Christmas Island: A question of self-determination
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Chapter 6: Land Tenure and Asset Ownership

The purpose of this chapter is to highlight the importance of land tenure and asset ownership on Christmas Island which are two important issues when assessing current governance arrangements. This discussion links with the previous discussion in that the vesting of religious sites and ownership of its infrastructure requires ongoing funding and community-based decision making. The ongoing preservation of religious sites is of paramount importance to both the Chinese and Malay communities on the island. In addition, land tenure and asset arrangements are critical issues for the Chinese community because they are integral to the location of, and preservation of the many temples located on the island. For example, analysing the land tenure and asset arrangements for the Chinese community in regard to the location of, and preservation of the many temples located on the island is critical. For this reason, involving the community and obtaining their input via a transparent consultative process is essential. At key junctures, land tenure arrangements on the island are confusing, especially where there is confusion around the application of the SDA process. This chapter will also highlight how decisions on the use of Commonwealth land usage is critical to economic development on the island, and therefore requires community input.

Land Tenure

The importance of land tenure arrangements has been highlighted in several Inquiries, Studies and Reports since the recommendations of the *Islands in the Sun* Report and as recently as in Chapter Four of the 2016 JSCNCET Final Report. The *Western Australian Planning and Development Act 2005* (CI) defines land as generally including land, tenements and hereditaments as well as any interest in land, tenements and hereditaments that includes houses, buildings and other works and
structures.\textsuperscript{492} Land tenure then is the relationship between people with respect to the land and is a system that determines who has permissible access to the rights to use, control, develop and/or transfer the land, which include the associated responsibilities and constraints as prescribed in the aforementioned legislation. In this context, land tenure arrangements on Christmas Island have largely remained unchanged since 1992 with the introduction of the applied legislation regime in accordance with the \textit{Islands in the Sun} report. Essentially, Crown land on Christmas Island is land owned and managed solely by the Commonwealth Government. This includes Crown land held under lease, licence or permit or in the case of the National Park where the Crown land has been specifically designated as a National Park.

In regard to the designation of Crown land specifically as the National Park, this initially occurred in 1980 because of the Christmas Island National Park being proclaimed under the \textit{National Parks and Wildlife Conservation Act 1975}. The Park at that time comprised the entire south-west corner of the island, and in 1989, a further proclamation consolidated the previous three stages and further extended its boundaries.\textsuperscript{493} Currently, approximately 85 square kilometres or 63\% of land on Christmas Island is administered by Parks Australia as the Christmas Island National Park.\textsuperscript{494} A large portion of the remaining Crown land is administered by the Commonwealth DJIRDC with the \textit{Land Administration Act 1997 (WA)(CI)} providing a number of land tenure options for Crown land on Christmas Island, such as freehold sale, general leases, conditional purchase leases, lease with option to purchase for

\textsuperscript{492} State Government of Western Australia, ‘\textit{West Australian Planning and Development Act (CI) 2005}’, (Perth: State Law Publisher, 2005), 5.


\textsuperscript{494} Director of National Parks Department of Environment, 2.
subsequent subdivision, licences and pastoral leases. These provisions are specifically prescribed pursuant to Part 6 of the *Land Administration Act 1997* (WA) (CI). These arrangements are also subject to Commonwealth Government policies and procedures, such as the *Public Governance, Performance and Accountability Act 2013* and the Commonwealth Property Disposal Policy. All Commonwealth land on the Island is subject to this Policy. The general policy is for ‘Commonwealth property, having no alternative efficient use, is to be sold on the open market at full market value’. There are three general exceptions to this general policy:

1. Disposal of property for housing and community outcomes: Where surplus Commonwealth property is considered suitable for facilitating an increase in the supply of housing, improved community amenity or the creation of new jobs, the property shall be disposed of under an approved strategy. This decision is made jointly by the Minister for Home Affairs, Minister for Finance and Deregulation and Minister for Housing.

