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Via Email eca.sen@aph.gov.au

Senate Standing Committee on Commonwealth Department of Environment, Communications and the Arts - **Submission to the inquiry into forestry and mining operations on the Tiwi Islands**

Please find **attached** a Report addressing the existing and proposed forestry operations on the Tiwi Islands. The Report does not address the mining operations as we believe that the forestry example is evidence enough of the complete failure of the law, Government, science, the market and the Tiwi Land Council to deliver outcomes to the ordinary Tiwi people and the environment.

We urge all members of the Senate Committee to put aside the 10 years of impenetrable rhetoric about the benefits of the forestry and resource activities on the Tiwi, and have a sober look at the reality that the Plantations have only derived a benefit to the few who support it by directly disadvantaging the rest of the Tiwi community. There is no success story here. The Plantations themselves have caused the loss of job opportunities, economic wealth and community development. Let alone the immense threat being posed to one of Australia's ecological treasures; there is an equally immense threat to 2,500 Tiwi people's future economic sustainability, community and wellbeing being tapped by a private company which should cause disgust across all party lines.

On the eve of Australia adopting the UN Declaration on Indigenous Rights, this is a critical moment in time to recognise and prevent the further waste of the all the Tiwi people's financial and human capital being funnelled by the Land Council and Great Southern to profit themselves and investors, and redirected towards the significant opportunities in valuing the strong Tiwi human capital and environmental treasure of the Tiwi Islands.

It is abundantly clear that the idea that the ordinary Tiwi people support the Forestry Plantations has been a well orchestrated myth. The Tiwi people have now signed 2 petitions calling out for help and we urge the Senate to finally listen, travel to the Tiwi Islands and talk to all the ordinary Tiwi, in language, and not through the selected few who rule over it. The EDO(NT) would look forward to any opportunity to discuss its submissions with the Committee.

Yours sincerely

Mark Cowan¹

¹ Of the Environmental Defender's Office (NT). I hold 2 degrees in Law and Environmental, Regional and Local Government Planning. After practicing as an Environmental Planner in Queensland and Overseas, I practised in Property, Planning and Environmental Law in Australia's leading National Legal Team at Blake Dawson. Between leaving private practice and coming to head up the EDO (NT), I worked in remote Territory indigenous communities from Borroloola and Ngukurr to Bulman, Timber Creek, Kalkaringi and Lajamanu as a lawyer with the North Australian Aboriginal Justice Agency (NAAJA) addressing indigenous inequality.

The Real Tiwi Island Story

A report into the effect of the Logging and Forestry Plantations on the Tiwi Islands – Northern Territory





April 2009

EXECUTIVE SUMMARY

This Report is organised as a response to the unending claims and rhetoric made by the joint operators of the native forest logging and plantation project (**Plantation Project**) on the Tiwi Islands, Great Southern (including its subsidiaries and predecessors) and the Tiwi Land Council.

Due the lack of transparency of the Plantation Project and Tiwi governance, there is little choice other than to source much of our information from the scant publicly available sources and ordinary Tiwi people's stories. However, we believe that the available information shows a disturbing reality from which our submissions are drawn.

We apologize for the length of this submission. However, there is a long list of issues that have been created by this project over its 10 years, which together point to systemic issues with environmental management, regional planning and ingenious governance on the Tiwis. It is hard to escape the conclusion that the Land Council has no idea what it is doing, and is a deeply failed institution. This has worked to the great advantage of Great Southern.

In addition to a number of submissions to improve these areas throughout this Report, the EDO(NT) calls for an immediate halt to the Plantation Project on the Tiwis for breaches of environmental laws, the abolition of the current Land Council structure of control over the community, and support and investment for Tiwi people to come together and decide their communities own future.

Our grounds are as follows.

The Environmental and Social Impacts are severe, irreversible and indefensible

- The Plantation Project directly threatens the loss of entire-sub species from the Earth, particularly the Masked Owl and Butlers Dunnart. It also threatens some of the most pristine Eucalypt forests and habitat in Australia, and the last real refuge for native wildlife from the cane-toad and other mainland threats in the Northern Territory.
- The Plantation Project contravenes the rights of many ordinary Tiwi people under the UN Declaration of Indigenous Rights to protect and maintain their traditional law, culture and heritage. The breach of these rights through the support of an indigenous organisation or otherwise does not change this reality.
- The only Government control that has ever been placed on the Plantation Project was in relation to 5 single listed species, and:
 - The clearing of pristine Eucalypt Forests and habitat of many important and special native species has been allowed without any Government control or mitigation
 - The Pollution and contamination of the Tiwi environment by the Forestry Plantations have been allowed without any Government control or mitigation
 - The EDO(NT) is not aware of any of the environmental impacts from the construction of the Melville Port, the new shipping operations it has brought into the sensitive coastal and marine environment, or the construction of other forestry infrastructure being approved, controlled or mitigated in any way by Government.

- The Project has created more threatened and endangered species on the Tiwis than existed before it commenced. The Masked Owl which was covered by the EPBC Act approval has not been protected, and has moved in status from threatened to endangered as a result of the Forestry Plantations.
- Great Southern and the Land Council conducted one of the largest known illegal clearing actions in Australian history when it breached the EPBC Act. This illegally cleared threatened species habitat.
- Any expansion of the Project, particularly in combination with the predicted impacts of climate change, will be disastrous for the ecology, society and traditional culture of the Tiwi Islands.
- EDO (NT) believes that it is clearly inevitable that so long as the Plantations remain, they will seek to expand and soak up more of the community's resources into an environmentally, socially and economically unsustainable future. And therefore it is a critical moment to alter this course.

The Failure of Australia's Environmental Management System

- The only impacts which are subject to any Approval are those impacts on 5 single fauna species listed as threatened under the EPBC Act. No other environmental impacts have been approved. Yet the Project has still illegally cleared habitat of these species and systematically failed to comply with its obligations to protect these 5 species under this Approval.
- Those threatened species listed since the EPBC Act Approval in 2001 (Bare-footed Tree rat and hooded robin) have had their habitat cleared without any control or mitigation
- The Northern Territory Government never regulated, assessed or approved any of the environmental impacts of any part of the Plantation activities carried out on the Tiwis.
- EDO(NT) believes that Great Southern and the Land Council may have seriously breached native vegetation and species protection laws which exist in the Northern Territory, and believe this should be investigated and enforced.
- No Environmental Impact Assessment has ever been undertaken for any part of the Project by either the Northern Territory Government or the Commonwealth
- Great Southern and the Land Council has breached the Northern Territory Code of Practice for Forestry Plantations which requires full environmental impacts assessment, native vegetation clearing approval to be obtained and full offset of vegetation and habitat cleared to have been provided (amongst other requirements). As this Code has been systematically breached, the Commonwealth Minister should revoke its approval of the Code and regulate the export of the Native Timber and Plantation Timber from the Project.
- EDO(NT) believes that Great Southern may have made misleading statements to Investors regarding the nature of the Plantations and this should be investigated by the ACCC immediately.
- EDO(NT) is not aware of any reason why the Melville Port, Construction Village and other Forestry Infrastructure has not been referred to the Commonwealth for approval under the EPBC Act.

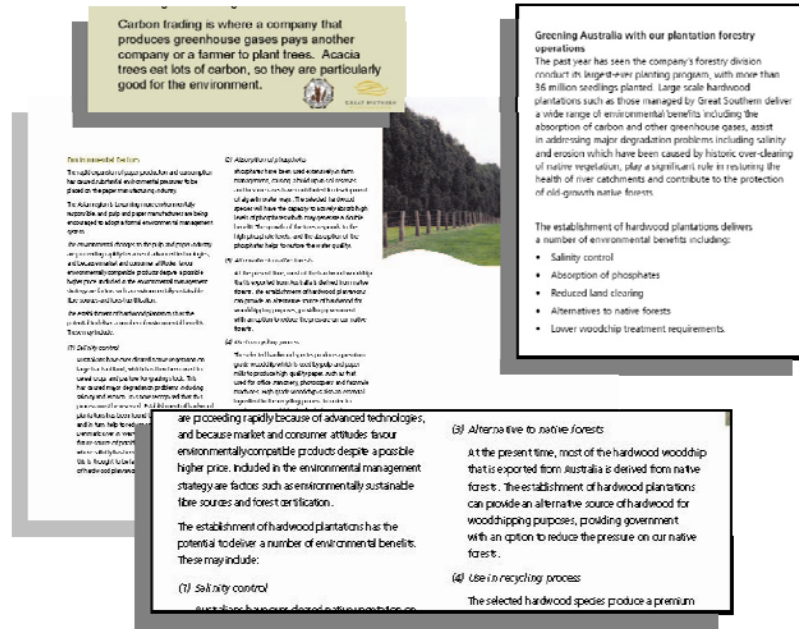
The Economic and Community Impact and Lost Opportunities

- MIS Forestry Plantation business on the Tiwi Island has been an extremely bad idea in economic terms; the Land Council has pursued this area of economic development merely based on personal preference rather than any economic sense.
- It looks like the Land Council will have subsidised the normal private operating costs of Great Southern's Plantations anywhere up to 100 million dollars by first harvest in 2013 by using Tiwi people's Public funds which are supposed to be spent "for the benefit of" ordinary Tiwi people. The project has been a windfall for Great Southern on account of public funds for the benefit of Indigenous people.
- All the money available from Public resources to fund all the aspects and opportunities for the Tiwi community has been spent on Forestry Infrastructure and support. This has created a severe loss of employment opportunities for Tiwis in community and professional service employment and tourism on the Island. The Plantations have merely created more social problems and community division, or replaced old ones with new ones. A few new jobs have been created by completely destroying the opportunity for many more jobs.
- The Land Council has demonstrated a complete inability to represent Tiwi people and operate in their interests. It has directly conflicted with the restrictions on its power under the *Aboriginal Land Rights Act* and has calculated to control the Island, in both public services and private enterprise, so that it can direct all the resources on the Island to those who support it and the Plantation Project.

- The Tiwi Islands has always been in a prime position to develop Tourism on the Island. Yet the Land Council has directly apposed this in favour of Resource exploitation.
- The Tiwi Islands, like many indigenous communities, is crying out for local Tiwis to deliver their own community and professional services to help nourish and sustain the community. This is where real economic sustainability lies, in building capacity in individual Tiwi people to run and value add to their own community. It also helps broaden power and control of the community evenly. Training Tiwi people to grow Investors trees does not deliver any services to the Community at all. If the forestry project continues more resources will continue to be lost to the community by paying outsiders for local services, and the remaining resources will be wasted in using them to benefit more outsiders through Forestry services. It is a completely illogical means of trying to address the sustainable future of the community.
- There are many economic opportunities in environmental management and protection on the Island, particularly through Caring for Country and Indigenous Protected Area programs. These types of opportunities have demonstrated in other indigenous communities that they bring many social and community benefits. The use of the Indigenous Rangers concept by Great Southern has been a perverse means of running it own operational costs and supporting the destruction of the environment, whilst co-opting the image of the successful environmental protection these programs have achieved across the Top End.
- Carbon and Biodiversity offset markets present a real opportunity for Tiwis to improve community wellbeing and sense of worth and engagement in traditional culture whilst deriving real economic value and returns. The availability of these opportunities demonstrate that where there is economic value in protecting the environment there is not logic in claiming that the only economic future is in destroying it.

1. THE INDEFENSIBLE ENVIRONMENTAL AND SOCIAL IMPACTS

The Proponents have been telling Investors, the Public and Tiwi people that the Tiwi Islands Plantations Project would be good for the environment.



Great Southern PDS for Forestry Plantations (including Tiwi) 2007 / 2008 and Annual Report 2007 and Great Southern Tiwi Forestry Story Slideshow 2007

The Spokeman for Great Southern, David Ikin has described the logging of native forests over the years in an amazing number of ways

“Its clearing the trees in the area, more trees that go in that are cleared, u put a word on it, we use the word conversion”

“its converting eucalypt open forest woodland into jobs for indigenous Australians”

“The Northern Territory Environment Centre has described what we are doing as clear felling. But this does not resemble clear felling”²

1.1. THE TIWI TREASURE

The international ecological significance of the Tiwis, and its critical importance too many ordinary Tiwis in maintaining their customary law and traditional practices, is being ruined by the Plantation operations. This must be clearly and honestly appreciated by those who can influence its future.

The lack thereof from the Government and main-stream Australia has been a key to explaining why the destruction of the Tiwi environment and Indigenous culture is being allowed.

1.1.1. ECOLOGICAL TREASURE

² David Ikin in Background Briefing by the ABC

North Australia stands out as one of the last large natural areas remaining on Earth. Containing unparalleled tracks of wild tropical savannah, Australian National University's leading scientists describe it as important as the Amazon Rainforest, Antarctica's polar wilderness and the forests of Alaska and Canada.³ Melville Island in the Tiwis is the biggest island in North Australia (the second biggest Australian island after Tasmania), and its 10,000 years of isolation from the mainland has created a highly unique ecology, including the evolution of at about 40 endemic species and subspecies found nowhere else on Earth.⁴

Indeed leading scientists have described the Tiwi islands as the "jewel in the crown" of the Northern Territory's environment⁵, and it has been designated as a "site of international conservation significance" by the NT Government under its *Parks and Conservation Master Plan 2005*. It is as important for protection in Australia as Kakadu, West Arnhem Land Plateau, The Kimberly's, Fraser Island and the Daintree.

Occupying the wettest extreme of the Territory (and Australia), it contains the most ecologically rich and tallest eucalypt forests in the North, endemic treeless plain communities, and some of the largest known intact regional strands of mangroves, monsoon rainforests and melaleuca wetlands. Beyond the unique communities of localised species, it provides essential habitat for birds, bats and butterflies traversing from the mainland or migrating to the Indonesian Archipelago.

For its endemic species, the Plantation Project presents the real and present threat of complete extinction from the Earth. Too those species it shares with the mainland, the Island presents as the only remaining effective refuge from unstoppable threats sweeping North Australia (particularly the cane-toad), making it vitally precious for biodiversity conservation for these species future, such as the Brush-tailed Rabbit Rat which is likely to be extinct on the mainland Territory in 7 years.⁶ Species like the White Spotted Northern Quoll have already had to be removed to the protection of the Territories's Islands to save them from extinction by the cane-toad.⁷



Photos of Tiwi Islands Coastline and different ecosystems – Tall Eucalypt, Wet and Dry rainforest, Melaleuca Communities, Mangroves and Riparian Waterways.⁸

³ John Woinarski, Brendan Mackey, Henry Nix & Barry Traill, *The Nature of Northern Australia*, 2007 ANU Press.

⁴ At least a further 19 species are only found elsewhere outside Australia

⁵ The Nature of Northern Australia – natural values, ecological processes and future prospects by John Woinarski, Brendan Mackey, Henry Nix and Barry Trail 2007, ANU. And background briefing - ABC

⁶ Commonwealth Conservation Listing Advice of Brush-tailed Rabbit rat under EPBC Act.

⁷ <http://www.smh.com.au/news/environment/wildlife-faces-extinction-despite-territorys-vastness/2007/09/11/1189276719749.html>

⁸ **Source** Pual Munns, John Woinarski, Kym Brennan, Ian Cowie, Ralee Kerrigan and Craing Hempel – Biodiversity conservation on the Tiwi Islands, Northern Territory August 2003 (Also source of Cover photo of Eucalypt Forest). ABC Local: Anna Daniels (Coastal Scene)

1.1.2. INDEGINOUS CULTURAL TREASURE

The Tiwi women and other ordinary Tiwi people have now told the Government that their customary law, culture and practices are being taken away by the Plantation Project. Even as Labour adopts the UN Declaration on Indigenous Rights their plea is being ignored.

Natural ecosystems undeniably underlie the core of Tiwi traditional culture, and it cannot be denied that the destruction of Tiwi Country described in this section:

- infringes their traditional rights as indigenous people to their customary law and practices; and
- contributes to existing, and creates its own new negative social impacts (such as mental and physical health, sense of wellbeing and “sit down” mentality)

As recognised by CSIRO Studies on the issue:

Many Indigenous people living in remote areas have a heightened sensitivity to ecosystem change due to the close connections that exist for them between the health of their ‘country’, their physical and mental well-being and the maintenance of their cultural practices. A biophysical change manifested in a changing ecosystem has, for example, the potential to affect their mental health in a way not usually considered in non-Indigenous societies.⁹

Conversely, a recent review of the Indigenous Protected Area program (which includes areas like Groote Eylandt and Dhimurru) by the Commonwealth Department of Environment and Heritage found that involvement in environmental protection of Country by indigenous people under this program positively contributed to early childhood development, improved early schooling engagement, reduction in substance abuse and restoring community relationships and reinforcing family and community structures.¹⁰

Therefore the social problems of indigenous communities are contributed to as much by a break down in tradition and culture through the destruction of their environment, as by the lack of engagement and opportunities in modern economic life. Indigenous people have both the right to live a traditional lifestyle and the right to engage in modern economic development, but just like any other community their desires are not homogeneous. However, where some Tiwi enforce the exploitation and logging of the ecosystems on which other Tiwi traditions and culture completely depend – this is not a choice which seeks any compromise with the inherent conflict, and its claim to be the solution to the social issues of the community is self-defeating, as it only replaces the social issues it addresses with other ones (or re-distributes them in a different pattern across the community).

