

SUBMISSION TO SENATE ENQUIRY INTO FORESTRY AND MINING OPERATIONS ON THE TIWI ISLANDS.

I welcome the opportunity to make a submission to the Senate Environment, Communications, Information, Technology and the Arts Committee based on my three years experience of working and living with the Tiwi Islanders as the Chief Executive Officer of Tiwi Islands Local Government 2002-5.

I attach four papers prepared following my 3yr term as CEO of Tiwi Islands Local Government.

- *Lessons from the Tiwi Islands*: 24th May 2005. Issue Analysis No 55 Centre for Independent Studies.
- *Remote Aboriginal Communities: Where are the Jobs?* Bennelong Society Conference 8th September 2005.
- *Indigenous governance at the crossroads: The way forward*. Issue Analysis No 78. 28th November 2006.
- *Education and Learning in an Aboriginal Community*. (Veronica Cleary) Issue Analysis No 65. December 05.

Although there have been some changes since 2005, many of the issues raised in these papers are relevant to this committee's current deliberations. My wife and I have kept in contact with the communities since 2005 and we currently support two Tiwi girls attending The Friends School in Hobart for their secondary education.

The chief points that I wish to make to the current Senate Enquiry are that:

- To date, forestry operations on the Tiwi Islands have provided few, if any local community benefits.
- There is an urgent need for greater transparency and accountability in the administration and operations of the Tiwi Land Council in relation to its business and commercial interests.
- Governance issues including conflict of interest and the stagnation caused by the Land Council's control of monopoly businesses must be addressed
- Where Federal Government funds are used to support indigenous economic or employment projects which are subsequently sold, these funds should be converted to equity or shares in a company that is retained on behalf the indigenous community.
- If and when forestry operations are suspended in the Tiwi Islands, the company must be required to rehabilitate plantation land to assist the return of native forests.
- Education and the normalisation of indigenous townships are the key to economic success.

Terms of Reference.

- a. an assessment of the environmental, economic and community impacts of existing and proposed forestry and mining operations on the Tiwi Islands including compliance with relevant environmental approvals and conditions;

Although the mining operations of Matilda Minerals (now Stirling Resources) commenced after I left the Tiwi Islands, I was very much aware that negotiations were underway and that many community members were anxious about what was happening. I did attend one Tiwi Land Council Meeting that considered the exploration approval of sand mining at which a number of concerns were expressed by some of the younger members. I noted that these concerns were dismissed in an intimidatory way by a Land Council Manager, with the final comments in the discussion being made by the Executive Secretary of the Land Council indicating that the company had offered to pay \$250,000 and they needed the money. It was the practice of the Tiwi Land Council to table minutes of each meeting at the following meeting but to collect all copies so that these could not be circulated or made generally available. Considering the limited literacy and comprehension of business English by the great majority of Land Councillors, I was concerned that very few Tiwi Islanders had any understanding of what Matilda Minerals was planning.

In relation to the forestry operations which were underway before I arrived in the Tiwi Islands, I was similarly aware that many local residents were becoming increasingly concerned at the scale of the land clearing for the acacia plantations on Melville Island. There was, and had been since the outset of negotiations, inadequate information provided to the general community by the Tiwi Land Council. When questioned, the Executive Secretary would always point to the many years of discussion and the hundreds of meetings that took place. The reality was that the significant meetings were all 'Management Committee' meetings at which only four salaried Tiwi Land Managers and the Executive Secretary were present. Again, minutes from these meetings are not available to anyone outside the Land Council. The Land Manager who made most of the decisions, did not take kindly to any questioning of decisions made and most community members were too afraid or respectful those same Managers as they controlled the distribution of funds from the Land Trust account. At one stage, one of the more senior TLC members expressed his concern to me about the extent of the forestry operation and he questioned the objectivity of the four Tiwi Land Council Managers (of which he was one) who had overseen the agreement, when they were also members of TASMAL (the management group established to oversee the forestry operation), and were being paid a significant fee by the forestry company (\$6,000p.a. was suggested).