2. Priority sales: These are made directly to a purchaser without having the property first being offered for sale on the open market, for example, where it is considered that a sale to State or Local Governments would optimise housing and/or community outcomes or where Commonwealth funded organisations seek special consideration in the disposal of surplus property to facilitate Commonwealth policy objectives. This decision is made jointly by the Minister for Home Affairs and the Minister for Finance and Deregulation.

3. Concessional sales: These are priority sales concluded at a purchase price below market value. This decision is made jointly by the Minister for Home Affairs

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495 State Government of Western Australia, *‘West Australian Land Administration Act (CI) 1997’*, (Perth: State Law Publisher, 1997), 72–79.
and the Minister for Finance and Deregulation.\textsuperscript{496} The \textit{Mining Act 1978 (WA)(CI)} provides for mining leases to be granted on Christmas Island, which currently allows the mining of phosphate on the island. These provisions are specifically prescribed pursuant to Part 3, Division 1 of the \textit{Mining Act 1978 (WA)(CI)}.\textsuperscript{497} In this regard, the continual availability of suitable Crown land for the expansion of economic activity, including mining, is integral to the long-term viability of the Island’s economic prosperity. PRL supported this notion in their Annual Report 2018, considering that the decision by the Commonwealth based on environmental reasons to decline the application by PRL for further drilling exploration, which would have allowed them to continue their mining program, was extremely disappointing.\textsuperscript{498}


\textsuperscript{497} State Government of Western Australia, ‘West Australian Mining Act (CI) 1978’, (Perth: State Law Publisher, 1997), 21.

Figure 6.1 Land tenure and uses on Christmas Island. Source: Christmas Island National Park Management Plan 2014-2024.

National Park = 63%
Uncommitted Crown Land = 19.2%
Mine lease = 13.7%
Other Committed land = 4.1%
Figure 6.2 Statistical map of land use on Christmas Island. Source: Shire of Christmas Island Local Planning Strategy 2012.
Figure 6.3 Early surveyors’ map of the Flying Fish Cove Area circa 1920 provided in a comparative context where current planning mechanisms are inhibited by the historical establishment of industrial and housing infrastructure in a clustered environment. Source: Shire of Christmas Island Archival Records.
In successive JSCNCET Inquiries, witnesses have consistently argued that the Commonwealth should release land, which together with effective land use policies will help stimulate economic development.\textsuperscript{499} The 2009 Commonwealth Crown Land Management Plan (CLMP) advocated the release of Commonwealth land, primarily for housing and economic development at full market value as a result of the 2006 JSCNET Report of Current and Future Governance Arrangements for the Indian Ocean Territories. Recommendation 2 of the JSCNET 2006 Report was that the Australian Government should adopt the policy that, in future, all Commonwealth land released for development on Christmas Island would be sold at full market value.\textsuperscript{500} Accordingly, the 2009 Report on the CLMP for the IOTs identified Crown land being assessed for conservation, economic, cultural and social values. This assessment provided the basis for a plan of management, which included recommendations on the appropriate future uses of land, land development priorities (i.e., short-term, medium-term and long-term priorities) and management options for those lands.\textsuperscript{501} The 2009 CLMP remains in force today as the Commonwealth’s principal document for land tenure and disposal on the island.

The general principle of the CLMP was to sell and dispose of Commonwealth Crown land that had no alternative efficient use, on the open market at full market value. The Commonwealth reviewed the 2009 CLMP in 2016 because of comments and recommendations in the JSCNET 2016 Final Report and submissions from the community.


\textsuperscript{501} GHD Consultancy and Commonwealth Attorney General’s Department, 1.
As noted earlier in this study, since 1992 the Australian and WA Governments have been party to SDAs for the provision of state-type services to Christmas Island and the Cocos (Keeling) Islands. Delegations provided by an SDA generally give WA officials the same powers on Christmas Island as they would have in WA to carry out state-type functions. In effect, this means that the WA Department of Planning has a critical role in determining local planning decisions. It provides planning and administrative advice to the Commonwealth to ensure the use and development of land are consistent with strategic planning, policy guidelines and planning standards. It also provides advice and assistance to the Commonwealth on coastal planning issues, professional and technical expertise, administrative services and resources to advise the WA Planning Commission (WAPC). The WAPC provides information, advice and recommendations to the Minister on land use planning and land development matters.502