The question must be asked why equally alternative employment opportunities which do not conflict with traditional life and culture and protection of the environment have not been pursued on the Tiwis? The need for local indigenous people to be employed in local community and professional service provision has been obvious all along, and so too has the huge Tourism potential.

The answer appears to be that a small group of Tiwi men under the influence of a white administrator have simply decided the future of all Tiwis is in resource exploitation on a personal preference and enforced this decision by attempting to take control of the entire resources of the Island under the authority of “traditional Tiwi decision-making”, which concentrates all power in a few men and at the complete exclusion of all women. Yet how can traditional customary law developed over 100s of thousands of years without any concept of modern resource extraction and exploitation now ensure the discretion and decision of these men is exercised responsibly to the traditional law from which they claim power? And have the Tiwis ever agreed that they wielded such claims to traditional leadership? The Land Council appears to accept the traditions which give them concentrated power, but reject those traditions which control that power

⁹ Donna Green, Climate Change and Health: Impacts on Remote Indigenous Communities in Northern, CSIRO Marine and Atmospheric Research Paper 012 Australia

¹⁰ Brian Gilligan, The Indigenous Protected Areas Program 2006 Evaluation – Department of Environment and Heritage.

1.2. THE DESTRUCTION OF THE TIWI ENVIRONMENT AND CULTURE UNDER THE EPBC ACT APPROVAL

The same mistakes of the past in Southern Australia are now being made again today in the North. Yet this time they are being made on the most marginalised of all Australians.

Using chains dragged between bulldozers, the Plantation Project has clear-felled nearly 30,000 hectares of the most ecologically rich parts of the tall eucalypt forests on Melville Island to the soil since 2001 in order to sell the native timber and establish plantations of *Acacia Mangium*. *Acacia Mangium* is recognised as a weed in the Territory and presents significant risks to the environment. Not surprisingly, studies have confirmed that it does not provide habitat for native species.¹¹

After chaining the forests, the majority of vegetation was burnt. Most tragically, the timber for which the ecosystem was destroyed initially sold at a \$700,000 loss to Asia, and brought no economic benefits or jobs at all to the Tiwi people. It appears the money that has been made since then has been spent on building bigger roads to allow more trees to be logged.

The stated intention is to increase the Plantation Project up to 100,000 ha of eucalypt forest. Great Southern already holds a lease option over the full 100,000 hectares.¹² This would be equivalent to clearing other national treasures like 83% of the Daintree or 63% of Fraser Island.

The clearing has occurred consistently from 2001 to 2009 in cycles driven by the Managed Investment Scheme process, which source Investor's capital to fund the logging of the native forests and the establishment of the Plantations.

To Log the native forests and establish the Plantations, Great Southern must get money from investors, and investors will only pay the money if they can receive the tax incentive for "carrying out a business", which Great Southern guarantees. To claim the tax incentive, ATO requires their money to be spent within 12 months of being paid to Great Southern. Accordingly once receiving the money Great Southern has to spend it rapidly on all the major activities to establish the Plantations (being those activities responsible for almost all of the environmental impacts). The activities which cause the greatest impacts on the Tiwi environment are being driven by the constraints of tax incentives, not by the environmental constraints of the land, the need to carefully consider community impacts and undertake careful (and characteristically long) traditional decision-making processes, or even the changing market demand for the product.¹³

The majority of the clearing (about 13,500 ha) has occurred only recently from 2006 since Great Southern has taken over successfully selling the Plantation to investors, making it a project which has occurred in under the nose of all the lavish contemporary commitments by Australian Governments to prohibit large scale clearing, to achieve ecologically sustainable development and address climate change.

The process this Project followed for its commencement has been a sham, and has clearly and directly conflicted with almost every provision of the Intergovernmental Agreement on the Environment, the

¹¹ *Environmental relationship of the brushtailed rabbit-rat, Conilurus penicillatus, and other small mammals on the Tiwi Islands, Northern Australia*, Ronald S.C. Firth, John C.Z. Woinarski, Kym G. Brennan and Craig Hempell; *Journal of Biogeography* (J Biogeogr.) (2006) 33, 1820 – 1837.

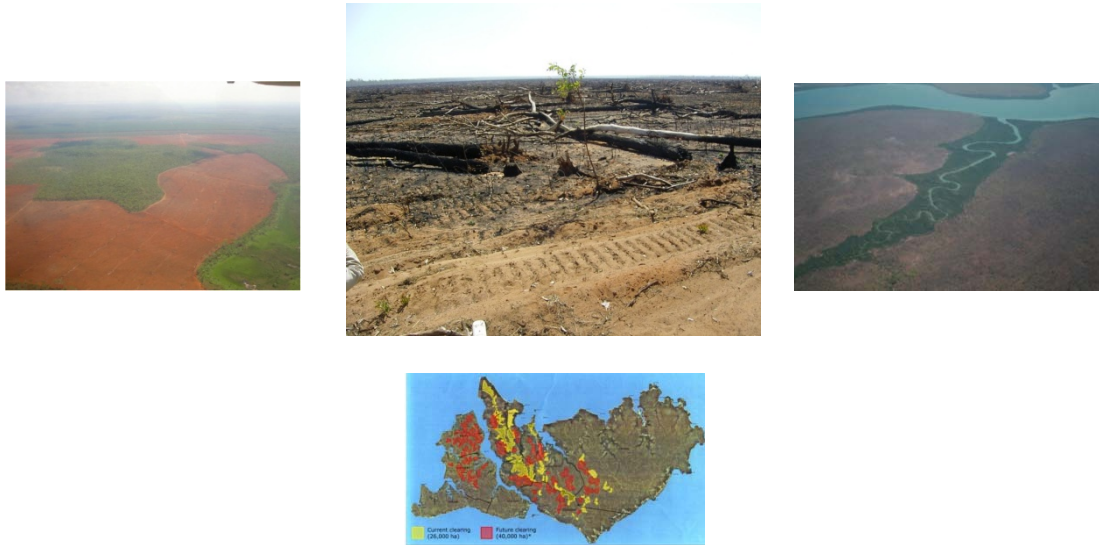
¹² Great Southern Company Announcement / Media Release Thursday 17 February 2005 regarding the Acquisition of Sylvatech Limited

¹³ See Reports from Dr Judith Adjani from ANU on the impact of MIS Forestry Schemes

National Strategy for Ecological Sustainable Development and the Rio Declaration which were adopted by all Australian Governments some 15 years ago.

It also bears believe that Australia's has committed \$200 million to the International Forest Carbon Initiative to reduce native forests being cleared in Indonesia and Papua New Guinea, but allows it in the Tiwis.

Needless to say the Logging and Plantation Project creates a plethora of well known serious, irreversible and indefensible environmental impacts, none of which are beneficial.



Aerial and Ground photos of clearing for plantations on the Tiwi.¹⁴

1.2.1. UNCONTROLLED CLEARING OF EUCALPYT OLD GROWTH FOREST

The Logging targets the stands of tall native eucalypt forests on the Tiwi, which constitute about 70% of the last remaining strands in the Northern Territory. All of the 100s of different species of plants and trees contained in the targeted 30,000 ha on Melville Island are completely destroyed. This includes any of the 22 endemic plant species only existing on Tiwi Island, and 6 plant species which are threatened (4 endangered and 2 vulnerable).

The most ecologically rich and tallest parts of the native eucalypt forests, which are also the preferred habitat for many threatened species, are being destroyed by the Forestry Project, as they provide the best native timber for sale and growing conditions for the plantations.¹⁵

A confusing myth appears to have arisen that tall eucalypt forests are less important than other ecological communities of the Island, such as wet rainforest communities, perhaps because of a history in Australia of "rainforest" concern in Tasmania and marketing? Yet many (if not most) of the important and threatened species only live in the Eucalypt Forests.

¹⁴ **Source:** ECNT Photographs of Land Clearing and Indicative Map of current and proposed clearing areas

¹⁵ *Environmental relationship of the brushtailed rabbit-rat, *Conilurus penicillatus*, and other small mammals on the Tiwi Islands, Northern Australia*, Ronald S.C. Firth, John C.Z. Woinarski, Kym G. Brennan and Craig Hempell; *Journal of Biogeography* (J Biogeogr.) (2006) 33, 1820 – 1837.

The clearing with respect to the environmental values of the Eucalypt Forests has never been considered or controlled by either Government (including the EPBC Act Approval). It has never been assessed, approved or regulated by either the Northern Territory or the Commonwealth Government.

The Northern Territory has had a mandatory process for regulating the clearing of native forests on the Tiwi Islands since November 2002, requiring a development permit to clear above 1 ha. Yet the EDO (NT) is not aware of any Development Permit being held for the Forestry operations, and have confirmed with the NT Department of Planning and Infrastructure that none are held.

The EDO(NT) believes the Senate Inquiry should investigate why no clearing permits are held for the Forestry Operation and ensure that the NT Government takes appropriate enforcement action.



Tall Eucalypt Forest Targeted by Plantations¹⁶

1.2.2. UNCONTROLLED DESTRUCTION OF NON-LISTED SPECIES AND THEIR HABITAT

The clearing destroys any of the 150 species of native frogs, birds, mammals and reptiles that have been recorded on Melville Island, and their habitats. This includes about 11 species which only exist on the Tiwi Islands, and 7 listed threatened species (5 vulnerable and 2 endangered). Many only found in the habitat of these forests.

Again the destruction of non-listed native species and habitat by the Plantations has never been considered or controlled by either Government (including the EPBC Act Approval). It has never been assessed, approved or regulated by either the Northern Territory or the Commonwealth Government.

Yet their protection is just as important to ensure they do not become threatened, and they are just as important to traditional law and culture on the Island.

In addition to the clearing laws introduced in 2002, the *Territory Parks and Wildlife Act* provides a mandatory process for considering direct impacts such as land clearing on common native species and their habitats. It requires a person to obtain a permit to kill or interfere with (including *disturbing*) any native animal on the Tiwi Islands.

¹⁶

Source: Conservation Advices for the Northern Territory Parks and Wildlife – and John Woinarski, Kym Brennan, Ian Cowie, Raelle Kerrigan and Craig Hempel and Paul Munns Biodiversity Conservation on the Tiwi Islands, Northern Territory August 2003 (Eucalypt Forest)

EDO (NT) is not aware of any permit being obtained for the Plantation Project for the clearing which would inevitably have killed, or at least seriously interfered with and disturbed 100s if not thousands of native animals contained in the 30,00 ha of Eucalypt Forests.

The EDO (NT) believes the Senate Inquiry should investigate why no permits to interfere with native wildlife have been obtained for the Forestry Project, and if not why these basic laws of species protection are not being enforced.

Given the complete lack of control on this project over common environmental impacts, it was not surprising when a study in 2006 of small mammals (Northern Brown Bandicoot, Common Brush-Tailed Possum, Grassland Melomys, Brush-tailed Phascogale, Red-Cheeked Dunnart, Sugar Glider, Pale Field-rat, Delicate Mouse and Western Chestnut Mouse) including the now threatened Brush-tailed Rabbit Rat, on the Tiwi islands found that they were being severely disadvantaged by the Plantations, causing a substantial reduction in the status of these mammals on the Tiwi stronghold.¹⁷

Indeed previously common species on the Tiwi have been subsequently listed as threatened species under the EPBC Act, because no-one ever considered or controlled the impact of the Plantations (see 2.2.4 below).

1.2.3. THE DESTRUCTION OF THREATENED SPECIES AND THEIR HABITAT

The Tiwi Islands contains a high concentration of listed threatened species in the Territory due to endemism and pre-existing background threats; it now contains even more listed threatened species due to the Plantations.

The only environmental impacts ever considered, assessed, approved or controlled by either the Northern Territory or Commonwealth Government are in relation to 5 of these threatened species. Even then, this only related to impacts which could be classed as significant on the overall population of the 5 single fauna species and 1 flora species listed as threatened under the EPBC Act in 2001. Threatened species under the NT lists were never addressed and are not controlled by any Government.

The impacts which are controlled by the EPBC Act are in relation to the Butler's Dunnart, Masked Owl, False Water Rat, Red Goshawk and Partridge Pigeon, and 1 flora species Burmania. The protection of 3 of these species (Butler's Dunnart, Masked Owl (Melville subspecies) and Burmania) is even more vital, as they are only known to exist on the Tiwi Islands, and nowhere else on Earth.

Yet the EPBC Act Approval has demonstrably even failed to protect these 5 listed fauna species from the Logging and Plantations Project, as the conditions allowed substantial impacts on these species to occur, and were systematically breached in any event by Great Southern and the Land Council:

1. The Approval allowed the destruction of significant elements of these threatened species habitat because:
 - The buffer distances which were to be placed around the species were almost a 50% reduction from the buffer distance which scientists had said were required for their protection (eg 2km for Red Goshawk, 1km for Butlers Dunnart); and
 - Buffers were only required around known occurrences of a threatened species, and not around known essential habitat. So clearing was approved of high quality habitat (nest and roost sites) so long as they did not happen to be being actively used at the time of surveying.. Clearing of essential hunting and mating areas was also approved outside the limited buffer zones.

¹⁷

Environmental relationship of the brushtailed rabbit-rat, Conilurus penicillatus, and other small mammals on the Tiwi Islands, Northern Australia, Ronald S.C. Firth, John C.Z. Woinarski, Kym G. Brennan and Craig Hempell; *Journal of Biogeography* (J Biogeogr.) (2006) 33, 1820 – 1837.

2. The approval did not require surveying or spotting of threatened species immediately prior to or during clearing operations to ensure threatened species could be identified and safely removed at the time of clearing. Nor did the conditions impose localised staged clearing regimes, allowing threatened species time to take refuge.
3. No conditions were imposed which required offsetting the habitat cleared by the plantation sites, to reduce the net impact of the threatened species habitat.
4. The approval did not ensure that anyone actually looked for the threatened species using reliable methods which would actually find the threatened species present.



Red Goshawk, Masked Owl, Partridge Pidgeon, Buttlers Dunnart and False Water Rat¹⁸

1.2.4. UNCONTROLLED AND ILLEGAL CLEARING OF THREATENED SPECIES HABITAT

The tone of non-compliance was clearly set early on by Great Southern and the Land Council, when in 2002 the Land Council came up with the perverse conservation logic of continuing with clearing the habitat of the Butler's Dunnart because they had not found any occurrence of the species, in the same breath as stating that they knew they had not been using surveying methods that would actually find the species.¹⁹

Not surprisingly, reports from the Northern Territory Government in 2006 found that from 2001 to 2006 monitoring had not even been carried out on most of the 5 species, causing unknown destruction of these species and their habitat.

The lack of action on some conditions, such as survey's for masked owl's nests, works clearly to the advantage of the Forestry Company, because not looking for nests sites, means not finding nests sites, which means not needing to buffering these from clearing²⁰

"Great Southern Plantations and its predecessor have not undertaken any surveys of masked owls or butler dunnarts in the tranches proposed for clearing, nor have they systematically done so for partridge pigeons. Prior information on masked owls location does not appear"

"To date there has been a poor level of compliance with biodiversity related conditions mandated by the Federal Minister, the breaches appear to be widespread and systematic, the lack of action in some areas worked clearly to the advantage of the Forestry Company."²¹

No real attempt appears to have been made to look for the Butler's Dunnart or the Masked Owl for 6 years until 2006.²² This means that almost 15,000 ha of these threatened species habitat has been cleared without any controls or mitigation whatsoever. The likely event is that many individuals have been killed.

The Commonwealth department of Environment has clear evidence, and even a partial admission, that the proponents proceeded to illegally clear up to 1000 hectares between 2004 and 2006 of habitat of these listed threatened species, which also provided important buffers to rainforest and wetland communities.

¹⁸ Sources: Ian Morris (Red Goshawk), R Firth (Masked Owl), M Armstrong (Partridge Pigeon), K Brennan and D Mile (Butler's Dunnart),

Page 41 of Melville Island Plantation Proposal Progress Report dated 2002 compiled by Sylvatech Limited and Tiwi Land Council. Background Briefing - ABC

²⁰ Background Briefing - ABC.

²¹ Background Briefing - ABC.

²² http://www.tiwilandcouncil.net.au/WhatsBH/Whats_BH.htm

1,000 hectares of illegal clearing is on par with the biggest illegal clearings that the EDO(NT) is aware of in Australian history. To put this in perspective the much publicised biggest Court prosecution for clearing in Australian history related to only 450 hectares in New South Wales in 2009, and the biggest Queensland prosecution for land clearing was for 1,000 hectares.²³ People across the States have been regularly prosecuted for relatively small amounts of clearing, including a 40 by 50 meter lot in the Northern Territory²⁴, cutting down trees for firewood²⁵. Operations have been ordered to completely stop over illegal clearing of 400 hectares in WA²⁶. Rugby League Star Jarrod McCracken is being prosecuted over clearing only 12 hectares!²⁷ The list goes on.

Yet when aboriginal people's land is illegally cleared the Company and institution responsible hides behind the myth that they are providing economic benefits and gets away with it?

The strategy of Great Southern and the Land Council has been to ensure it does not have the environmental information it was required to in the first place, so it can claim inadvertence and ignorance because of a lack of environmental information when it causes severe impacts to avoid culpability. This strategy has been a seminal characteristic of this Project.