In my paper *Lessons from the Tiwi Islands* published by the Centre of Independent Studies I raised the conflict of interest of Tiwi Land Council Members and in particular the four Land Council Managers who were, in effect, the Executive and who were then appointed Directors of the various companies managing related commercial interests and companies such as Tiwi Tours, Tiwi Barge, TASMAL, Port Melville etc. If Land Council Managers and/or members are also directors of business enterprises and are beneficiaries, then there is a question about their

independence in making decisions. This is clearly demonstrated by the fact that there is only one Tour Company, and Tiwi Barge operates a monopoly shipping service. The monopoly shipping service has already been the topic of a previous Senate Enquiry with a recommendation made that the monopoly cease and competition be allowed.

The objective of the Tiwi Land Council of pursuing economic development is to be commended, however it is doubtful if Land Council Members and in particular the Managers act in the best interests of the residents of the four Tiwi Island communities. Some community members are critical of previous ventures of the Land Council where loans of many thousands of dollars have been extracted from community businesses such as the Nguui Club and store, and then have been lost or not returned to the community.

It is difficult to see any community benefit from the commercial operations when numerous requests by the local government authority for information and assistance with community projects are largely ignored or circumvented.

There are three components to the financial benefits of forestry for Tiwi Islanders. The chief beneficiary of the forestry operation is the Munupi Land Trust as currently the bulk of the forestry operation occurs on Munupi land and they receive land lease payments. Although the rules governing the distribution of land trust monies prevent distribution for personal benefit, there were many inventive applications for funds for a range of uses such as travel, new vehicles and boats which benefit an individual or small family group rather than the real needs of the impoverished welfare-dependent community. The Land Council Manager exercises power over the fund making it difficult for community members to question or express opposition. The second beneficiary is Pirntubula Pty Ltd which was set up in 2002 to receive income from the TLC's business and commercial enterprises. It is understood that this company receives other lease payments related to forestry (eg Port Melville) and receives a percentage of profits from the exported timber. It has been reported that this fund was used to support the development of Tiwi College and commercial opportunities, but it is also understood to have funded a range of perks for key Land Councillors such as international travel (2002) and many other trips. The main complaint of Tiwi Islanders is that no-one knows how much this fund has accumulated and/or what its expenditure is used for. It seems that the Executive Secretary of the TLC maintains a very tight and secretive hold on this account with few regulatory requirements for annual reports, ASIC reporting or other accountability. In part, this led to the petition signed by more than half the adult population to the Australian Parliament in 2006, asking the Minister to conduct an inquiry into the TLC and to remove the Executive Secretary for his 'undue influence'.

The third benefit has undoubtedly been the employment of a small number of Tiwi Islanders on the plantations and as Land Rangers (paid for by Great Southern). More government funds have been provided to support the training and mentoring of these employees. It clearly has to be a very long-term plan to lift employment levels as the majority of the adult population is illiterate, lacking in skills and a work ethic in relation to paid employment. At the time I left the islands in 2005 there were only a handful of Tiwi islanders employed compared with the 100 plus workers flown into work the project. There were nevertheless many managed visits to the project by

Ministers, public servants and media all of whom were given the impression that the project was successfully employing large numbers of Tiwi Islanders.

Tiwi College is promoted as an opportunity to achieve a high level of secondary education and 'job ready' workers without leaving the islands but at this stage, its main functions are much more modest as it struggles to provide remedial English, basic nutrition and social skills for a few days a week. Although the new college faces many challenges and their staff are doing a great job under the circumstances the critical factor in providing a meaningful and successful education system surely lies in establishing a sound early childhood and primary education system. This issue was addressed at length by my wife in her paper "Education and Learning in an Aboriginal Community". The development of Tiwi College was undertaken without the consultant's chief proviso that education on the islands could not be improved without a level of strategic cooperation with all the existing education providers on the island (2 NT Gov primary schools, 2 Catholic Education primary schools and a Catholic Education secondary school). There is still little or no cooperation between the education providers. It may be valuable for members to read the consultants report to the Tiwi Land Council on the establishment of a secondary college where it's relevance to forestry operations is discussed.

If, as currently rumoured, the forestry operation is suspended in the near future because of the current economic downturn as has happened with mining, the viability of Tiwi College must also be questioned. The TLC originally promised to support this private school with profits from its forestry operations but it is clear that this is unlikely and the huge cost of maintaining and operating the school is going to become an increasing burden on taxpayers. It is simply not sustainable in its present form. I hope that my fears about the sustainability of the forest operation are not true and the Tiwi Islanders are not left with large tracts of their land overgrown with acacia plantations as well as the loss of their native forests. If and when operations close, consideration needs to be given to the rehabilitation of lands replanted for forestry, similar to rehabilitation for land used for mining. The Islands have already been left with plantations of Cyprus and Caribbean Pine plantations from previous exploits that have seen the loss of native forests and areas that have been left unmanaged.