The Shire of Christmas Island is involved in planning for the local community by ensuring that appropriate planning controls exist for land use and development, especially in the context of any Crown land that the Commonwealth intends to dispose. The key mechanism is the preparation and administration of its local planning scheme and strategy. Local planning schemes, scheme amendments and local planning strategies for the Shire of Christmas Island are governed by applied WA legislation and regulations and assessed by the WA Department of Planning and the WAPC under the WA approval system through SDAs. In February 2016, the Commonwealth and WAPC approved the gazettal of the Shire of Christmas Island’s adopted Town Planning Scheme Number 2 and the supporting Local Planning Strategy. The purpose and aim of the Scheme is (a) to appropriately plan for the

Island’s diverse cultural, topographic and climatic characteristics; (b) to provide for future urban expansion in appropriate areas; (c) to enhance and diversify the Island’s economic base through the provision of land for a range of economic activities; (d) to recognise and enhance the Island’s unique heritage, both built and cultural; (e) to provide appropriate controls to protect development from the effects of extreme weather events; and (f) to preserve the Island’s unique natural attributes and environmental values.\textsuperscript{503}

The gazettal of the Shire’s Local Planning Scheme Number 2 replaced the Shire’s Town Planning Scheme Number 1 that had been in force since July 2002 and was out of date in terms of land tenure and development controls on the island. A requirement of the review process for the Local Planning Scheme Number 2 was to adopt a Local Planning Strategy, which provided a comprehensive strategic overview of land tenure and use on the island. This had not been undertaken previously, despite the legislative requirement to do so in accordance with the Town Planning and Development Act 2005 (WA) (CI); the process was commenced in 2006 but never completed. The essential objective of the Local Planning Strategy is to provide a strategic vision and land use plan to guide future development on Christmas Island. The role of the Local Planning Strategy is to balance the needs of the natural environment, economic development and community expectations that will also provide background information and analysis to inform the strategic direction for Christmas Island as a guiding tool in the decision-making process, as well as informing a review of the Town Planning Scheme Number 2.

Ultimately, the land use and development initiatives and directions developed in the Local Planning Strategy are incorporated into a new Town Planning Scheme. As the statutory land use document for Christmas Island, the Town Planning Scheme Number 2 provides certainty and enhancement of the long-term direction that better reflects the changing economic circumstances on the Island as well as the potential unique land use challenges. The obvious purpose and effect of the Local Planning Strategy and the Town Planning Scheme Number 2 was to address issues of land tenure, especially in the context of releasing Commonwealth-owned Crown land for development. This was reflected in the Local Planning Strategy, recognising there was/is a direct relationship between it and the 2009 Commonwealth CLMP. Given that the majority of land on Christmas Island is owned or managed by the Commonwealth, as depicted in Figure 6.1 of this chapter, the outcomes of the land suitability and capability assessment and subsequent recommendations from the CLMP are especially relevant to ensure that land is released in accordance with the local planning processes undertaken by the Shire of Christmas Island through its Town Planning Scheme Number 2 and the Local Planning Strategy. Further, the project consisted of an initial assessment of Crown land on Christmas Island, which provided the basis for a plan of management, including recommendations on the appropriate future uses of land and land development priorities (i.e., short-term, medium-term, long-term priorities).

Importantly, the CLMP recognised that the most effective and recognised land management plan is, and will continue to be, the (Shire’s) Town Planning Scheme and that the Town Planning Scheme offers the most effective way of directing the future land uses on the Island to align with the strategic directions outlined in the

In this regard, the Shire of Christmas Island plays a critical and important role in land management on the island and will continue to do so, given its mandate in accordance with the Town Planning Scheme Number 2 and the Local Planning Strategy, and where the WA Department of Planning also has a strong influence on the local (Shire) planning processes and decisions.