- In response to the illegal clearing, Great Southern and the Land Council used a lack of spatial information and studies it was responsible for doing as an excuse to escape culpability;
- It used the lack of studies it was supposed to do to say the illegal clearing didn't cause a significant impact on threatened species;
- It used the lack of surveying information to escape culpability for buffering threatened species and clearing their habitat until they were caught out in 2006; and
- It has recently used a lack of hydrological impact information to escape culpability for destroying a nearby waterfall.

Yet all environmental legislation across Australia creates strict liability offences and obligations in direct recognition of decades of this strategy by developers, and the need to place the obligation firmly on those who want to carry out activities which impact the environment to have and use resources to assess and understand all those potential impacts and avoid them (the polluter pay principle of ESD).

The Commonwealth Department's response to the breaches by only imposing new conditions has destroyed 20 years of progress in this area by again caving into this strategy. It has been a complete disappointment for the protection of Northern Territory's environment and a sad indicator to developers that they can get away with it.

1.2.5. CREATING MORE THREATENED SPECIES

Because the Northern Territory Government never regulated the impacts on native species and habitats in 2001 (and because the EPBC Act cannot regulate non-listed species), the Plantations have freely destroyed these species and habitats.

The inevitable result was that new species become threatened with extinction. Following the commencement of clearing, about 7 new fauna and flora species (particularly the Hooded-Robin and the Brush Tailed Rabbit Rat) have been listed as vulnerable or endangered under the EPBC Act because of the Plantations.²⁸

For example the listing advice for the Brush Tailed Rabbit Rat states:

²³ <http://www.abc.net.au/rural/news/stories/s1203766.htm>

²⁴ Development Consent Authority v Peter Walter Bonsell and Jennifer Betty Bonsell [2004] NTMC 031

²⁵ <http://www.abc.net.au/news/stories/2008/08/12/2332721.htm>

²⁶ <http://www.abc.net.au/news/stories/2008/07/29/2317618.htm>

²⁷ <http://www.abc.net.au/news/stories/2008/07/22/2310743.htm>

The subspecies on the Tiwi Islands was likely to undergo substantial decline over a short period of time due to clearance of its habitat for plantation timber

As the clearing was already approved prior to these new listings, the clearing of the habitat of the Hooded Robin and Brush-tailed Rabbit Rat has been completely authorised by legal default, and 13,000 ha of their habitat has proceeded without any mitigation in regard to the possibility of extinction of these species.

This was demonstrated poignantly when in 2006 a new scientific report described the threat that the Brush-Tailed Rabbit rat was under directly because of the Forestry Plantations. As it was not one of the 5 species regulated by the EPBC Act, Great Southern held up its EPBC Act approval, again claimed ignorance, and said:

“there are five nationally significant species the company has been told to protect and the brush tailed rabbit rat is not one of them.”²⁹”

The 2006 Scientific Report also found other common native species the Black-footed Tree Rat, Northern brown bandicoot, Common brush-tailed possum, Grassland Melomys, Brush-tailed phascogale, Red-cheeked dunnart, Sugar glider, pale field-rat, delicate mouse and Western chestnut mouse are being seriously disadvantaged by the Plantations. Again, none of the impacts on these species were ever assessed, approved or controlled by any Government in any way.



Hooded Robin, Brush-Tailed Rabbit Rat³⁰

1.2.6. WORSENING THE STATUS OF THREATENED SPECIES

Because of the flawed condition under the EPBC Act and complete failure of Great Southern and the Land Council to comply with them, species supposedly protected under that Approval have been seriously impacted on the ground.

In 2006 the status of the Masked Owl, which was addressed and controlled in the EPBC Act Approval in 2001 moved from Vulnerable to Endangered.

The listing advice for the change stated:

The most acute threatening process is conversion of large areas of its optimum habitat (eucalypt tall open forest) to short-rotation plantations of exotic timber species.³¹

This followed reports that Great Southern and the Land Council had completely failed to carry out any of its obligations under the EPBC Act Approval to protect the Masked Owl.

Again because of the legal default protection the controls on the Masked Owl have allowed 13,000 ha of its habitat to be cleared without reflecting its new, more critical, status.

The tragic irony has been that the former Commonwealth Environment Minister Mr Hill has not only failed to mitigate impacts on threatened species as classified at the time the Plantations were

²⁹ ABC News 1 November 2006 available at <http://www.abc.net.au/news/stories/2006/11/01/1779019.htm>

³⁰ Source: NTPWS Listing Advices (K Brennan)

³¹ See Territory Government Masked Owl listing advice

approved, but has effectively caused the creation of more endangered and vulnerable species under the EPBC Act.



Masked Owl³²

1.3. THE UNCONTROLLED BROAD ENVIRONMENTAL IMPACTS

The minds picture of discrete plantations lots belies the silent reality of the impacts which are caused on the entire Tiwi environment far beyond the plots of Plantations.

No approval was ever obtained with respect to these impacts, and they were never assessed.

○ **Functional Breakdown and Flow on Effects**

The entire ecology of the Tiwi Islands including its rainforests, coastal and riparian areas and mangrove communities are of course heavily interdependent on the large Eucalypt Forests and the species who inhabit them which are being clear-felled for the Plantations. Like removing the tyre from a car, all the parts of the Tiwi environment outside the plantation areas are seriously affected by the clearing of that 1 part.

○ **Release of Contaminants into the Environment**

The runoff and seepage of 7,200,000 kg of fertiliser³³, pesticides, herbicides and sediment contaminates into the land, groundwater aquifers, streams and rivers. Once they accumulate in the environment they degrade downstream ecosystems and harm native animals.

○ **Spread of Weeds and Pests**

The spread of weeds and pests by the Plantations (such as the Acacia itself, Gamba Grass and ants) presents as one of the most critical environmental impacts from the Plantations. The escape of Acacia into the broader environment could completely degrade a large majority of the Island. The requirement of large machinery to come from the mainland to clear the forests creates huge risks of the cane toad and other mainland threats coming across.

○ **Disposal of wastes**

Disposal of wastes from related processes harmful to both human and the environment.

○ **Changes to surface and groundwater hydrology**

Changes in surface and groundwater hydrology are a very significant risk, as Plantations significantly increase water uptake. The clearing, ripping and mounding for Plantations creates significant changes

³² Source: R Firth (Masked Owl).

³³ Page 3 of Assessment Report 3 (240kg per ha x 30,000 ha).

to drainage and seepage rates and run-off geography. All this leads to significant impacts downstream on rivers and coastal areas, and the ecological communities which depend on them such as riparian, wet rainforest and melaleuca habitats.

○ **Multiplier impacts of dispersed pattern of Plantations**

All of these problems have been significantly escalated by the uncontrolled pattern of patchwork plantations which have moved across Melville Island, with the clearing and road access to each plot creating new entry points for weeds and pests and contaminants, and a much larger surface area for these serious impacts to enter the environment.

Great Southern has stated publicly that they undertook this approach as insurance against Cyclones to protect investor's assets; again economic imperatives are destroying the landscape.

The complete lack of assessment and Government control of these impacts has yet again resulted in inevitable impacts.

Late last year, the hydrology of popular Taracumba falls used by local indigenous children and tourists alike, located near to one of the Plantations began to change dramatically. GSL have denied impacting the falls, however GSL has never undertaken any studies to find out.³⁴ As stated by CSIRO in their submission to this Inquiry:

There have been no studies on the effects of Tiwi forestry operation on catchment hydrology, so effects, if any, are unknown

The approach of Great Southern and the Land Council was again to use lack of information and studies it should have undertaken to escape liability.

1.4. UNCONTROLLED RELEASE OF DEVELOPMENT AND ENVIRONMENTAL IMPACTS

The plantations obviously required large amount of infrastructure and development to establish, harvest and export the Timber but no one seemed to think about any of this at the time. The Plantation proposal which was put to the Commonwealth Minister under the EPBC Act specifically excluded all of these subsequent developments:

- The construction of a large Port and stockpile yards to ship the harvest to sale on fragile coastal areas;
- A Permanent camp at Maxwell Creek for accommodation workers;
- Kilometres of roads / widening and upgrading of roads;
- Tiwi Barge and loading (washdown) facilities to bring across heavy machinery from Darwin to clear the forests and harvest the plantations;
- Forestry training schools and college, and other infrastructure; and
- Most significantly the Melville Forestry Port has brought in both large Barges and huge Ocean Going Vessels directly into the fragile marine and coastal environment in the small strait between Melville and Bathurst Island, which is inhabited by many protected marine species under the EPBC Act.

This infrastructure and shipping operations to export the timber have all cleared many more ha of native forests and habitats and created significant environmental impacts from erosion, contamination and spread of weeds and pests.

The risks of brining large barges and ocean going vessels into the fragile marine environments in Cyclone prone area cannot be understated. For example significant issues have been caused in the Gulf of Carpentaria by movements of vessels from out loading facilities at Karumba in relation to impacts on indigenous cultural values in the marine region, and in 2007 when a vessel was caught in a Cyclone in the fragile environment and spilled contaminants in the waters.

³⁴

Summary of Environmental Review Findings in relation to Water Quality, Water Monitoring and Erosion by URS dated March 2005

Also in turn the construction of the Port has created a potential explosion in environmental impacts on the Islands, by providing an export potential for mining and other resource developments not previously available. There is also a wood chipping Mill planned which would likely lead to demand for increased plantations. Indeed the Port has led Matilda Mineral Proposal to mine the Tiwis which was reliant on the Port.

Despite all these activities appearing to require EPBC Act Approval or NT Approval the EDO (NT) is not aware of any being obtained. The EPBC Act also required these downstream impacts to have been considered in assessing the original project in 2001.



Picture of Melville Port under construction and Forestry roads on the Tiwi, also the MV Tinos departing Port Melville³⁵

1.5. THE REALITY OF CLIMATE CHANGE FACED BY THE TIWIS

The Intergovernmental Panel on Climate Change's *Third Assessment Report* nominated ingenious peoples and small island populations as the most threatened group likely to suffer from Climate Change. The Tiwi people meet both these critical threat criteria.

1.5.1. Contributing to Climate Change

The only effective measure to date in Australia which has actually proven to reduce our GHG emissions has been the prohibition on clearing native forests throughout Australia brought about by the States Government's from about 2000.

Yet the clearing of Tiwi forests has been allowed to create the carbon emissions removing 30,000 ha of forests, most of which occurred since 2006.

The claim that plantation forests have a net carbon benefit when established on existing cleared agricultural land it itself sceptical, given the large carbon release caused by disturbing the soil for planting.

However, the claim that the Tiwi Plantations create a carbon benefit when they are established by clearing native forests compared to keeping the native forests in the ground is simply ridiculous.

The plantations use huge amounts of scope 1, 2 and 3 emissions from all the carbon emissions:

- required to establish the plantation trees, maintain the trees, produce the seeds, fertilisers and pesticides and transport them to the Tiwi
- build the Port, all the roads and infrastructure.
- run the day to day business of Great Southern and the Land Council relating to the Tiwi plantations.
- harvest all the trees, transporting them to the Port, than barging or shipping them thousands of kilometres to China or other Asian countries.

³⁵

Source: Pentarch Group – 2005 to 2007 Newsletters and Great Southern and Tiwi Land Council – Tiwi Forestry Story PowerPoint Presentation 2007

Even after all this, the carbon will simply end up back in the atmosphere unless GSL can somehow guarantee how the fibre in the plantation trees will be used and disposed of by end users they can't even identify.

Compare all of this with simply leaving the native forests in the ground.

1.5.2. Coping with the impacts of Climate Change

Despite the long-term economics of the Plantations, no one has looked at the long-term impacts of Climate Change.

- The very real threats to the economic viability of the Project; and
- The increase in the fragility of the environment caused by the addition of serious climate change impacts on biodiversity to those caused by the Forestry operations.

The adverse effects of Climate Change in the Tiwi Islands which are reasonably certain include:

- A rise in average temperature, and increased number of hotter days;
- The frequency and intensity of extreme weather events such as tropical cyclones and storm surges is likely to increase;
- Rising sea levels, which are now being forecast by CSIRO to reach 1.5 meters by the end of the Century;

Other impacts which are predicted to occur are a decrease in overall rainfall and increase in spread of pests and weeds and diseases.

The potential impacts on an isolated low-lying island are significant:

if you combine that sort of scale of sea level rise with the prospective increase in intensity of cyclones then the impact of those two things together on things like storm surge could result in massive increases in risk of salt water inundation³⁶

Salt inundation of coastal wetlands, mangroves, rainforest habitats and downstream environments is likely to have significant impacts on the relatively low lying Melville Island, forcing fauna inland towards cleared plantations.

The reduction in overall habitat by the Plantation Operations is likely to significantly reduce the in-built resilience of the Tiwi ecology to absorb or adapt to increases in cyclone activity, storm surges and salt water inundation from climate change.

1.6. THE QUANTITY OF ENVIRONMENTAL IMPACTS

The nonsense of the argument that the Plantations only cover 5% of the Island is apparent with reference to the fact that Australia's entire forests make up only 4% of the World's forests.³⁷ So why not just clear them all?

The environmental footprint and impact of the Plantation Project clearly stretches far beyond the area of land covered by the Plantation Plots, and probably affects close to a half of Melville Island.

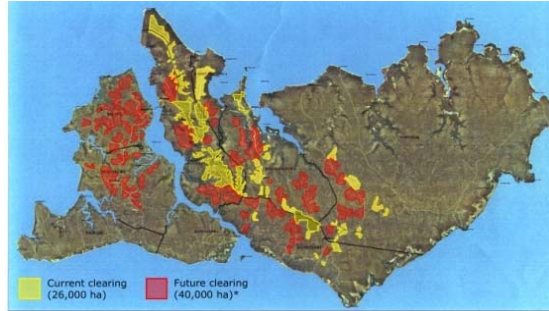
Even just focussing on the Plantation plots, 300 square kilometres of the highest quality eucalypt forest, and habitat of threatened species, on an island of ecologically international significance is what it is.

³⁶ <http://www.abc.net.au/news/stories/2008/03/05/2180199.htm>

³⁷ <http://adl.brs.gov.au/forestsaustralia/facts/type.html>

Every development no matter how big or small can claim to contribute only a small percentage of impacts to some greater area or pool of environmental impacts. In fact the degradation of the world's environment has largely occurred because of this approach through cumulative impacts.

The reduction of the entire complex issue to a percentage is a stark reflection of the lack of understanding of the issues by Great Southern and the Land Council.



Current and Future Clearing by Plantations³⁸

2. THE COMPLETE FAILURE OF THE AUSTRALIAN ENVIRONMENTAL MANAGEMENT SYSTEM

To paint the picture that all the impacts had been ok'd by independent Government bodies - the Proponents told Investors, the Public and ordinary Tiwi people that the environmental impacts were approved by all levels of government, had undergone rigorous environmental assessment and continue to be heavily regulated and monitored by Government to ensure compliance

³⁸

Source: ECNT

Tightly regulated

Before the first tree was planted, the forestry project was subjected to a rigorous approvals process, involving both the Federal and Northern Territory governments.

The project operates within a robust framework of environmental regulation. Forestry activities are monitored against several different environmental statutory requirements, including Commonwealth and Northern Territory legislation, local authority plans, policies and strategies, contractual provisions and industry standards.

Responsible regime

The project has been developed and is managed in accordance with the most responsible and rigorous environmental regimes. These include 50-year approval from the Australian government under the Environment Protection Biodiversity and Conservation Act, approval from the Northern Territory government under both environment and planning requirements, and the completion of an EIS before approval.

Environment Australia supports the project, and manages it under an ongoing strategic management plan, which incorporates conditions of approval and an independent audit process.

Great Southern and Land Council Fact Sheet on Tiwi Islands

Industry Media Release on First Shipment

In what appears to be a spectacular failure in every aspect of Australia's environmental management framework, the entire operation is almost completely uncontrolled by any level of Government. It has followed a confused path in which it has eluded the grasp of the law, the Government and the ordinary Tiwi for over 10 years.

2.1. TIWI LOCAL GOVERNMENT

Unlike much of Australia, no environmental or planning regulation or approval process is undertaken by Local Authorities in the Territory (or by Land Councils), so the Tiwi Local Government has had no role. In 1999 to 2000 when the project commenced the Local Council was non-existent.

The Tiwi Local Government is heavily influenced by the proponent of the Plantations projects. Former Tasmanian Health Minister John Cleary was appointed CEO of the Local Government on 1 May 2002 for about 3 years. Since leaving the Tiwis he has heavily criticised the influence of the Land Council on the Local Government and its myopic focus on Forestry to the detriment of any other economic opportunities such as Tourism.

2.2. INDEGINOUS CONSULTATION

There are no processes in the *Aboriginal Land Rights Act (ALR Act)* which ensure that independent expert consultation and information is available to Tiwi people so that they can decide how to use their Land, or that consultation with Tiwi people occurs at the time when details of the project and its environmental impacts are actually known. When the Land Council itself is the developer of a Project, this means that only people who are consulting with the ordinary Tiwi people are those with vested interest in it.

For example under the ALR Act, at least to some extent mining proposals have to provide a range of information which sets out the proposed operations and its environmental impacts, and then has to hold consultation and negotiation meetings (including access to independent mediators and commissioners), to inform the traditional owners before they consider their consent. Yet similar provisions are not provided for non-mining activities, even though they may present just as bigger environmental impacts and issues for the community.