- b. A review of governance arrangements relating to existing forestry and mining operations on the Tiwi Islands, including the examination of consent and approval processes to date;

The original forestry operation was established by Sylvatech which negotiated leases with the Tiwi Land Council. This company together with the Land Council was active in attracting substantial government funds, both from the Territory and Australian Governments, for infrastructure including roads. This support was provided by governments wishing to support indigenous employment opportunities and forestry was sold to government as a successful business with the potential of providing substantial income and employment. The company also marketed investment packages to investors. The sale of Sylvatech to Great Southern in 2004 for around \$41M resulted in the distribution of this money among shareholders including the four or five non-Tiwi Directors who held the majority of shares. This should raise

questions about the sale of assets supported by significant government funding (in this case, many millions) which had been granted specifically to assist indigenous employment. Should monies contributed by government be repaid when assets are sold for profit?

I would recommend that any financial assistance provided to a company on the basis of providing indigenous economic development or employment should be on the condition that assistance provided be converted to equity or shares in the company held on behalf of the indigenous community. This would prevent other non-indigenous entrepreneurs profiting from sale of businesses and protect local equity.

My understanding of the Land Rights Act is that Land Councils are prevented from becoming involved in commercial operations to prevent conflict of interest and nepotism. The need for transparency in decision making would be vastly improved by an amendment to the NT Land Rights Act to require that minutes of all meetings including executive and managers meetings and decision making forums be available to the public, or at the very least to all local residents and the local shire council. There are comments in TLC annual reports indicating that minutes are available in Land Council offices, however this not the case as each year's minutes are sent directly to the Archives office and are not publicly available until the statutory period of time has elapsed.

There were numerous examples that I witnessed where members were told that they were breaking the law if they made public any minutes of TLC meetings. On one occasion the executive of the local government authority (TILG) of which the then chairman of the land council was a member, requested a copy of some minutes relevant to local community business. This was subsequently refused by a non Tiwi staff member of the Land Council, after which a letter signed by the Chairman of Land Council on behalf of TILG was still refused or more specifically ignored. On another occasion members became aware that the TLC's Executive Secretary was using a rubber stamp to sign a letter from the Chairman of the Land Council, of which the Chairman had no knowledge and was not able to sign as he had not been to Darwin at the time. It is understood that this matter was referred to the Federal Minister by the NT Government. A request was made for the release of minutes under Freedom of Information, only to be told that Land Councils are exempt from FOI. For full transparency and to regain the confidence of the residents of communities, the copies of all minutes of managers (executive) meetings and meetings of the Tiwi Land Council should be made public.

- c. In respect of forestry operations an examination of the adequacy of contractual commercial and legal arrangements between project proponents and operators and the Tiwi Land Council.

Comments have already been made concerning the conflict of interest of directors and payments made by the former forest operator. I have no knowledge of arrangements with Great Southern, however I expect some similar arrangements are in place.

There were a number of issues concerning the use of roads and their maintenance during my time as CEO that were not resolved and in recent discussions, still seem to be a concern. As CEO, I was keen to develop employment opportunities for Tiwi people and one significant opportunity was for the local government authority to provide the maintenance and construction of roads within the forestry operation. All attempts to achieve this were openly resisted by the Land Council and Sylvatech. Every obstacle was placed in our way with disputes by the Land Council over ownership and control of the main roads on the islands and specifically the road between Paru and Pirlangimpi, the main route for the forestry operation. It was clearly set out in the NT Land Rights Act that main roads are outside the control of the Land Trusts and their management is a local government responsibility. This was confirmed at a meeting attended by senior NT public servants in 2004, however attempts to finalise a road maintenance agreement with Sylvatech were unsuccessful. It was interesting that at that meeting the TLC Executive Secretary put forward a plan that all road maintenance monies be paid to the land council, which would then contract the work. This suggestion was negated by NT Government officers who attended the meeting. Earlier, during the extended absence overseas by the TLC Executive Secretary, I was given a copy of a heads of agreement between the construction company Henry Walker Eltin and the TLC, whereby Henry Walker would be the preferred contractor for all works on the islands and the land council would receive a payment of 10% for all contracts.