The Shire of Christmas Island Local Planning Strategy provides a comprehensive description and strategic direction of land use on the island that would be integral for consideration in any future governance options for the island. Given that the Christmas Island Local Planning Strategy depicts and recommends the future land use directions for the Island as a whole and its purpose is to guide the future development and long-term sustainable growth of the Island, the logical direction for this strategic development and growth is already well placed with the Shire to manage. Further, most of the land use priorities and opportunities that may require different approaches or have different objectives to future land uses have already been comprehensively identified for implementation in accordance with the regulatory requirements of the Town Planning Scheme Number 2 and therefore can be readily implemented. This posits the Shire in an advantageous position in terms of land tenure and control when considering options for future governance arrangements for the island where land tenure arrangements are integral to the discussion.

This is particularly relevant when considering that the community of Christmas Island will be deciding on the options for its future governance status and land tenure, especially urban development where a logical spatial framework for the expansion and integration with existing and planned infrastructure needs would be

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505 GHD Consultantancy and the Shire of Christmas Island, 34.
506 GHD Consultantancy and the Shire of Christmas Island, 5.
foremost in most of the community’s consideration. Depending on the option of self-determination that the community may favour, the Shire of Christmas Island would be able to facilitate the transition of land tenure and control through its Local Planning Strategy and Town Planning Scheme that is already in place as a regulatory mechanism.

**Asset Ownership**

For the purpose of this section, asset ownership can be considered to mean ownership of buildings, plant and equipment and infrastructure, such as roads, airports and ports. Given that the island economy was originally based around phosphate mining and government services, most asset infrastructure on the island has developed in response to this development. Many community assets are either directly under the control of the CIP Co. or the Commonwealth, or under vesting jurisdiction, such as the road network, or some public buildings by the Shire of Christmas Island. The road network was developed and built for the transport of phosphate from the mining quarries to the ‘dryers’ (the infrastructure needed to air dry out phosphate before shipping) and eventually to the port harbour, following the rapid mechanisation of mining operations as noted in Chapter Two. Similarly, the infrastructure for transporting the phosphate from the dryers to the port is by conveyor and cantilever process, as depicted in Figure 6.4.

As discussed in Chapter Five, expenditure by the Commonwealth is consistent with the Commonwealth’s ownership of the assets. In this regard, the Commonwealth is responsible for operating and maintaining a port on each of Christmas Island and Cocos (Keeling) Islands and Patricks Ports manages both ports on behalf of the
Commonwealth.\textsuperscript{507} While the port is primarily used for phosphate commercial shipping purposes, it also serves to receive and dispatch general freight for the island as well as for immigration purposes. For example, the Commonwealth’s capital expenditure in its 2013–2014 budget on extensions to the Flying Fish Cove jetty was about $6.7 million, capital upgrade to the port gantry and wharf crane was approximately $250,000 and port barge capital replacement was about $2 million to maintain its port assets.\textsuperscript{508} The ongoing expenditure by the Commonwealth on the port precinct demonstrates its obligation to maintaining assets it owns and operates on the island.


\textsuperscript{508} Department of Infrastructure and Regional Development, 11–12.
In the same year (2013–2014), the Commonwealth allocated expenditure (capital and operational) for other major assets it owns, such as the airport, hospital, power station, fuel storage facility, water treatment plant, employee and public housing, Recreation Centre, Customs and Policing, some community parks and public buildings, such as community religious places of worship and public conveniences. The total amount from the 2013–2014 Commonwealth budget for this allocation was around $38 million.509 As noted in Chapter Five, this amount decreased in the subsequent forward budget estimates years primarily owing to the change in the

509 Department of Infrastructure and Regional Development, 6–12.
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funding model between 2014–2015 and the subsequent years because of the commencement of the ‘Indian Ocean Territories Special Account 2014’ from the 1st of July 2015.510 Accordingly, the Commonwealth has responsibility for a diverse and complex array of assets. Similarly, CIPCo. made budget expenditure provision for upgrading some of its infrastructure, as noted by the Managing Director in the CIP Co. 2018 Annual Report where the financial results confirmed the need to increase output to offset the high fixed costs component of island operations.