With no Government environmental planning regimes applying to indigenous land, ordinary Tiwi people are only left to struggle by themselves with how to cope with the very new movement towards resource exploitation of their land. The only people they have there explaining it to them are the very ones who are in partnership with the developers – the Land Council. How can such a system work? It would never be accepted in white communities as legitimate?

2.3. NORTHERN TERRITORY GOVERNMENT

The Northern Territory Government does not, and has never, regulated the Forestry Project and the EDO(NT) is not aware of any statutory planning or environmental approvals which have ever been obtained under Northern Territory Law except for subdivision approvals.

There were no Northern Territory environmental approvals required for the project when discussion commenced about it in 1998, except for a licence to interfere or disturb native wildlife under the *Territory Parks and Wildlife Act* (discussed below). However from late 2002, clearing of native vegetation on the Tiwis required a development permit under the Planning Act.

Despite the Forestry Operation clearing native vegetation and disturbing (if not harming) native wildlife from 2001 to 2009, the EDO (NT) is not aware of any approval ever being obtained.

2.3.1. Harming Native Species

Under the *Territory Parks and Wildlife Act* (**TPW Act**) is an offence to take or interfere with (which includes to *disturb*) protected wildlife without a permit. All native animals are classed as protected wildlife (ie all animals with a vertebra, not just threatened species).

It is hard to imagine how the clearing of 30,000 ha of the habitat of both common and threatened mammals and bird species has not disturbed or harmed at least one animal, if not killed many. Indeed the NT Forestry Code of practice implies the availability of the TPW Act for enforcement action in this regard.³⁹

2.3.2. Clearing Vegetation

The Clearing of Native Vegetation on the Tiwi Islands (unzoned land) became regulated on 26 November 2002 under the Northern Territory *Planning Act*⁴⁰. 25,889 ha of native vegetation have been cleared by the Forestry operators since the start of 2003.

All clearing of native vegetation greater than 1 hectare requires a development permit unless another Act authorised the clearing. The EPBC Act clearly is not an Act which regulates or authorises the clearing of vegetation as it is limited by Constitutional Powers to discrete environmental issues contained in international treaties, such as threatened species and migratory birds.

In any event, as has occurred, the clearing of vegetation which has occurred in breach of the EPBC Act Approval clearly requires a development permit under the Northern Territory Planning Act as it is not authorised by the EPBC Act approval.

We have contacted the Northern Territory Planning Department who are not aware of any development applications or permits being held for the clearing of vegetation on Melville Island.

2.3.3. Compliance with the Environmental Assessment Act

The only mechanism that ever applied to the Forestry Project was an assessment under the *Environmental Assessment Act* (NT) (**EAA**). However there was no EIA undertaken, and the information provided did not even address the presence of flora and fauna on the Plantations.⁴¹

With the need for any regulatory approval the process was useless and did not address whether the environmental impact of the Plantation Project was acceptable or should go ahead. Even then it only looked at conceptual pilot project for 5,000 ha for the Plantations and did not address the Project that eventuated.⁴²

³⁹ See clause 26 of the Northern Territory Code of Practice for Forestry Plantations

⁴⁰ Interim Development control Order (No. 12), and subsequently Planning Scheme 2005 and Section 10.2 of the Planning Scheme 2007. The wording has changed but the intent the same, to regulate clearing on unzoned private and crown land including Aboriginal Land.

⁴¹ Page 10 of Assessment Report 29

⁴² A 2,700 ha proposal for the project in 1999, followed by a 2,500 ha proposal for the project in 2000 (5,200 ha altogether). The 2 proposals making up 5,200 ha were approved by the Commonwealth Environment Minister under the *Environment (Impact of Proposals) Act*. EDO (NT) is not aware of any environmental assessment process followed by the Commonwealth Government

Despite enquiries with the NT Government, the EDO (NT) is not aware of any environmental assessment ever being carried out for the 5 fold expansion to the 25,000 ha proposal.

The lack of any control by the Northern Territory meant the Forestry Project operations are completely self-regulated in the Territory, with the only possible regulatory control coming from the Federal Government.

Even when a voluntary “Inter Departmental Committee” was set up to try to help influence the unregulated Plantations. The reality was that out of 7 positions on the IDC, it consisted of 3 from the proponents of the Plantations, 2 from the Forestry department of the Northern Territory, one of whom was the chair. No community participants were included, let alone NGOs. The only independent environmental position for NT Parks and Wildlife was stated as “vacant” in 2002. After promptly setting up the IDC to help pass the assessment and approval by the Commonwealth, it met twice in 2002 and never appears to have met again.⁴³

2.3.4. Community Planning

Quite apart from the environmental costs, that Northern Territory Planning Scheme does not apply to the Tiwi Islands (apart from subdivision approval). The lack of government assessment and consideration of the basic planning issues, such as strategic planning, consideration of options and the need for this project and its huge impacts on the community has appeared to be largely silent, with little assessment of:

- the massive infrastructure requirements, and how it is going to be planned and resourced, and who was going to pay;
- the actual need or commerciality of this project in the area, and what would happen if it fell over;
- the significant likely community impacts on indigenous people;

Most importantly it means that there are no independent and qualified people involved in looking this types of Projects in these communities, discussing it with the community to see what they want, and assessing the benefits and costs. Instead the only people left to “consult” and “plan” with the communities are the developers themselves – which is an impossible position when the developer is also your Land Council who owns all your land.

The Northern Territory Government needs to investigate and take appropriate enforcement action with regard to breaches of vegetation clearing laws and the *Native Wildlife Act*.

Immediate Steps must be taken to help indigenous communities plan for modern development. This may require alteration of the Aboriginal Land Rights Act to ensure proper consultative processes are followed for non-mining land-use proposals. Aboriginal people must also have independent government body that is available to oversee land use developments and carry out these consultations, not a Land Council which has vested interests and narrow focus on creating wealth through land.

The Northern Territory must enact native vegetation clearing prohibitions in line with all other Australian jurisdictions. If the Northern Territory does not, than the Commonwealth must consider stepping in.

Interim controls must be placed on further clearing of the Tiwis until comprehensive regulation is established. This could be achieved through an Interim Development Control Order should be placed prohibiting all further clearing on the Tiwi Islands effectively immediately.

⁴³

See TLC Annual Reports page 27 of 2003 / 2004, page 26 of 2004 / 2005, 2006 / 2007 and 2007/2008

2.4. THE COMMONWEALTH GOVERNMENT

The Federal Government does not regulate most environmental impacts of a project, except with regard to discrete areas which affect the national interest and fall within its Constitutional Powers. It relies on most environmental issues to be regulated by the Territories and States.

The areas in which the Federal Government expressly regulates environmental impacts of the Forestry Operation area:

- Approval of the environmental impacts of the export of the wood by the Forestry Operations through the Constitutional Export Powers under the *Export Control Act*.
- Approval of the impacts of the Forestry Operations on discrete matters of national significance through the EPBC Act (ie listed species, migratory species and Ramsar Wetlands etc).
- Regulation of Reporting by Great Southern of its environmental performance through the *Corporations Act*, and claims made by Great Southern with respect to the environmental credentials of the Forestry Operations through the *Trade Practices Act* .

2.4.1. THE COMPLETE FAILURE OF THE COMMONWEALTH'S EXPORT CONTROL SYSTEM

In 1995 following the huge national debates regarding the logging of native forests and the creation of the National Forests Policy, the Commonwealth announced that it would steadily remove itself from regulation of forestry through its Constitutional head of power over Exports. The Policy required Codes of Practice to be developed by all States and Territories which were legally enforceable.

The intention was for Regional Forestry Agreements and Approved State and Territory Codes of Practice for Forestry to replace the environmental regulation by the Commonwealth of this major issue to ensure that all the environmental issues of Forestry were properly regulated and native forests logging was phased out.

To give up export control of timber from the Territory, the Commonwealth Minister was required to satisfy himself that the Northern Territory Code of Practice would satisfactorily protect the Territory's Environment; otherwise every entity who exported timber in the Territory was required to obtain a licence from the Commonwealth Minister to ensure the environmental impacts of the source of the wood could be scrutinized and controlled.⁴⁴

The Territory Code was duly prepared. It contained some 26 requirements, the most significant of which were;

- All clearing to obtain **approval to clear vegetation under the NT Planning Scheme**;
- All clearing to be **assessed under the Environmental Assessment Act**;
- **No Net Loss of Biodiversity Values** – meaning that all clearing of vegetation which was to occur must be offset by creation of habitat and vegetation elsewhere.

The Commonwealth Minister approved the code on 24 March 2004⁴⁵, and the first shipments of logged timber from the native forests duly followed on 11 September 2004. The EDO (NT) assumes that no licence was obtained on the basis of compliance with the Forestry Code. Indeed the Proponents have repeatedly claimed that they will comply with the Northern Territory's Code of Practice for Forestry Plantations.⁴⁶

Clearly, the Forestry Operation has not done any of these three things required by the Forestry Code listed above.

⁴⁴ *Export Control (Unprocessed Wood) Regulations 1986 and Export Control Act 1982*

⁴⁵ Commonwealth of Australia Gazette No. GN 12, 24 March 2004

⁴⁶ See Progress Report August 2002

Under the National Forest Policy these Codes were intended to be legally binding on Forestors and this was also the clear intent of the exemption from the Export Control licence system. We assume therefore that this Code is legally binding on the Land Council (or whoever entity is exporting the native timber) and will be binding on Great Southern when it exports the plantation timber or woodchips. If it is than why are they being allowed to breach it?

If it is not, than how can the Commonwealth exempt the Northern Territory from its control?

2.4.2. **THE COMPLETE FAILURE OF THE COMMONWEALTH'S EPBC ACT**

The EPBC Act process only assessed, approved and now regulates the impacts of the project in relation to 5 single species listed as threatened. It is acknowledged that to a degree, the measures to protect these species may also inadvertently protect other environmental values. However, the protection of broad environmental values through laws relating to single species is completely ineffective. It remains that most of the environmental impacts discussed in section 1 of this Report are outside the jurisdiction of the EPBC Act, and are not required to be managed by the proponents.

Even the limited EPBC Act approval process was deeply flawed, was never enforced and has been systematically breached by Great Southern and the Land Council.

2.4.2.1. **Flawed Application**

The 5 fold expansion of the project from 5,200 ha to 30,000 ha was referred to the Commonwealth Government under the EPBC Act on 28 March 2001 with regard to the proposed clearing for the Plantation plots only. The Referral did not include the Port or any other forestry Infrastructure.⁴⁷

The EDO(NT) is not aware of any approvals to this day under the EPBC Act or Territory laws for the clearing of native forests for the Melville Port or other Forestry Infrastructure.

As far as the EDO (NT) is aware, the entire application for the Approval of the 30,000 ha project under the EPBC Act relied upon:

- The non-binding, limited strategic assessments of on 5,200 ha pilot proposals (discussed above);
- A background study on the biodiversity values of Melville Island, which:
 - expressly stated that it was not an environmental assessment of the Plantations;
 - expressly excluded an assessment of whether the project should go ahead⁴⁸, and indeed was framed by terms of reference from the TLC that the project would go ahead;
 - was heavily qualified regarding the existing and continuing lack of information regarding the environment of the Tiwi Islands (and the proposal).
 - was conducted on the assumption that only 30,000 ha development would proceed, and that a comprehensive reserve system would be established as promised by the Tiwi Land Council (which has never occurred).
- A "Strategic Plan".

2.4.2.2. **Flawed Assessment and No EIA**

Principle 17 of the Rio Declaration on the Environment and Development states that:

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

⁴⁷ Page 3 of the EPBC Act Referral dated 28 March 2001
⁴⁸ See page 129 of Biodiversity Report

Despite the complete inadequacy of information, the then Federal Minister Robert Hill decided that an environmental impact assessment was not required, nor was any further information at all, and proceeded on the lowest form of assessment available to him (preliminary documentation).

This appeared to be in direct conflict with the principles of ESD, as a background study included in the referral stated that:

The existing documentation of the biodiversity and environment of the Tiwi Island is meagre, and especially so given their size and ecological significance.⁴⁹

Mr Hill decided to assess and approve the 30,000 ha native forest clearing proposal with very little information on what the environmental impacts of the proposal would be.⁵⁰

2.4.2.3. Flawed Commonwealth Public Consultation

The only possible input into the assessment was an invitation to send written “comments” to the Public Relations firm hired by the Sylvatech and TLC at their office in Edgecliff, New South Wales.⁵¹

Tiwi islander’s main language is Tiwi, and most cannot speak English at all. About 10% of Tiwi Islands have any basic writing skills.⁵² The thought that any Tiwi would get consulted on this proposal through the EPBC Act process was a joke.

2.4.2.4. Flawed EPBC Act Approval

The Commonwealth Minister approved the project on 12 August 2001, subject to a range of conditions relating to the 5 listed species. The EDO (NT) seriously questions the legal validity of an approval under the EPBC Act given our discussion of the flawed process that was followed.

2.4.2.5. Flawed EPBC Act Conditions

As discussed above, the EPBC Act conditions were deeply flawed and approved substantial impacts on the threatened species.

The failure of the conditions was a direct result of the complete lack of information and assessment that had informed the decision to approve the project. Essentially the Commonwealth Minister reversed the process, approving the project on the basis that the environmental assessment of its impacts would occur after (ie. via the conditions).

The Commonwealth Environmental Department then promptly forgot about the entire project and compliance monitoring for 6 years, and the conditions were not followed through.

It was inevitable that this approach would lead to the creation of more vulnerable and threatened species and the serious and widespread breach of the EPBC Approval conditions.

2.4.2.6. No Compliance Monitoring

The Commonwealth Government appears to have rubber stamped the plans of clearing provide subsequent to the development. None of the plans show locations of any listed species besides the Goshawk.

⁴⁹ Page 3 of Biodiversity Study December 2000

⁵⁰ The assessment process was done on “Preliminary Documentation”

⁵¹ Notification of Publication of Preliminary Documentation dated 25 May 2001 available at http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=current_referral_detail&proposal_id=229

⁵² Page 18 2002 to 2003 TLC Annual Report

It did not monitor compliance for 6 years. As was stated by the Northern Territory Government itself:

There has been at least one instance in the Northern Territory (Tiwi Island forestry) where Commonwealth conditions have not been adequately monitored or enforced. The subsequent investigative process and discussions of remedy were not conducted in close contact with Northern Territory Government agencies.⁵³

2.4.2.7. **Relaxing of Environmental Conditions to Suit Economic Needs**

Staged clearing is one significant means of reducing impact on species, by allowing time for species to adapt to the loss of habitat. Original conditions in the EPBC Act Approval required general staged clearing of the proposal to mitigate impacts on the listed species, so that only 10,000 ha could be cleared in any 2 year period.

After Cyclone Ingrid destroyed most of the plantations in 2005, GSL needed to obtain Investor capital quick, but knew it would have to establish all the trees of every Investor within 1 year in order to comply with the 12 month pre-payment Tax Rule. So it approached the Commonwealth Government to double the rate of clearing so that 10,000 ha could be cleared in the one year for it to get millions from investors.

The changes had a significant impact on the environment, effectively doubling the rate of clearing, which is a significant factor in impacts on threatened species. Yet the change was simply approved without a blink of an eyelid by the Commonwealth.

2.4.2.8. **Illegal Clearing and Weak Enforcement**

The proponents systematically failed to comply with what little regulation which did apply. And after reports emerged of clear breaches of the conditions, Commonwealth Governments sat on it for 2 years, with the former Commonwealth Government refusing to do anything at all.

The breach of environmental conditions was extremely serious and resulted in somewhere between 260 and 1000 hectares of native eucalypt forests being clear-felled illegally between 2004 and 2006, with unknown amounts of habitat and listed threatened species being destroyed. It was on par with the largest illegal clearing actions ever occurring in Australia.

The reported claims that systematic breaches of monitoring and surveying requirements has occurred has not even been acted upon or addressed by the Commonwealth to date.

It is entirely unclear why no prosecution (or more serious response) for breach of conditions has been commenced by the Commonwealth Government. Similar amounts of illegal clearing activities anywhere else in Australia have led to swift and serious prosecution both by the State and Commonwealth Governments (explained above).

While we do not know the details of the confidential enforcement decision - the "joint statement" released by the Commonwealth Department and Slyvatech defies all the progress in environmental enforcement and compliance practice that has been achieved over the last 20 years to use reasons of "inadvertence" and "lack of financial gain" as a bearing on the Commonwealth's enforcement response and the culpability of the proponents:

- **"The contravention of the Approval was inadvertent"**

The breach occurred because the proponents did not invest (or have) the resources, skills or finances to properly comply with the Approval.

If we are going back to using inadvertence as an excuse for environmental offences, than we might as well not have any environmental laws whatsoever because no-one

⁵³

ever *intends* to pollute. In fact the operators of the recent oil spill of the Queensland coast should be let off the hook as clearly that didn't mean to pour the oil into the sea.

- **“The contravention did not result in significant commercial benefits”**

We question what possible relevancy this statement has to a Plantation MIS Operation, given that no commercial benefit is made until 10 years time when the trees are harvested and the native timber lost money in any event.

Clearly the intention of clearing every plot of land for plantations is to receive a commercial benefit – not only to Great Southern by establishing the Plantation trees, but to the Land Council and Sylvatech in selling the native timber. The failure to spend adequate resources to comply with conditions requiring rainforest and wetland buffers (ie develop mapping technologies) reduces costs in order to increase these commercial benefit.