Tiwi Islands Local Government Works Division already had plant and equipment for roads work but it was old and constantly under repair and many items of equipment were beyond their serviceable life. An application to the Aboriginal Benefit Account for funds to purchase new equipment to enable our local road crew to undertake the work was frustrated and eventually opposed by the Tiwi Land Council, undoubtedly to support their argument that the local government could not, and should not be allowed to do the work. Its counter proposal was that the TLC would set up a Work & Plant Authority to receive ABA and government funding to contract out the road work. I was also disappointed that approaches by local government to attach employment outcomes to the funding that was eventually provided by the NT Government for the necessary road upgrades, were ignored.

There seems to be a never ending eagerness by the TLC to bring in outside contractors to undertake all their infrastructure works, even including such simple things as landscaping around their Nguuu office when I was there. This was contradictory to the numerous funding submissions made by the TLC where funding was sought on the grounds of creating employment for local indigenous people and 'developing a Tiwi economy'

- d. an examination of the economic opportunity costs associated with existing developments including forestry operations

It was disappointing that although substantial financial assistance was provided to the forestry operation to create indigenous employment, the employment outcomes are still minimal and requiring extensive government training support. For example, the initial project involved the establishment of an acacia nursery largely funded by government at Nguiu which provided a substantial number of local jobs, particularly for women. This nursery was closed before I arrived with seedlings now grown and shipped from Darwin by a private operator.

The economic opportunities associated with existing developments on the islands including forestry would be greatly increased if somehow, a greater level of cooperation and coordination between the all powerful Land Council and the democratically elected Tiwi Shire Council could be achieved. In my time on the islands, the development of the Tiwi Bombers football team, the upgrade of the Nguiu oval to NTFL standard, football clubrooms and social facilities would have been much more speedily achieved if the separate efforts of TILG, TLC, TITEB (the training body) and Nguiu social club were combined at the outset. Instead, personal grievances prevented any request or proposal from the local council TILG being considered. The highly developed Nguiu market garden, nursery and golf course was lying abandoned at the time I left the islands and yet from time to time, there were a number of proposals made separately by one organization to use this facility but each was opposed, ignored or diminished by another organization. Further development of roads, transport and bus services across the islands offers great opportunities for tourism development but the TLC steadfastly refuses to consider or ignores any proposals that it does not control.

- e. an examination of the prospects for alternate economic development opportunities and impediments for the Tiwi Islands including sale and promotion of cultural products, community development activities, land and sea management, an opportunities for involvement in future carbon trading and emissions offsets schemes; and

One of the obvious areas for economic development is the development of tourism on the islands. There are a huge number of opportunities as the islands are a short distance from Darwin and easily serviced by air. In addition to air there is a comfortable ferry (the Arafura Pearl) that has been struggling to continue its service due to restrictions placed on its operation by the TLC. The ferry has the capacity to carry roughly 100 passengers, however limits are placed on the number of tourists by the TLC which insists that all passengers undertake a tour with Tiwi Tours. It is interesting that Tiwi Tours is leased to a national tour company under arrangements with the Land Council but it is the only tour company in the Northern Territory that doesn't operate weekends. At the time the ferry service commenced there was interest by an indigenous tourism operator in operating tours on Melville Island. This was directed to the TLC and as a result nothing happened. The requirement of approval by

the Land Council when it already has a direct interest in Tiwi Tours places limitations on any tourism expansion.

There should be an audit across all communities of all employment opportunities to identify areas where local people could replace contractors and the large number of non Tiwi staff working on the islands. An area where there is great opportunity is in housing where commitments now exist for the construction of large number of new homes. Although on the surface attempts have been made to employ and train young Tiwi workers one needs to ask the question why? After all these years are there no fully qualified tradesmen.

Greater economic independence will be achieved if the four Tiwi Islands townships can be separated from the Land Council's control through lease agreements which do not require permits or control commercial interests. In this way, they can become freely accessible to visitors, tourists and traders resulting in the expansion of accommodation facilities, retailing, art centres and tourism ventures with far greater employment opportunities than forestry will ever provide. The Land Trusts can retain land across the islands for private use and development as they wish but the residential communities must be normalised to provide the Tiwi people with the economic opportunities that other Australian communities achieve.