To assist in meeting this challenge, CIPCo. has been investing further capital into its operations with the objective of improving efficiency.511 This has included new roofing over the dryer’s wet ore bins to provide greater weather protection, new automation throughout the conveyor system and improvements in instrumentation and surveillance to further enhance operational efficiencies.512 Therefore, CIP Co. is a major owner of infrastructure assets on the island and has been since it commenced mining operations (as depicted in Figure 6.5), although the nature and type of the infrastructure has changed over the years. In this regard, any input from the community in future governance arrangements would have minimal impact on CIP Co.’s asset ownership but would certainly influence their land tenure and economic development status.


512 Phosphate Resources Limited, 5.
The other major owner of infrastructure assets on the island, independent from the Commonwealth and CIP Co., is the Shire of Christmas Island that has either direct ownership of public buildings, plant and equipment and some of the road infrastructure (including footpaths), or vesting responsibility. Prior to the promulgation of the local government because of the Islands in the Sun report in 1992, the majority of current owned assets by the Shire of Christmas Island were under the ownership of the Christmas Island Assembly as part of the Commonwealth. The condition of the current Shire assets vary in accordance with their age and use, such as its current Administration building that was the former Christmas Island ‘Asian’ School, as noted in Chapter Two, or the Community Hall in Poon Saan, both of which were built in the 1950s. In this regard, the Shire faces significant building asset management challenges, which principally relate to the high levels of corrosion.
caused by the harsh weather conditions. A high level of routine maintenance is required to protect all building components and minimise the effects of the tropical weather. Maintenance alone for these two assets in the Shire of Christmas Island 2015–2016 budget was approximately $250,000.513

Figure 6.6 Maintenance works on North South Baseline Road undertaken by the Shire.


The road infrastructure assets on the island were valued at $71.8 million in the Annual Financial Report at 30 June 2014, using a depreciated replacement cost method. This value includes roads within the Nature Reserve controlled by the Shire but fully funded by the Federal Government.514 The extensive road network on the island importantly provides access for the community, mining operations, Nature


Reserve (Parks) and the detention facility, and the network of unsealed roads are therefore strategically and financially important to the Shire and the community. The overall condition of the roads is considered appropriate for the current levels of service, although future maintenance and renewal of the Island’s road transport network is highly dependent on continued receipt of Commonwealth grant funding. In the absence of these grants, the network would be at significant risk of infrastructure failure owing to limited alternative sources of funding. This makes this issue a critical one when considering future governance models for the island. The following table provides data about the Shire of Christmas Island’s road assets as recorded in its Assets Register.\textsuperscript{515}

Table 6.1: Shire of Christmas Island Road Expenditure and Projections – Shire of Christmas Island Asset Register

<table>
<thead>
<tr>
<th>Road Type</th>
<th>Dimensions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sealed Roads, No Kerbing</td>
<td>22.00 km</td>
</tr>
<tr>
<td>Sealed Roads, Kerbing Both Sides</td>
<td>12.98 km</td>
</tr>
<tr>
<td>Sealed Roads, Kerbing One Side</td>
<td>6.81 km</td>
</tr>
<tr>
<td>Gravel Sheeted Roads</td>
<td>52.42 km</td>
</tr>
<tr>
<td>Footpaths</td>
<td>9.35 km</td>
</tr>
<tr>
<td>Bridge</td>
<td>1</td>
</tr>
<tr>
<td>Culverts</td>
<td>48</td>
</tr>
<tr>
<td>Signs</td>
<td>673</td>
</tr>
</tbody>
</table>

Critical major strategic asset management is an important issue for all owners of assets on the island, given the highly corrosive tropical coastal environment that results in a reduced lifecycle for metal-based (as well as non-metal) infrastructures. This has been a constant problem for all sections of the community on the island, given the harsh and at times extreme weather environment and also contributes to unavoidably high maintenance and renewal costs for these assets. Even though private asset ownership on the island is minimal, the high maintenance asset replacement cost and the limited source of capital for private ownership to replace these assets is still an issue. However, it does not have any direct financial impact cost to government agencies. This is also relevant to the road infrastructure where the tropical annual wet season causes high rainfall and subsequent damage to the road (especially unsealed) network, which in turn requires routine cyclic and costly maintenance. Further, the remaining useful lifespan of minor infrastructure assets in the tropical environment is highly dependent on the level and timing of future maintenance and makes lifecycle forecasting problematic. This is also a relevant factor for private ownership of smaller assets, such as small businesses. The
continual and regular maintenance of assets does contribute to achieving the maximum asset service life. However, asset maintenance is extremely expensive on the island, and only the larger organisations, such as the Commonwealth, the Phosphate Mining Company and the Shire, are in any position to realistically achieve this outcome.