We also consider that the principal reason for the clearing was the commercial drivers behind the whole MIS, being the need to expend the investors “establishment fees” in 12 months so that the investor could claim the tax incentive. Indeed the illegal clearing occurred exactly at the time when the proponents obtained the change to the conditions of the EPBC Act approval in 2005 to double the rate of clearing, the sole basis of which was to increase production levels (ie profits).

- **“the contravention did not result in evidence of harm to matters of national environmental significance”**

We question again how this ground can be used when there was in fact no information on whether this occurred or not:

We don't really know whether they have been affected because these studies have not been done, we know that some habitat has certainly been lost, what we don't know whether the species will be affected in the long term by that habitat loss⁵⁴

The weak enforcement response by the Commonwealth has lead to the proponents treating the issue as minor, with little deterrent effect on them or others in the community. As stated in its Annual Report GSL explains the loss of 1000 ha of native forests as:

Auditing undertaken in relation the Melville Island operations has identified a compliance issue with the establishment of plantations around buffer zones

The blasé sentiment towards up to 1000 ha of illegal clearing of native forests and threatened species habitat is repeated by members of the TLC, who refer to the issue as a “hiccup”.⁵⁵

The whole process appears to have misunderstood that the areas cleared were a protected area themselves, just as important vegetation communities and threatened habitat as the areas they were also supposed to buffer.

Worse still, the process was also deeply secretive. In response to the initial allegation of illegal clearing, GSL quickly proposed a “voluntary audit” of their compliance with conditions, which was accepted by the commonwealth government. This action clearly headed off a mandatory audit under the EPBC Act which would have attracted legal sanctions for any misstatements in the audit process and been available to the public.⁵⁶ As was recognised by Minister Cambell on 7 February 2006:

⁵⁴ Background Briefing ABC Professor of Tropical Knowledge at CDU – Steven Garnett
⁵⁵ <http://www.abc.net.au/rural/nt/content/200810/s2393197.htm>
⁵⁶ See section 461 of the EPBC Act

As this audit has been initiated by the proponent and is not a formal requirement of the EPBC approval, decisions on the public release of the audit will be at the proponent's discretion.⁵⁷

And by the Spokesman for GSL, David Ikin:

The audit is not a public document, ah how can I put this, every three years there is a compulsory audit that must be carried out, I am sure that that one may be released, this is just something for ourselves and the Tiwi Land Council initiated. The document is not a public one.⁵⁸

The proponent not only got away with being completely unregulated with regard to all aspects of the Forestry Plantations, but when they severely breached the EPBC Act approval they were let off.

We also note that no real "penalty" has been inflicted by the Commonwealth Government for the negligence of the proponents through the new conditions; they have only been required to remediate the cleared areas and provide offset activities which should have been included in the projects approval in the first place. Such conditions are common practice across the Country. The funding of "rangers" will just replace the Commonwealth Government grants and there will be no net benefit to the environment.

2.4.3. **THE COMPLETE FAILURE OF COMMONWEALTH ENVIRONMENTAL CORPORATE REPORTING OBLIGATIONS**

Ordinary individual people in Australian are the ones who are paying to clear the native trees on the Tiwi Islands to establish their acacia woodlots. In fact each investor (according to the Tax Office) is carrying on a business on their woodlot. Under the Investment Contract, the investor takes out a sublease on their woodlot and pays the investment manager to clear the plot that they lease for them on the Tiwi Islands and plant it with acacia trees (than continue to maintain it and eventually sell it).

However, it is entirely unlikely that those investing with Great Southern (if any) know that they are actually paying for native eucalypt forests and habitat of threatened species in the Tiwis to be clear-felled for their acacia trees. Especially given that most plantations Australia-wide are established on already cleared agricultural land.

Clearly, many ordinary people who partake in these schemes would like to know such important information. The obligations under the Corporations Act and Trade Practices Act are supposed to ensure that these people have such information on the environmental ramifications of their investment and are not misled as to the facts.

From 1999, First Management Corporation in contract with Sylvatech sold to Tiwi plantation investors until about 2002. At least they were upfront, and explicitly stated that investors would be paying to clear the trees on the land, even revealing that the trees would be felled by way of bulldozing and burning.⁵⁹

Yet when Great Southern took over in 2005, that kind of talk soon went silent.

Great Southern's Product Disclosure Statements and Annual Reports are awash with claims that their Plantations provide an alternative to clearing native forests, that they are carbon friendly and that they provide other environmental benefits. Every picture and image is of green agricultural land with Plantations nearby. It gives a clear message to consumers that they only have plantations on cleared agricultural land.

⁵⁷ Senate Question No. 1463 – 7 February 2006

⁵⁸ ABC Background Briefing

⁵⁹ <http://law.ato.gov.au/atolaw/view.htm?docid=PRR/PR1999103/NAT/ATO/00001> ;
<http://law.ato.gov.au/atolaw/print.htm?DocID=PRR%2FPR2001124%2FNAT%2FATO%2F00001&PiT=20031217000001&Life=20010711000001-99991231235959>; <http://law.ato.gov.au/atolaw/view.htm?docid=PRR/PR200022/NAT/ATO/00001>

Moreso the document on which investors decide whether to invest in the Tiwi Forestry Plantations (the Product Disclosure Statement) says nothing about clearing native vegetation, let alone threatened species habitat, to establish their woodlots.⁶⁰

In fact the yearly PDSs indicated that native forests were not cleared. In the 2007 and 2008 PDS GSL stated at **Page 15**

“ The establishment of hardwood plantations has the potential to deliver a number of environmental benefits. These may include:

...

(3) Alternative to Native Forests

At the present time, most of the hardwood woodchip that is exported from Australia is derived from native forests. The establishment of hardwood plantations can provide an alternative source of hardwood for wood chipping purposes, providing government with an option to reduce pressure on native forests.”

It even gave the clear impression that native vegetation is actually an area of exclusion from plantations during the land selection process:

“GPS Surveys of obvious non-plant boundaries, native vegetation, farm tracks and utilities are carried out”⁶¹

We note that Great Southern is now being sued in a class action by Investors for misleading conduct in relation to their re-structure plan.⁶²

The EDO (NT) believes the Inquiry should request the ACCC to investigate the matter.

2.4.4. A CONFUSED, UNIFORMED AND UNREGULATED MESS

Like every other community in Australia, the ordinary Tiwi people and greater public deserve a clear process which provides them with independent and verifiable information on exactly what is being proposed, and government support in giving them information on the likely impacts of a complex project (both adverse and beneficial) and in return receives their input. This Forestry Project has followed a piecemeal strategy, with each consecutive part of the development only slowly coming to light over 9 years. Information on the values of the Tiwi environment and impacts of the Forestry Operations has followed it, rather than preceded it⁶³, leading to complete inability of Government, the public or the Tiwi people to ever understand its implications or the true extent of what was being proposed.

The proposal has shifted from a small 5,200 ha concept plan to the Northern Territory, to a fully fledged 30,000 ha plantation proposal to Commonwealth Government. There was never any detail on the actual project or its impact. Than between 2001 and 2004 plans for the Port, roads and other infrastructure came to fruition without any regulation or assessment by anyone. All along continuous statements have been made by the proponents about a greater plantation up to 100,000 ha, and now it is quite clear that the original Port was never sufficient for the plantations and will have to be greatly upgraded and expanded.

This has significantly confused and detracted from the ability of either Government or ordinary Tiwi people to realise the overall extent of the real plans for the Forestry Operations, and assess and approve the environmental impacts of the original plan to develop up to 100,000 ha of plantations, roads, a Port and even a Mill which would presented as clearly more unacceptable.

⁶⁰ <http://law.ato.gov.au/atolaw/view.htm?locid=PRR/PR2004115/NAT/ATO&PiT=99991231235958> ;
<http://law.ato.gov.au/atolaw/view.htm?locid=PRR/PR2006121/NAT/ATO&PiT=99991231235958>;
<http://law.ato.gov.au/atolaw/view.htm?docid=PRR/PR2006121/NAT/ATO/00001>

⁶¹ The 2006 and 2007 PDS **page 59**

⁶² <http://www.thewest.com.au/default.aspx?MenuID=32&ContentID=115164>

⁶³ The first comprehensive study of the Tiwi environment was only undertaken in 2003, years after it was approved.

It has given the public and Tiwi people no chance of understanding what was really happening or what was really being proposed. Yet the strategy is extremely successful in avoiding critics of the Plantations as:

- Environmental impacts always seem less if they are presented in stages and components, rather than considered as one project; and
- Calls to prevent each further expansion or component on environmental grounds are met with cries that the expansion is an economic imperative for the industry to survive, and jobs will be lost if it cannot expand.

The strategy is subject to strict legal prohibition in most State and under the Commonwealth EPBC Act yet somehow it has happened here.

The Commonwealth Minister should revoke approval of the Code of Practice for Forestry Plantations in the Northern Territory to ensure that until it is properly followed and enforced through legislation, the export of plantation timber will require and export licence to ensure environmental requirements are met.

Investigation should be conducted into the complete failure of the EPBC Act process regarding this Plantation as a distinct part of the current EPBC Act Senate Review.

The fundamental continuing breaches of the EPBC Act should be investigated and enforced by the Commonwealth Environment Department..

The ACC should investigate the reporting and disclosure obligations with regard to the various statements of Great Southern regarding the Tiwi Plantation Project.

With major resource developers increasingly targeting the Northern Territory (recent McArthur River Mine), more action is desperately needed for Northern Territory and Commonwealth Departments to work together to ensure best practice is implemented for projects in the Territory, particularly on Aboriginal Land where there is very little oversight or community consultation and vast range of issues which operate against effective decision-making.

Given the complete lack of Territory Regulation and Enforcement the Commonwealth needs to look into providing capacity building and resources to the Territory in this area. Most environmental laws in the Territory are simply disregarded because there is no enforcement.

3. GOVERNANCE, TIWI CONSENT AND ECONOMIC IMPACTS

The Proponents told Tiwi people were going to make 100s of millions of dollars in land and port lease payments, native timber sale, profits from a share of the plantations and even carbon benefits! Nothing was explained in Tiwi language, but the \$\$\$ signs were pretty recognisable.



Extracts from the Tiwi Forestry Story Slideshow 2007 – Tiwi Land Council and Great Southern

3.1. THE CO-OPTION OF THE TIWI'S RESOURCES TOWARDS BUILDING, RUNNING AND RE-INFORCEING THE PLANTATIONS

How could it possibly be profitable to establish plantations for large scale export to Asia on a remote undeveloped island which had no existing infrastructure?

The Plantations would need:

- Access to the Island for large scale machinery and infrastructure;
- A large network of suitable roads for heavy machinery to be used to establish and harvest the Plantations;
- Accommodation and offices for workers, management and staff;
- To source staff and labour without any resident population skilled in the area (so would otherwise have to fly contractors in and out at huge expense); and
- A means of exporting the timber in huge quantities efficiently

And more importantly to Great Southern and its predecessors who are in the business of selling the Tiwi Forestry Plantations to Investors to make its money – who is going to invest in their Tiwi scheme instead of another scheme if they are going to have to pay huge fees to build the infrastructure for their plantations?

And it was certainly not going to be profitable for Great Southern or its predecessors to be in the business if they had to pay for it.

The answer was that it would get the land leases dirt cheap because there was no infrastructure, and the Land Council was to pay for infrastructure and operating costs through its access to funds for the benefit of all Tiwi people, and its ability to harness and control the financial resources of the Island, both through its control of land lease income as the Land Council, and through its control of other income (Port Rent, Sale of Native Timber and Tiwi Barge income) through Pirntunbula or other arrangements. Broken down it could harness all the money available to the Tiwis as follows:

- Large one-off payments from the Aboriginal Benefits Account, Heritage Trust and other Government Sources to build the Forestry Infrastructure and operate the Plantations.
- Use of the majority of its own yearly Land Council management funding from the Aboriginal Benefits Account for the operating costs of Great Southern's Plantations as the joint business partner.
- Re-direct the money it would receive in rent from the land and the Port from Great Southern and its predecessors back into spending for the Forestry Infrastructure and support; and
- Spend any proceeds, such as that from the sale of the native timber, (and probably the cut of the plantation harvest profits) back on forestry infrastructure and support for the Plantations.
- Use money that the private asset holding company that the Land Council owns (Pirntunbula) made to redirect to the Forestry Plantations and support.

All of these sources are supposed to be for the benefit of Tiwi people, yet over 10 years the Land Council has directed them towards subsidising Great Southern's Forestry Plantations, or the institutions that supported it at the cost of any other social or economic venture.

The drawing in of all the available public funding to the Island has meant that all other economic and employment opportunities have been wasted.

3.1.1. The Land Deal

TLC locked themselves into 30 year leases back in 1999 based upon the value of land with pretty much no infrastructure for Forestry (\$17 a ha). On the assumption that the 3 year rent reviews follow normal practice and cap any increases from market reviews above a small percentage of the original rent (ie 2 to 3% of \$17) these rent values are not going anywhere fast for the next 20 years (**although this should be confirmed by the Inquiry**). Even if the Tiwis have a chance to re-negotiate the terms of the lease in 20 years, what competition is there on a single island heavily constrained by environmental values for agricultural business?

The problem is not with the amount of rent, which we assume was duly calculated on the inability of infrastructure for Forestry or any other competitor for the land (although we note that anyone who was not hell bent on establishing Forestry at all costs would have realised this as an obvious indicator that Forestry was not a profitable business for the Island)

The problem is that the whole basis of the extremely low market value of \$17 a hectare⁶⁴ (when compared to normal prices of anywhere between \$100 to \$300 throughout Australia⁶⁵) for a Forester is because the Forester will have to install that infrastructure necessary for the intended business themselves at their cost. This is the whole principle of the *unimproved* valuation methodology. For

⁶⁴ See page 160 of Senate Hansard dated 11 May 2006 (Senator Abetz)

⁶⁵ See Market Report 13 "Rents for plantation land leases" dated September 2000 by Australian National University Forestry

growing and selling trees this is namely roads to move to and from the plantations and a Port to store and export the wood for sale.

But instead of Great Southern paying for it, the first con was that this was the infrastructure that the Tiwi people ended up paying for anyways with public funds available to them (Aboriginal Benefits Account mostly for the Port (4.5 million) and Roads (15.5 million)).

The second con was that the land rent and other money received from Great Southern was also to be duly re-invested by the Land Council back into building more Forestry Infrastructure or paying for the operating costs of the Plantations in any event (rent from the Port, the Roads, the Barge facilities, in addition to even paying for running the business via the operating budget of the Land Council). For example as stated in the Annual Reports:

Agreements for private investment in development of land contain various conditions for both participatory revenue and cost recovery to fund the requirements of Land Management. Development conditions and constraints of the new *Environmental Protection and Biodiversity Conservation Act 1999*, contain strict management and audit requirements that the Land Council, together with the Investor, must comply with. **These requirements, driven by joint development interests, are the significant focus of the Budget.**

The Management Committee also commenced planning for forest harvesting commencing in 2003. **Tiwi leaders have agreed to set aside revenues from this harvest (of approximately 200,000 tonnes) for major forestry road construction.** Preliminary discussions of urgent forestry infrastructure have already commenced with the Northern Territory Government. These roads have an economic potential for timber haulage and will establish a significant asset owned by the Tiwi people.⁶⁶

The shift from custody of traditional lands to reliance upon development of portions of that land are the trigger for sophisticated strategies and processes now required. **The land Council was fortunate in accessing Natural Heritage Trust Funding that supported assessment and data collection for baseline studies over the past three years**

3.1.2. Island Access for Great Southern's Plantations

The Tiwi Barge is for freight and heavy machinery service only. It is presumably owned by Pirntunbula and therefore receives the fees from it.

The establishment of Plantations through the leasing of land under the power of the Land Council meant that lots of heavy machinery and freight was going to be needed to flatten the forests, rip up the soil, upgrade the roads, and build the workers camp and the Melville Port. Meaning lots of Barge Fees.

Also in 2003 \$90,000 was funded by the Commonwealth to build a Quarantine Wash Down facility, which was only needed because the heavy machinery for the Forestry Plantations presented a high risk of penalties to the Land Council and Great Southern for wilful and negligent introduction of weeds under the new *Weed Management Act* which was introduced in 2001.⁶⁷

The Barge operates as a monopoly designed to extract fees to Pirntunbula, which causes financial stress on parts of the Community. As stated by former CEO of the Tiwi Local Government John Cleary it:

has a monopoly on shipping to the Tiwi Islands. Its monopoly rates are egregiously over-priced but pleas by housing and store managers to use other operators were refused by the Land Council. On one occasion both generators in a community failed on a Friday night leaving the community without power. After discovering that Tiwi Barge was unable to provide a barge, an approach was made to another company which immediately dispatched a barge to transport the generators to Darwin for repairs over the weekend and at the same time bring in another generator. At the Local Government Council meeting the following week, this decision was attacked by a Land Trustee who was a Director of Tiwi Barge. Despite their monopoly, there is no evidence that Tiwi Barge profits are being returned to the community. Even an approach by the local government council to contribute to the landing facilities used only by Tiwi Barge was ignored.⁶⁸

The money from the monopoly on commercial access to the Island goes to Pirntunbula, which allows the Land Council to both benefit from it personally, but also direct in any way it sees fit to support

⁶⁶ In 2001 / 2002 and 2002 / 2003 Land Council Annual Reports

⁶⁷ Page 28 of 2001 / 2002 Tiwi Land Council Annual Report. Hansard Tuesday 2 March 2004.

