos of the Indian Ocean*”

Whilst this denomination was probably not maliciously intended, it has boosted the perception of the Island as a pristine and undisturbed place in the minds of many.

In fact the historic environmental disturbance of the CI ecology due to mining started in 1898. At the peak of its mining activity Christmas Island’s length of railway per capita was 12.839km per 1,000 people (NationMaster.com) thus the highest in the world or more than 100 times the world’s average length.

The map below, originating from the Shire Local Planning Strategy, indicates clearly why the Galapagos denomination with its “pristine” connotation is a simplistic myth.

It should understood that for every exploration drilling line shown in the yellow area of the map the forest has been systematically cleared to create a 7m wide corridor along the full length of that line.

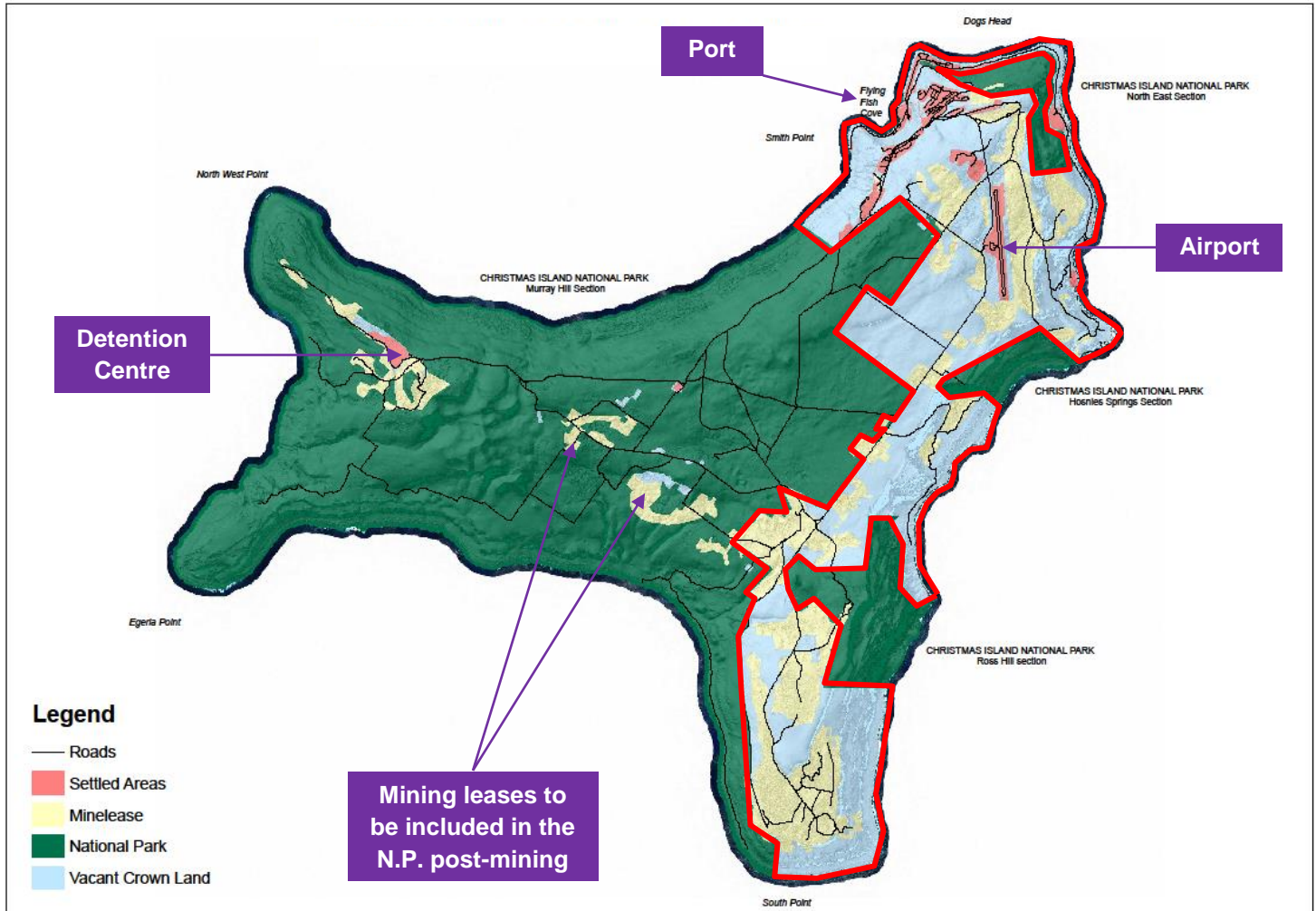




Appendix 3

Proposed Crown land disposal ordinance

Area proposed for the application of a Crown Land Disposal Ordinance (CLDO)



The CLDO would have for main objective to lease vacant Crown lands.

It is suggested that selling land for freehold residential should only be contemplated in close proximity to established areas and at times of sustained market pressures. Other disposals could be accommodated with medium to long term leases.

The CLDO could include but not be limited to the following:

- Reference to the Local Planning Strategy for economic development.
- Reference to the Town Planning Scheme No.2 for land uses;
- Specific reduction of the requirements of the EPBC Act as per private land;
- Holistic allocation of future mining leases (in contrast to the current ad-hoc approach)
- Disposal of land in trust to the Shire (for revenue purposes) or other Agencies
- Disposal of land for agricultural purposes where mining no longer occurs
- Disposal of land for tourism development;
- Disposal of land for affordable housing (an unmet need for local young couples);
- Protocol to process unsolicited proposals (very relevant to an isolated economy);
- Protocol and responsibilities for due diligence and development approvals;
- Eligibility of lessees.