Chapter Summary

In concluding this chapter, it is observed that both land tenure and asset ownership issues have been raised in previous and current Inquiries, Reports and Studies. PRL (CIP) has restated its requirement for more land to sustain mining operations on Christmas Island, noting in its submission to the JSCNET 2015 Inquiry that it needs to be understood that, without access to additional vacant Crown land, on current parameters, it is unlikely that the operation will be commercially viable beyond 2020. In addition, tourism associations of Christmas Island and Cocos (Keeling) Islands commented that visitor numbers to the IOTs could be increased if suitable land was made available for additional tourist accommodation. Further, that land tenure issues have been of concern on Christmas Island for many years, is demonstrated by the 2010 JSCNET Inquiry Report into The Changing Economic Environment in the Indian Ocean Territories. The Report noted that the absence of a land use strategy or plan has been highlighted as a significant hindrance to business investment and development for both Christmas Island and the Cocos (Keeling) Islands.

Current Commonwealth policy does not include resolving the key issues identified by the Islands in the Sun report or subsequent JSCNET Reports and Inquiry

recommendations that have continually frustrated the community. Therefore, this approach continues to deny the islanders their fundamental rights, ignores cultural and historical sensitivities, maintains an unhealthy level of economic dependency and Commonwealth land ownership and continues to suppress community initiative, development, capacity and self-reliance. It also ignores Commonwealth constitutional, jurisdictional and legislative responsibilities to govern and to provide for the good governance of the IOTs, as noted in Chapter Four. The Shire of Christmas Island has released its Local Planning Strategy and Town Planning Scheme Number 2 that was gazetted in February 2016. However, the release of the final Commonwealth CLMP continues to hinder and influence any meaningful land tenure development on the island, as noted in the JSCNET 2016 Final Report. The essential objective of the Shire’s Local Planning Strategy is to provide a strategic vision and land use plan to guide future development on Christmas Island. The Local Planning Strategy attempts to balance the needs of the natural environment, economic development and community expectations to ensure the long-term sustainable development of Christmas Island. Ultimately, the land use and development initiatives and directions developed in the Local Planning Strategy are incorporated into the statutory Town Planning Scheme. Therefore, it is critical that a positive synergy be established between the Shire’s planning processes and that of the Commonwealth. As the statutory land use document for Christmas Island, the Town Planning Scheme provides certainty and enhancement of the long-term direction that better reflects the changing economic circumstances on the Island as well as the unique potential land use challenges.

Since the Island’s economy has been, and is still, primarily based around phosphate mining, developing alternative economies that include tourism, immigration detention, horticulture, education, and light industry is dependent on land tenure disposal as well as asset ownership and improvement. While the Commonwealth Government has made significant capital investment to upgrade existing facilities
and provide infrastructure for potential new industry, this must be aligned with any future economic development along with recognising land tenure being simultaneously critical to this growth.

In this regard, consideration of future governance options for/by the community will, and must, include these issues where land tenure and asset ownership are important factors, given the heavy historical reliance by the community on the Commonwealth regarding these matters. For example, any self-determination model that means incorporation with either WA or the NT should include the same legislation applying to land tenure where the local government maintains (some) control over land tenure and planning through its Local Planning Strategy and Town Planning Scheme. Similarly, a comprehensive audit of all assets on the island should be undertaken in the process to establish the assets longevity and cost concerning any transfer of ownership from the Commonwealth. Hence, the community must be fully informed during any consultation process of the likely effects of these issues when considering the self-determination options outlined in this study.