⁶⁸ Page 7 – Issue Analysis – Indigenous Governance at the Crossroads – The Way Forward (No. 78 November 2006) The Centre for Independent Studies.

itself, the Forestry Plantations and those who support it. Of course all this power over financial resources comes from its power to grant the interest in land for the Plantation in the first place.

3.1.3. Establishment and Harvesting of Great Sothern's Plantations

\$1.5 million dollars was taken from the Aboriginal Benefits Account and NT Funds for roads to allow for the establishment and harvesting of the Forestry Plantations.

In 2008, Great Southern's shares plummeted 99 cents and reported a 63.8 million dollar loss.⁶⁹ In July 2008 the Plantation's General Manager went again to the Commonwealth to ask for more Government funding to build forestry roads. Now asking a \$14 million from Government funds on the basis that:

An investor is going to say: 'What are my chances that, when I come to harvest this next lot of trees in another 10 years time, someone will have built better roads, because if they haven't the cost of my hauling the logs might go up by 25 or 50 per cent?' The next question they are going to ask is: 'If I'm not too sure that that's going to happen, what are my alternatives?' They are going to look at other shires in Australia where they can grow pulpwood.

Great Southern is using the fact that the investor was never asked to pay the known cost of running their business by Great Southern to get money from Tiwi funds to supplant the cost, now that Great Southern was in financial difficulty.

Where there is not enough money for Great Sothern's infrastructure coming from the Aboriginal Benefit Account, it appears clear that its business partner the Land Council had never intended to pay the money from the native timber sales to the Tiwi people but use it to build more forestry roads:

The Management Committee also commenced planning for forest harvesting commencing in 2003. **Tiwi leaders have agreed to set aside revenues from this harvest (of approximately 200,000 tonnes) for major forestry road construction.** Preliminary discussions of urgent forestry infrastructure have already commenced with the Northern Territory Government. These roads have an economic potential for timber haulage and will establish a significant asset owned by the Tiwi people.⁷⁰

Any claim that these roads were for the benefit of ordinary Tiwi people is clearly ridiculous.

The plantations are located in remote areas not needed for access by the general community in any event. For the upgraded roads which happen to coincide with roads between communities, the increase in traffic congestion, safety issues and noise, dust and other amenity and safety impacts of forestry trucks (particularly at planting and harvest time) is likely to completely offset any gains. As the population is centralised in small pockets, particular in Nguiu we doubt much frequent travelling occurs between communities.

The only roads paid for by Great Southern, and not Tiwi or ABA money, have been for direct access roads in remote locations to their plantations which are far away from communities, and completely useless to the community, as stated by the Plantations General Manager to the Senate in July 2008 when he asked for more money:

"At present, apart from the roads that Great Southern has made to the more remote areas that we have planted, there is one piece of reasonably improved road [referring to the ABA built road]"

3.1.4. The Export Infrastructure for Great Southern's Plantations

The former Commonwealth Government agreed to pay \$4.3 million dollars out of accounts supposed to be used to benefit Aboriginal people to pay for Great Southern's Export costs.

Somehow it was sold on a pitch that:

⁶⁹ <http://www.thewest.com.au/default.aspx?MenuID=32&ContentID=115164>
⁷⁰ In 2001 / 2002 and 2002 / 2003 Land Council Annual Reports

As a valuable long-term income-producing asset, the port will make a significant contribution towards the Tiwi goal of a secure economic future.⁷¹

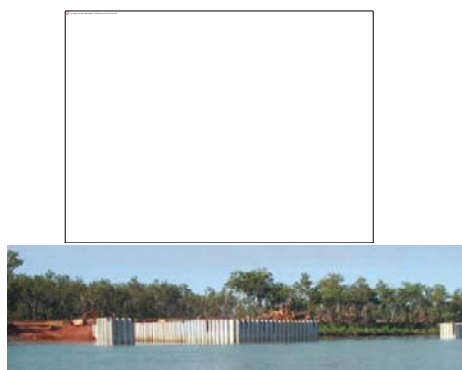
The reality is that the Land Council (through Pirntunbula) has bought a piece of dirt jutting out onto the water for \$4.3 million dollars of Aboriginal Benefit Account funds which was never capable of exporting the plantation timber and could have been directed elsewhere to directly benefit Tiwi people.

The Port has not been a valuable asset.

- It is structurally unsound, and has required constant additional funds for repair, being severely damaged at least twice so far:
 - In March 2005 the wharf was severely damaged by Cyclone Ingrid;
 - In late 2007, the corner of the wharf collapsed and required extensive work to become operational, again TLC claimed it would be operation by mid 2008. Recent Submission of GSL states that it is still not operational in March 2009.⁷²
- It cannot be used to export the plantation timber without a further **40 to 50 million dollars** being spent to actually make is a Port. Once again, no one was ever told this when it was originally built.⁷³
- The Port ended up losing \$700,000 on the only thing it was capable of doing – exporting the “tiwi red” native timber.⁷⁴

As owner of the Port we presume Pirntunbula has had to meet all the costs of repair and will have to contribute significantly to its upgrade of 55 million dollars. We will presume it will seek from the ABA again.

On the conservative assumption that 55 million will be altogether spent on the Port and that Pirntubula reportedly receives \$200 000 a year in rent for the leasing of the Port, it will only take **257** years to recoup its investment and opportunity costs.⁷⁵



Pictures of Melville Forestry Port (Source: Industry Media Releases)⁷⁶

3.1.5. Project Approval and Management costs of Great Southern’s Plantations

Over about 4 years the proponents were able to secure funding from the National Heritage Trust and Northern Territory Land Care of what looks like up to 1 million dollars to do the studies and plans required to get the project through its limited assessment and approval by Government and operate the project.

⁷¹ <http://www.steelcom.com.au/documents/press-articles-sheet-pile-november2004-emcc-p58-59.pdf>

⁷² http://www.tiwilandcouncil.net.au/WhatsBH/Sub_pages/Econ/Forestrynew.htm

⁷³ Page 19 of Submission by Great Southern Limited into Inquiry into forestry and mining operations on teh Tiwi Islands dated 16 March 2009

⁷⁴ Page 19 of GSL submission to Senate Inquiry

⁷⁵ John Hicks – Interview with Stateline Northern Territory Broadcast 29 September 2006

⁷⁶ Earthmover and Civil Construction Magazine

This was spent on the biodiversity studies and “strategic plan for Forestry Plantations” and “Resources Strategy” and other reports which were used for the Northern Territory Assessment and the Commonwealth EPBC Act assessment. None of these are legitimate independent planning documents. They were just normal private business management documents or self-supporting fluff to re-enforce the legitimacy of the Plantations.

The funding was only ever desired to support the Plantations, not out of any concern for the environment. As stated in the Annual Reports:

The shift from custody of traditional lands to reliance upon development of portions of that land are the trigger for sophisticated strategies and processes now required. The Land Council was fortunate in accessing Natural Heritage Trust Funding that supported assessment and data collection for baseline studies over the past three years

Once again funds and operating expenses that Great Southern would be required to expend themselves anywhere else in Australia are being syphoned out of Aboriginal people’s financial resources.

3.1.6. The Operational costs of Great Southern’s Plantations

It appears clear that almost all the financial and human capital of the Land Council since the Forestry Plantations started 10 years ago has been put into operating and supporting the Plantations. This consists on average of a 1 Million annual budget over 10 years so far (1999 to 2009).

All the staff employed by the Land Council are basically the daily operators of the Forestry Operations, or do work supporting the forestry operations or supportive organisations. The Land Council even produced thousands of flyers and booklets promoting the Forestry Plantations in 2007 and 2008.

Even the Commonwealth or Great Southern funded Land and Sea rangers on the Tiwis appear to be being used to actually manage the environmental impacts of the Forestry Plantations and do the surveys for them. This would be money a developer usually has to pay to manage their operations anyway, yet in the Tiwis it is being sold as an additional community service!

Any money received by the Land Council is also spent back on this Forestry operational cost. The Annual Report from 2001 to 2008 reads:

Agreements for private investment in development of land contain various conditions for both participatory revenue and cost recovery to fund the requirements of Land Management. Development conditions and constraints of the new *Environmental Protection and Biodiversity Conservation Act 1999*, contain strict management and audit requirements that the Land Council, together with the Investor, must comply with. **These requirements, driven by joint development interests, are the significant focus of the Budget.**

The demands of quarantine, environmental planning, controls and audit now consume two thirds of the Land council budget. (2003 / 2004 Annual Report)

Once again, even though the Land Council is the joint business partner in the whole Forestry Plantations and directly derives commercial benefit from it, it tries to act like some type of independent government agency managing the Project in order to legitimise receiving and using public Tiwi funds on what is essentially the operation of the Forestry business.

3.1.7. Forestry Education, Training and Employment for Great Southern

It is quite clear that the Tiwi Land Council has calculated from the start to take control of all education, training and vocational and employment government services on the Island in order to support the forestry industry (and other resource developments).

There were already 4 primary and secondary schools in the main communities on the Island with infrastructure adequate to cater for the number of school aged children. Students go to High School across the water in Darwin.

The Tiwi Education Sub-Committee was established in December 2001 in link with the commencement of the Forestry Project.⁷⁷ The Land Council walked into each existing school intending to “include the schools within the general decision-making processes of Tiwi leadership”. A Tiwi Islands training an Employment Board (TITEB) was also set up by the Land Council “to manage all employment and vocational education and training activities for Tiwi people on the Tiwi islands” to train everyone in Forestry and Resources.⁷⁸ It “worked closely with the Tiwi Education sub-committee in trying to address concerns within the school environment”.⁷⁹ And in 2002 ambition of the Land Council was “to achieve the participation of Tiwi leaders in the policy and planning of Tiwi education in harmony with the work for the TITEB”. The TITEB is fully funded by Governemnt. New training centres for it constructed in 2003 cost \$580,000 – all this focussed on Resource jobs on the island.

On 10 June 2004 the Land Council “determined” to establish a separate Forestry College and set up the education-subcommittee, with money from the Forestry Operation again “for the benefit of the Tiwis” of \$400,000⁸⁰. The sub-committee eventually turned into the Tiwi Education Board, the directors are from the same management committee of the Land Council, who are also on the TITEB.

They found the source of funds to set up the school when the Intervention kicked off in 2006 and the Commonwealth wanted in on the community. In 2006, to secure the deal for the 99 year lease the Commonwealth funded about 13.9 Million dollars into the development of a new Forestry School - The Tiwi College.⁸¹ Another 2.1 million dollars was sourced from somewhere to make up the 16 Million that was needed.

Not surprisingly the objectives of the school are developing skills in forestry and resources industry complete with a “Forestry Industry Training Centre”.⁸² The joint Great Southern, Land Council and TITEB Statement reads:

Great Southern, the Tiwi Land Council, Territory and Australian Governments are also partners in a college at Pickertaramoor, due to open in early 2008 to provide training of Tiwi teenagers in areas such as forestry and aquaculture

The College itself states it was established miles away from any of the communities in the middle of plantation plots to guide its objectives.⁸³ And the other business partner in the Forestry Plantations Great Southern is a Corporate Partner of the college and provides funding.⁸⁴ Like every other institution on the Tiwi Islands, the Land Council controls the College through the Tiwi Education Board. The Board again made up of the same Tiwi Land Council members and person picked by it, selects the teachers. The continued operation of the Forestry College is paid for by Great Southern’s rent of the Port which goes to Pirntunbula. Presumably money made from Tiwi barge and other interests is also used to support the Forestry College. Great Southern also make direct payments.

Since when are secondary schools in Australia allowed to be funded by Government and Private Corporate Interests in order to train and educate young children for a single business interest or sector?

So young Tiwis are drawn from general learning at existing 4 schools, to be trained in Forestry at the Tiwi College than move to the TITEB to be prepared for work in the Plantations. Once young Tiwis are educated and vocationally trained in Forestry, they then move into Tiwi Enterprises Pty Ltd which was set up with \$150,000 of the only money that has gone into the community from the Forestry Plantations, to provide the contracting service to Great Southern so that they can become Forestry

⁷⁷ Page 52 of Land Council Annual Report 2001/2002

⁷⁸ Page 39 of 2002 / 2003 Land Council Annual Report

⁷⁹ Page 19 of 2001 and 2002 TLC Annual Report

⁸⁰ http://www.ntcsa.nt.edu.au/index.cfm?attributes.fuseaction=viewTemplate&menu_id=20&template_id=56

⁸¹ FACSHIA Annual Report, Page 23. SENATE Hansard - Tuesday, 15 August 2006 per Senator Kemp

⁸² http://www.tiwilandcouncil.net.au/WhatsBH/Whats_BH_college_eduall.htm;

http://www.ntcsa.nt.edu.au/index.cfm?attributes.fuseaction=viewTemplate&menu_id=20&template_id=56

⁸³ Submission from Tiwi College into this Senate Inquiry

⁸⁴ Stateline Northern Territory – Forestry on the Tiwi Islands dated 29 September 2006

works..⁸⁵ Further money is spent with the Department of Employment, Education and Workplace Relations funding a full time person to help train the Tiwi people that Great Southern employs.⁸⁶

So after expending all the resources and energy of the entire Tiwi community for 10 years Great Southern and Land Council and TITEB can release great media statements saying that a few people have been employed with the Forestry Plantations.⁸⁷

From school age the Tiwi children are destined to be drawn away from normal schooling to be educated, trained and employed to cut down Tiwi's forests and grow acacia plantations for the profits of city investors down South. All the funding for the entire community which is available has been sourced for and spent on this prospect only.

3.1.8. Related Essential Forestry Infrastructure and Services

In addition 3 Management Offices have been constructed in Nguiu / Pirlangui and Milikapil in 2002 and we assume they are used for Forestry and Resources.

Recently bus Services to deliver Tiwis to work started on 10 January 2008. Not surprisingly they are there to provide transport for workers to get from their communities to the Forestry Operations..⁸⁸ Funding has also been sourced to establish Nursery (apparently to tender for seedlings contracts for the Plantations)

3.1.9. Other institutions

The Land Council appears to heavily influence the Tiwi Local Government which it initially set up "to overcome community division", with the 8 Land Trustees of the Land Council also on the Tiwi Local Government.

The former CEO of the Local Government and many Tiwis have reported that the Land Council continually tries to influence it and take over its functions. Indeed a read of any of the early Annual Reports of the Land Council shows it feels that it is responsible for all government functions on the Island and that all decision must end with it.

There are also reports the Land Council set up the Tiwi Health Board, and then promptly let it fail, whilst all along raving about its success publicly and blaming government for its failure.⁸⁹

A disturbing pattern appears to have occurred of centralising power on the claim that it overcomes community division, but really just allows the Land Council to control everything.

3.2. THE ROLE OF THE LAND COUNCIL

All Australians should be able to expect that the bodies which have power over them established by Governments act in a fair and equitable manner, and independently of the members own interests.

Yet the Land Council has been able to set up a system and framework where it can control most of the assets and money of the Tiwi Islands. It has done so by using general funds available for the benefit of all Tiwi people, yet the system allows it to choose at its discretion exactly how all the wealth gets spent and it is only getting spent on those who support the Council and the Plantations.

Indeed the Land Council should never have been able to get into this position of power. It simply has no power to carry out Government services or commercial activities, and is not supposed to receive any

⁸⁵ <http://www.abc.net.au/news/stories/2007/11/21/2097100.htm>

⁸⁶ See page 39 of 2003/2004 Annual Report of Tiwi Land Council

⁸⁷ Great Southern Media Release 9 April 2008 – "Forestry Project Delivers more Tiwi Jobs"

⁸⁸ http://www.tiwilandcouncil.net.au/WhatsBH/Sub_pages/Econ/transport.htm

⁸⁹ Rolla Manning (Mirrijini Consultancy) and Barry Puruntatameri - Effective community control – the way forward for improving Ingenious health

benefit from its position. The *Aboriginal Land Rights Act* is an Act which provides for “the granting of Traditional Aboriginal Land in the Northern Territory for the Benefit of Aboriginals”. The Act establishes the Land Council to hold (through the Land Trust) communal freehold title in the Tiwi Island on behalf of the traditional owners of the Tiwi Islands. The Traditional Owners (all of them) are the owners of the Tiwi Islands, not the Land Council. The Council is merely there to help them with how they want to manage their land.

The only relevant powers the Land Council in relation to land are:

To consult with traditional Aboriginal owners of, and other Aboriginals interest in, Aboriginal land in the area of the Land Council with respect to any proposal relating to the use of that land

To negotiate with persons desiring to obtain an estate or interest in land in the area of the Land Council on behalf of traditional aboriginal owners of that land and of any other Aboriings interest in the land

to assist Aboriginals in the area of the Land Council to carry out commercial activities (including resource development, the provision of tourist facilities and agricultural activities), in any manner that will not cause the Land Council to incur financial liability or enable it to receive financial benefit.

In line with this power there are some key restrictions in the ALR Act which control the power of the Tiwi Land Council. Obviously the power to control all interest in Land on the Tiwi Islands creates enormous potential for abuse.

We believe the Senate Inquiry should investigate whether they have been breached.

3.2.1. Power and Functions under the Aboriginal Land Rights Act

The ALR Act provides the following limitations on the Land Councils powers.

- **Prohibition on carrying out its own commercial activities, or receiving financial benefits or liabilities from commercial activities it assists with**

The functions of the Land Council are to assist Aboriginal in the area of the Land Council to carry out commercial activities in any manner that **will not cause the Land Council to incur financial liability or enable it it receive financial benefit**

The Land Council only has the powers given to it under the ALR Act. It has no more.

The Act does not provide any power to the Land Council to carry out commercial activities. It gives them a power to *assist* ordinary Tiwi people who want to carry out commercial activities themselves, but it can only assist to the extent it does not derive a financial benefit.⁹⁰

Yet the Council is running the Forestry Plantations itself as a business partner. It has approved leases of its land for Plantations, and uses its budget and the rent from these leases for the operating costs of the Forestry Plantations. Its position in approving the leases and land use also directly generate financial and fringe benefits to a company which the Land Council runs (Pirntunbula) through ownership of the Port (which is rented to sell the timber of the plantations) and Tiwi Barge (which receives all the money from the heavy machinery coming across for the Resource developments).

The clear intent of the ALR Act was ensure that the Council did not use its position in controlling all the interests in Land to derive itself a benefit, or to monopolise commercial activities on the land to that it controls the wealth.

- **No Government Service Function**

There is no power for the Land Council to carry out local government, or any governmental services or functions.

⁹⁰

Section 23(1)(ea) of the ALR Act

Yet it has moved to do all these. It appears to believe it is a land-use planning authority, a health authority, training and employment authority, an education authority and a business and resource development authority.⁹¹

Again its position as Land Council in approving land use and leases, has generated income into Pirntunula (or through Government grants) which it can then direct to these services, which are only designed to service a single interest, the Forestry Plantations.

- **The requirement to spend all the money it receives from the Aboriginal benefits Account on its administrative costs (ie its functions)⁹²**

The Land Council is required to spend its budget on its administrative costs, being carrying out those functions which it has power to do. It cannot spend its budget on functions which it does not have, such as operating or managing the Forestry Plantations itself, carrying out Government services or commercial activities, or deriving a financial benefit. Yet it has done all this?

The Land Council appears to be using the vast majority of its budget to operate and support the Forestry Plantations.

- **The requirement to on pay any money it receives through any interest in land which it granted under its powers to ordinary Tiwi people**

Where a Land Council receives payment in respect of Aboriginal land... the Land Council shall, within 6 months after that payment is received, **pay an amount equal to that payment to or for the benefit of the traditional Aboriginal owners of the Land.**

Any money which the Land Council receives in relation to the Land interest it controls, must be applied “to, or for the benefit of” the ordinary Tiwi people within 6 months of the Land Council receiving it.⁹³ The requirement is clearly there to ensure that the benefit from land interest passes directly back to the traditional owners and cannot be spent at the whim of the Land Council.

Yet the Land Council appears to believe that this means it can just spend the money on Forestry Infrastructure and related support to the Forestry Plantations. It has used the words “for the benefit” to pick and choose whose benefit it will use the money for and divide the community to support it.

- **The requirement that any money paid out of the Aboriginal Benefits Account be paid for the benefit of ordinary Tiwi people**

The Land Council can also source additional lots of money from the Commonwealth ABA for one-off payments. One off payments from the ABA can only be made by the Commonwealth Minister for Indigenous Affairs under section 64(4) of the ALR Act for:

Such other amounts as the Minister directs to be paid or applied **to or for the benefit of Aboriginals living in the Northern Territory.**

How is a Forestry Port and Forestry Roads to help Great Southern export its plantations a direct benefit to Tiwi people? Well it appears that no-one from the Commonwealth Department really looked at what the money was going to be used for. A recent Report Commissioned by Lyndsay Tanner did a performance audit in 2009 of past payouts from the Aboriginal Benefits Account and found the following for applications made by Land Councils for one-off payments for the benefit of aboriginal people:

The Office examined the assessment of a sample of successful applications for beneficial payments funding. The assessment process was found to be **cursorily in nature and did not include a detailed analysis of the information the applicants provided.** Assessments were carried out by staff in either Darwin or Canberra **without any formal quality assurance review.** Also there appeared to be **little or no consideration given to project risks including mitigation strategies and/or project monitoring.** Any recommended post-funding

⁹¹ Page 46 of 2001 / 2002 TLC Annual Report

⁹² Section 35 of the ALR Act

⁹³ Section 35 (4) of the ALR Act

monitoring appeared to be compliance based and **there was no requirement for applicants to report on what benefits/outcomes were achieved**, other than the amount of funding received and spent.⁹⁴

Even where there was no strict legal restriction on the payment of funds, it was clearly inappropriate for public funds such as the Heritage Trust and NT Government money to be used to build purpose built Forestry Infrastructure to deliver profits to investors with Great Southern. It was also completely inappropriate for the Land Council to spend its only energy on sourcing funds from Forestry Infrastructure when there were millions of other desperate needs in the community for the public funds.

3.2.2. Pirntunbula

As we understand it, the Pirntunbula receives the rent from the Port paid by Great Southern for \$200,000 annually as well as money from the Tiwi Barge, Tiwi Tours and other assets. This allows it to receive money outside the constraints of the ALR Act. Yet the only reason this wealth is generated is through the position of its members on the Land Council in granting the consent for the use of the land and leasing of the land for Plantations.

EDO(NT) understands that Pirntunbula has the following Directors (although they may change from time to time):

- Walter Kerinaiaua (Land Council Management Committee)
- Mathew Wanaemirri (Land Council Management Committee)
- Cyril Kalippa (Land Council Management Committee)
- Andrew John Tipungwutti (Land Council Management Committee)
- William Arthur Headley (Operations Manager with **Great Southern Plantations** - previously with **Sylvatech**)
- Ian John Henty Silvester (ex General Manager of Perkins Shipping – paid consultant to TLC)
- Craig Francis Phillips – (General Manager of **Pentarch Forest Products**)
- Bruce Dennis Maluish – (Managing Director **Matilda Minerals Ltd** –Board/Management of **Stirling Resources Ltd**)
- Tony Rokov (**Great Southern Plantations**)
- John Sydney Hicks (company secretary since Land Council)

Evidence suggests that the private use of the money is potentially very high, it has been reported by the former CEO of the Tiwi Local Government that:

Six Land Councillors and three staff [of Pirntubula] were able to enjoy a fully funded three week round the world trip in 2003, ostensibly to visit forestry and aquaculture 'business partners' in Korea, England and the Netherlands, but also including attendance at the secretary's wedding in Germany.⁹⁵

Is this not a direct conflict of interest and in direct breach of the ALR Act? It would not be accepted if a local governing body acted like this in a white community.

3.2.3. Representation

It does not appear that the election of the Land Council is at all representative. The Land Council is headed by a white non-Tiwi Secretary yet it appears that the Land Council claims traditional authority to obtain customary obedience as recognised "elders", and exclude women from the Land Council on the basis that "Land ownership is through patrilineal inheritance."⁹⁶ Half the population already has no voice. How did the Commonwealth Minister agree to this?

And how can a Land Council which seeks to make decisions about modern economic resource exploitation claim to have authority for this system from a traditional law which has nothing to do with clear-felling 30,000 ha of forests for *acacia* Plantations for export to Asia?

⁹⁴ Page 40 of the November 2008 *Performance Audit of the Aboriginals Benefit Account* (Office of Evaluation and Audit (Indigenous Programs))

⁹⁵ http://www.cis.org.au/issue_analysis/IA78/IA78.PDF.

⁹⁶ Page 17 2001 / 2002 Tiwi Land Council Annual Report

Those Land Council members who have opposed the Forestry Operations have been forced off the Council. When former member of the Land Council Garwin Tilploura started questioning the Land Clearing in 2007 and deals with Great Southern he was promptly sacked by the Land Council for “brining a Commonwealth Corporation into disrepute”, which is simply another way of saying he was fired for criticising the actions of the Land Council.⁹⁷ Adam Kerinaiaua was also sacked after criticising the Land Council’s actions.

When 2 petitions have been signed warning of the failure of the Land Council and opposition to the Forestry Plantations they have been ignored by Government.

It does not seem like the Land Council is at all representative of Tiwi people.

“We, the undersigned, are women of the Tiwi Islands and we would like to express our concerns over the clearing of our native forests...

“Our forests provide not only food source / bush tucker for our people but also our ceremonial items and craft...

“You may be aware that ours is traditionally a matriarchal society although our voices are seldom heard.

“We have no representation on the Tiwi Land Council. We are not consulted properly and never in Tiwi language. We hear promises of jobs and financial benefits for our people, yet have not seen any results.

“Most Tiwi do not benefit from royalty payments. In the meantime our forests are still being cleared at a fast rate.

“Our call is to stop clearing Tiwi land.”

Petition signed by about 110 members of the Strong Women’s Group

“We, the undersigned, are residents of the Tiwi Islands and wish to bring to your attention the concern of the Tiwi people regarding the actions of Mr John Hicks, the Executive Secretary / CEO of the Tiwi Land council.

We, the Tiwi people, feel that our interests are not being represented.

After his 20 year involvement in the Tiwi Land Council, we fell that Mr Hicks exercises excessive influence over the respected Elders of the Tiwi Land Council. We, the Tiwi people, are not sufficiently consulted on the decisions made which have a significant impact on our land and our people. We have little information about he workings of the Land Council which makes decision about our future.

We do not have confidence in Mr Hicks playing an influential role in the Tiwi Land Council and immediately call for his resignation.

The undersigned petitioners therefore ask the House of Representatives to call on the Honourable Minister for Indigenous

⁹⁷

<http://www.abc.net.au/news/stories/2007/11/21/2097100.htm>

Affairs to acknowledge our call for Mr Hicks' resignation and to commission an inquiry into the Tiwi Land Council including their administrative procedures, land-use decision making processes and Pirntubula Pty Ltd

Petition signed by about 500 Tiwi Adults

3.2.4. Informed Consent

We understand that in 1999 the main Deeds with regard to the proposed use of the land for Plantations were established. This is when the Land Council locked itself into the entire Plantation land-use.

The Land Council could not sign up to the use of the land for Plantations unless;

The traditional Aboriginal owners of the land **understood the nature and purpose of the proposed action**, and, as a group consented to it, and any Aboriginal community or group that may have been affected by the proposed action was consulted and adequate opportunity to express their view to the Land Council

We are not aware how the Land Council obtained consent from the Tiwi people in 1999.

However, in any event there were no details of the Project in 1999. There were no details of the environmental values of the Tiwis in 1999, and there were no details of the impact of the Project on the environmental values in 1999. No environmental studies were done until way into 2000 and no government assessment had been undertaken to even try to flesh out these details until mid 2001. So how could the requirement to ensure traditional owners gave their consent on a real understanding of the nature of the Plantations have possibly been met?

So with no information available on the environmental impacts, none could be given. Instead of there being an independent government process, the only people who spoke to the Tiwi people about the project was the developer themselves (the Land Council). The only information left was the claim that that the timber would be harvested by 2005 for 100s of millions of dollars, and that Tiwis would receive lots of money from rent from the land, the Port and even Carbon arrangements, and there would be lots of jobs!

It seems quite clear that informed consent could never have been given.

3.3. THE ECONOMIC IMPACTS OF THE FORESTRY PROJECT

If you were to spend an entire communities available financial and human resources, time and energy over 10 years on the worst possible economic and employment project you are probably still going to be odds on to end up with a few jobs and dollars somewhere.

Indeed, the Plantation Project has not been far off (and we note both the aquaculture and mining projects have already failed).

By the first time the harvest of the Plantations actually occurs in 2013 (after first predicting 2005) it looks like Great Southern will take with the help of the Land Council anywhere up to **100 million dollars** of Public funds available to Tiwi people, and 10 years of their time and energy wasted, simply to allow Investors trees to be planted, harvested and sold. In return those Tiwis who support the Plantation will receive hardly anything by 2013, and even than it has not solved any of the problems of the community and has created more. Most of the claims of Tiwi jobs selectively choose who it counts in the numbers (ie most of the work is done by contractors and seasonal workers, yet the Tiwi employed jobs are always compared to full time or island employees to make them look like a bigger percentage)

And how can you claim to have achieved anything if you have simply lost so many opportunities for real jobs and employment in these communities? What is the point of creating a few jobs for some people, when you have lost employment opportunities for so many more?

Indeed even after an enormous amount of money is being spent by Public funds on the Forestry Plantations and infrastructure, the Land Council has recently attacked the NT Government, rather than itself, for the failing resource economy it has pursued. How is it the Government's fault if it was the Land Council who wanted to set up a clearly expensive resource economy rather pursue the many existing opportunities for the Island?

It is time to stop and realise how many jobs and economic opportunities for ordinary Tiwi have been completely wasted by the Land Council through its myopic focus on the Plantations (and resource industry), and how the Land Council has used its position to control and divide the community

3.3.1. Dividing the Community

“Lease payments are made every three months once agreement is reached between Great Southern and Land Owning Groups over use of land. It is paid only to groups who want economic returns from development or business on their land.”⁹⁸

The Land Council has harvested the vast majority of available public funds for all Tiwi people, and its own budget on the Tiwi Islands to build the infrastructure and supporting services of the Forestry Plantations, yet the systemic control it has established in conflict with the ALR Act allows the Land Council to spend the only money it receives from Forestry on those people and institutions which support it. The people who do not support it have had money which was available to them for other economic ventures removed, and have not received anything.

The only people who are receiving payments from the Port (and Barge) and Land rent made by the Forestry Operations are those institutions which were set up by the Land Council itself to support the forestry plantations (ie Forestry College, Forestry Bus, Forestry Training etc), or other institutions which support it politically such as the Tiwi Bombers.

This is a great deal for Great Southern who would have had to pay the 100s of millions of dollars either itself or by increasing its fees from Investors. But it can claim to have no control over how the money that it pays to the Land Council and Pimntunbula is distributed.

The Land Council has clearly used the communal nature of property rights it manages, to channel all the available resources to the Island to only those people who agree for their land to be cleared.

3.4. THE PROMISE OF THE SHARE OF PROFITS

The only hope of any returns at all is the profits that apparently the Tiwi people will get a share of.

However we assume that the same system will merely direct the profits exactly where the Land Council wants it to go to support itself. We also note that the promises were that profits would occur in 2005, then 2009, now 2013 (unless another Cyclone hits and then it may be 2020).

Great Southern and the Land Council have made many claims about the potential returns to the Tiwi people from the sale of the Timber on its 2 % interest in the net profit that will go to Great Southern.

Yet Great Southern is not even able to legitimately make any such claims to the Investors who will get the first cut?

As the Projects are of a medium to long term duration and there are a high number of variables involved in the calculation of returns to Growers, the ability to accurately forecast returns is extremely limited.⁹⁹

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Tiwi Island Forestry Story – Great Southern and Tiwi Land Council Slideshow 2007

⁹⁹

Great Southern Product Disclosure Statement 2007 and 2008 for Forestry Plantations on the Tiwi Islands.

Why is it ok to throw around wild predictions to entice Tiwi people so that they invest their whole community's wealth and resources into the Project, but not ok to make such claims to a potential city investor so they will invest?

The profits from the venture (as well as the Tiwi jobs) are also highly dependent on the economic sustainability of the Forestry Plantations. There are already many reports that Australia has an oversupply of Forestry.

3.5. ECONOMIC SUSTAINABILITY

To lock up a entire Islands common funds, community skills, education, job capacity wellbeing and hope for the future in a single MIS venture at the expense of other opportunities and the desires of a large percentage of the population is an incredibly risky business, especially when the venture relies ongoing government tax incentives to survive and is inherently risky and speculative.

Yes trees grow; you can cut them down, make money, and grow again. Sounds great and sustainable?

But where do you get the millions and millions of dollars to spend all this to establish the plantations, especially when profits are only speculative at best. If the project is allowed to continue, the current investor's money runs out in 2013 and a new round will be required. Without people willing to invest millions of dollars into the Project (investors), the entire Project will fall over, purpose built infrastructure and skills will become useless and the Tiwis will be left with nothing in addition to 30,000 of cleared soil and 13 years of waste time and over 100 million dollars in waste funds.

If this is expanded up to 100,000ha double the money and resources will be wasted on infrastructure and human capital it will only get worse.

But as can be seen from the recent collapse of Matilda Minerals (and previous aquaculture business) and complete cessation to the Operations on Melville, business can collapse very fast so you have to know what they area about. Shares in Great Southern itself have fallen 99.9 percent in 2008, and Great Southern reported a \$63.8 million dollar loss to September 30 on the back of a slump in MIS investment.¹⁰⁰

3.5.1. Forestry 2020 Vision

The whole driver behind the national 2020 Vision and push for development of the forestry industry has been to move out of native timber logging, which the Regional Forestry Agreements were supposed to address the remaining issues with.

It is not sustainable that government policy can be used to establishment of plantations by the clearing of native forests. The policy support for these projects must be removed.

3.5.2. Tax Incentives for MIS Plantations

The Forestry Industry itself has regularly admitted that demand for investment is completely dependent on Tax incentives, not the product itself (like the word "conversion" to describe old growth forests being bulldozed, they use "tax efficiency" to describe the tax incentive).

Forestry MIS Schemes work by manipulating the existing tax incentives available to ordinary businesses to offset the capital they expend in their business towards making their tax assessable income. It is true that the same tax incentive used by MIS Schemes is available to normal business. However the rort occurs in 2 ways:

¹⁰⁰

<http://www.thewest.com.au/default.aspx?MenuId=32&ContentID=115164>

- By way of legal arrangements they create a fallacy that each of the thousands of investors living in Southern Australian Cities who read a PDS and transfer some money to Great Southern, are actually “carrying out a business” on a little plot in the far away Tiwi Islands in the same way as an actual private farmer would be doing who went out there and grew a crop and actually invested human capital in regional Australia. This allows them to claim all their investment money is for “carrying on a business” and offset all the expenditure against their assessable income in the year they pay Great Southern.
- Not only that, but investors can get the tax return immediately rather than after the capital expenditure is actually expended (12 month rule), let alone after the only time when they can really prove their operating a business at all (at the time the trees are harvested and sold in 8 to 10 years time).

Indeed in November 1999 when the 12 month rule was removed it led to a **70% drop** in investment. It was re-established in 2002 but under a sunset-clause until 2006, which was extended to 2008.¹⁰¹ Hardly a steady foundation for pending one’s entire resources of a community.

So the Tiwi Island Forestry Project is therefore largely underpinned and driven by the ability of MIS to co-opt this tax incentive to business, and will only survive if it is maintained. Unless the extraordinary tax incentive is maintained by Government, with a 70% drop in investors if it is not, it is clear that there would not be enough investors available to fund the project in 2013 and beyond.

There is a current review of the Taxation System underway by the Federal Government which should remove the tax incentives, at the very least if the Review achieves its focus on “sustainability” it will remove the tax incentives for plantations which are established by clearing native forests.

This is not a reason to keep the project going, but a reason to stop it before more money and resources is invested into it by the Tiwi people.

3.5.3. Market Risks

The investment process is highly risky and unknown as the trees take up to 10 years to grow and it is impossible to predict the market value of the timber, the presence of competing suppliers or whether there is a buyer for the timber in 10 years. The economic foundation of the project is strong economic growth in Asia. In the current economic climate we question the sustainability of this foundation and ask the committee to pay particular attention to what will occur if the project becomes economically unsustainable.

The Japanese market is already announcing they will no longer purchase woodchips sourced from native forests.¹⁰²

3.5.4. Operational / Environmental Risks

During that 10 years a plethora of operational risks are faced that the trees will actually grow enough to make any money, including fires, pests, droughts, severe weather events, and cyclones, most of which are set to markedly increase under impacts of Climate Change in the Tiwi.

We note that independent reports by GHD for GSP show that average survival rate of some planted acacias in the Tiwis is only 74%, compared to 96 to 99% survival rate in all other areas in Australia.¹⁰³

¹⁰¹ See Submission by the National Association of Forest Industries to the proposed taxation arrangements for plantation forestry dated 14 July 2006, and submission to the current review of the entire Tax system dated November 2008.

¹⁰² Great Southern Annual Report 2005

¹⁰³ Report for 2006 Project (2007 and 2008 Planting), Western Australia, Victoria, South Australia, Tasmania, Kangaroo Island and Tiwi Islands October 2008 by GHD, available at http://www.great-southern.com.au/Plantations_Investors.aspx

Indeed, in 2005, Cyclone Ingrid wiped out most of the plantations planted to that date, causing 10 to 14 million dollars in damage.¹⁰⁴ As stated in the Independent Reports by GHD, the March 2005 Cyclone damage will mean that fibre quality and quantity of plantations that survived will be significantly affected at the time of harvest and sale, and therefore drive down profits.

All pending and future funding for the Forestry Plantations needs to cease. If the Forestry Plantations are economically suitable for the Island than they should pay for themselves, not by using funds available to Aboriginal people when no benefit has been received.

The relevant Commonwealth Minister must seriously investigate the actions undertaken by the Tiwi Land Council which are outside their powers under the Aboriginal Land Rights Act, and amendments to the ALR Act are required to prevent Land Council's taking advantage of their position of power.

Tax incentives for MIS Plantation Schemes need to be removed immediately as part of the current Commonwealth Tax Review, as least for MIS Forestry Plantation Schemes which clear native forests to establish plantations or are otherwise environmentally unsustainable.

The Minister for Aboriginal Affairs needs completely alter the Land Council Governance arrangements in order to remove the ability of Land Councils to use their position to dictate communities and control government and commercial resources.

The NT and Commonwealth Government need to step in and directly consult with the ordinary Tiwi people to see what they want for their Islands, explaining to them the options available. If they want economic development (such as in tourism, service provision and environmental management) than appropriate experts and human resources need to be provided to them to achieve this.

The current Tiwi College and all other Institutions set up under the Land Council through Government funds need to have their funding and influence from private corporations and the Land Council removed.

Full investigation of the FACSIA needs to be undertaken of the process by which so much money was granted which does not actually benefit Tiwi people.

¹⁰⁴ Paragraph 8 of <http://www.forestry.org.au/news/articlefiles/1149-Tropical%20Forestry%20Begins%20to%20Mature%20-%20Article%20-%20The%20Forester%20Dec%202008.pdf>. Also see TLC Annual Report 2004 to 2005.

4. WHICH PRESENTS MORE ECONOMIC AND SOCIAL VALUE TO ORDINARY TIWI PEOPLE – CLEARING FORESTS FOR PLANTATIONS OR PROMOTING THE TIWI ENVIRONMENT AND COMMUNITY?

The Proponents would like everyone to believe that the Forestry Plantations are the Panacea to “welfare dependency”

4.1. The Plantation Solution?

The Plantation Project has presented itself very successfully as the solution to the ills of the Tiwi community. In fact it is the only reason it has been able to get away with the environmental devastation and the illegal clearing that has occurred. It has used the plight of Indigenous people as a successful marketing campaign to both use their resources and destroy the environment.

Yet it has done nothing to address the Indigenous communities issues. It has merely created new or more social problems and given jobs to a few, whilst removing many more jobs from others. The entire resources of the Tiwi people have been used to subsidize Great Southern’s operating costs, and any gains are used to divide the community.

Many opportunities have been missed and directly turned down by the Land Council through the myopic focus on the Forestry Operations.

The situation will only get worse if something does not change. The more resources are sucked into this Project, the further the opportunities to really address the problems of the Community and tap real economic opportunities available to it will be gone forever.

4.2. The Lost Opportunities from Valuing the Community and the Environment

Drawing on the theme of indigenous equality, the Land Council and Great Southern point to the wide-scale development and clearing of the mainland and cry its unfair, why can't we do it!

But lost in their myopic focus, they have negated to see the communities most two important and sustainable economic values which are present:

- Its community, and the existing human culture and capital of ordinary Tiwi people; and
- The Tiwi ecology and the absolutely obvious economic value that has been created by the preciousness of the Tiwi environment through the growing scarcity of environmental values across the Mainland and indeed the globe.

4.3. Local Community, Business and Professional Services

By far the most vital need in indigenous communities is for local indigenous people to manage, organise and deliver the existing local community, business and professional services that deliver and enhance values to their own community such as - health, legal services, banking and accounting, policing, environmental health, government administration, welfare support, food production and local agriculture, basic food and entertainment industries, sport and recreation, teaching and education, business and tourism management.

There is a large intellectual talent on the Tiwis which has been largely untapped, indeed Marion Scrymgeour the most successful indigenous politician in the NT is Tiwi born.

A large degree of these services for Tiwi people are delivered by white professionals, contractors and consultants from outside the community, who operate from or fly in and fly out from Darwin, who despite best intentions have little true understanding of local indigenous issues, usually no local language skills, and inevitably high turnover rates.

These areas of employment and wealth creation are the absolute eternal basics of functioning Tiwi society, and therefore present the real long term sustainable economy for Tiwi people through capacity building in these highly skilled areas. They also give Tiwi people the only real opportunities for self-determination, and help broaden and disperse control and power to make decision about the community evenly amongst the Tiwi people.

Yet instead of investing the limited education and training resources for Tiwi people to service, care for and nourish their own community, the Land Council have spent millions of dollars of traditional owners money and all their energy in training and educating Tiwis to bulldoze native trees and spread fertiliser and pesticides to deliver profits' to more white professionals and consultants outside the community. How is this ever going to enhance the Tiwi community in the long run?

4.4. Eco-Tourism (including Arts, Cultural products and Football)

Melville Islands contains pristine wilderness of International significance. It has an optimal strategic location for tapping the existing \$58.2 million top end tourism market, and indeed growing it.¹⁰⁵

- Melville Island is only a short hop over water (15 to 30 minutes by light plane) from the capital city of Darwin which is undergoing an economic and population boom (even in current global crisis), set to grow an entire new city by 2030.

¹⁰⁵

<http://www.crctourism.com.au/WMS/Upload/Resources/bookshop/FactSheets/Tremblay%20-%20KNP%20contrib.pdf>

- Melville Island is located tantalizingly close to Tourist Markets in Asia (both Asian market and international tourists in Asia) with the International Airport in Darwin and Flights to the Tiwi taking about 30minutes from Darwin, and domestic flight operators increasingly offering cheap flight between Darwin and much of South-East Asia (2.5 hours to Bali).
- Being a large Island environment, it offers completely different and unique experiences to those currently available in the Territory and indeed the North.
- It already has a rich, unique and vibrant culture, art industry, and exciting sports scene with the very marketable Tiwi Bombers football brand, to complement the key feature of the natural environment for the tourist industry.

During the 1 open day of the year when about 3,000 visitors flock from Darwin to watch the Tiwi Football Grand Final the Tiwi Art Centre made thousands in sales.¹⁰⁶

Yet, the second biggest Islands in Australia have 1 single Indigenous Tourism Venture controlled by the Land Council through Pirntubula, and is limited to about 15 to 20 visitors a day. It has only allowed 2 single white tourist ventures (Meville Lodge and a Fishing business), which duly support the Land Council to keep their monopolies on their business so they can charge huge rates.

The Tourism market presents huge social and economic opportunities for Tiwi:

- Employment and wealth creation through provision of services (such as the sale of cultural products, conducting tours and recreational activities, restaurants and accommodation service delivery);
- A direct increase in existing art and cultural product sales by selling directly to Tourists, and cutting out the well recognised impacts on white middle men on profits;
- the leasing of land on commercial drivers which put value on the isolation and lack of development and infrastructure of the Tiwis (rather than devalue these characteristics); and
- Providing skills and training in Tourism which are some of the most transferable and fluid of any industry, giving Tiwi people the freedom to live on their traditional homelands or Australia-wide and internationally.

As a useful analogy, 20 years ago, the decision to move from bulldozing the environment to selling it occurred in the Daintree / Wet Tropic Region of Cairns and on Fraser Island with the cessation of the clearing of native forests. Similar decisions have been made to move from land development to environmental promotion in the Territory.

Direct Tourism and Recreation in the Daintree in Queensland now delivers direct investment at about 141.7 million a year, and in Fraser Island is worth 116.7 million. A year¹⁰⁷ This is not money locked up in useless assets, but money flowing directly to the communities who service the area. The contribution to the general economy through multiplier effects is up to 250 million for Fraser Island.

The failure to tap this opportunity by the Land Council was not inadvertent, but intentional. In 2002 the Tiwi Local Government developed a Strategy for Tourism on the Island, which it was required to do under its Constitution.¹⁰⁸ The former CEO of the Local Government has reported that the Land Council directly opposed and scuttled the Strategy. In its place, the Land Council has only ever initiated and developed a “Natural Resource Strategy” aimed at promoting forestry, mining and aquaculture.

There is alot of Tiwi people who have approached the Land Council to carry out small scale private business or Tourism on their land which suit their lifestyle, yet they have all been ignored because it does not involve Forestry.

¹⁰⁶ <http://www.abc.net.au/news/stories/2007/04/03/1888350.htm>

¹⁰⁷ <http://www.fido.org.au/DaintreeFraserStudyExecSumm.html>

¹⁰⁸ Section 11(2)(w) of *Tiwi Island Local Government Constitution*

The only access to the Island apart from plane, the Tiwi Barge, is operated by the Tiwi Land Council through a private company it set up called Pirntubula on which its members sit.

Not surprisingly its only vision for the future relates to the Forestry Operations and other resource developments:

Indications are that the service has an opportunity during 2008 to significantly expand its service in order to cater for the expected high demand associated with the Tiwi Forestry Project, Aquaculture Industry, Matilda Minerals, development of the Tiwi College and housing and other construction developments on the Tiwi Islands during 2008.¹⁰⁹

Whilst the TLC is happy for resource industries to come into the Tiwi with 100s of foreign worker and backpackers, and lease the land and compete to strip its resources, it prevents any such opportunities by its own people or private tourism ventures, stifling the development of the Tourism sector.

A single successful resort or enterprise could quite easily employ 20 top 30 Tiwis (comparative to the Forestry Operations), whilst also generating substantial ongoing rental income for leasing of the land and providing much more sustainable skills than how to bulldoze trees and spread pesticides.

Think logging in the Daintree, Fraser Island, Kakadu, Litchfield and you will quickly understand that not only have resources been directed away from tourism to Forestry development, but the continuation of the Forestry Operations stifles and is incompatible with tapping the significant tourism Opportunities.

4.5. Environmental Protection and Management Opportunities

Clear synergies exist with economic development and job outcomes from the value placed on the protected environment through Tourism, in combination with tapping government funding and free markets capital in biodiversity protection and carbon abatement.

The skills and practices involved in these economic ventures also have the immense benefit of complementing, supporting and re-invigorating traditional Tiwi culture, and language and land management – which have all been shown to have major beneficial impacts on indigenous health, families and social harmony.¹¹⁰ Recent studies by the Commonwealth Government showed the involvement of indigenous people in the Indigenous Protected Areas program delivered a wide array of positive social outcomes.

The logging of 300 square kilometres of native forests, and then getting Tiwi people to manage those environmental impacts has been a perverse sales pitch of the Great Southern, using pretty pictures of locals surveying animals and plants, it provides tokenistic support to Land and Sea management which it then uses to manage its own environmental impacts.

It is vitally important for Tiwi leaders and people to understand that economic opportunities and jobs in environmental protection and management, either through government or developing regulated and voluntary markets are just as (if not much more) “real”, “sustainable” and wealth producing as the Forestry Operations, which are in fact largely Government funded and rely on continuing policy support to exist.

Protection and management of the land and sea environment in the Tiwis is a valuable economic activity. Traditionally the market has failed to provide economic value for these services because of failures in appropriately valuing environmental protection, and appropriately costing resource consumption and industries which pollute.

4.5.1. Government Supported Land and Sea Management

In place of the market failures, Governments have been left to deal with the externalities and have driven jobs and economic value in protecting the environment, through regulation and direct funding of environmental initiatives.

¹⁰⁹ http://www.tiwilandcouncil.net.au/WhatsBH/Sub_pages/Econ/transport.htm

¹¹⁰ Donna Green, Climate Change and Health: Impacts on Remote Indigenous Communities in Northern, CSIRO Marine and Atmospheric Research Paper 012 Australia

Absent Forestry Operations, the Tiwi islands is still subject to a range of serious threats, including introduced species, changes in fire management regimes which are having substantial impacts on native forests, flora and fauna. The increased impacts of Climate change are likely to increase these impacts.

There is plenty of funding available to employ Tiwi people in this area:

- On 2 January 2009, Mr Garrett announced a further \$31.1 million dollars available for jobs and training as land and sea rangers as part of the Working on Country initiative within the broader \$2.25 billion Caring for Country Program..
- There is also 27 million dollars for specific working on country initiative in the Northern Territory, as part of a change to CDEP Scheme to improve skills and employment outlooks
- The Northern Territory Resources, Environment and Arts also provide funding grants.
- The Indigenous Protected Area program as part of the National Reserve Scheme

The whole intent of these programs is again being completely co-opted and perversely undermined by the Forestry Operations, as land and sea rangers on the Tiwi are now spending most of their time and government grants on managing the impacts on the Forestry Operations themselves, instead of the existing background threats which already existed.

4.5.2. Market Demand for Land and Sea Management

Increasingly, the global push for sustainability and response to Climate Change has focussed on correcting the basic failure in the market by establishing market mechanisms for environmental protection; it is one of the guiding principles of Ecological Sustainable Development.

The Corporate and private environmental responsibility push has also generated significant voluntary markets, in both carbon and biodiversity.

There are many active institutions and organisations available for the Tiwi people to make these opportunities a reality, including NAILSMA which is currently undertaking 4 carbon abatement projects, CSIRO, ANU, Charles Darwin University, EDO (NT) and ECNT to name a few.

4.5.2.1. The Carbon Market

Through the developing carbon markets, there is real economic value to the Tiwi people in:

- Avoiding the carbon that would be released through clearing their native vegetation, by retaining the vegetation; and
- Managing native vegetation to reduce carbon emissions and encourage carbon storage (such as fire management).

Experts have priced the lost opportunity to the Tiwi people of leaving some of the Native Forests that have been cleared in the ground at about 110,000 million dollars.

Greenhouse emissions from savannah burning in the Northern Territory are quite a significant contribution to overall GHG emissions, as highlighted by recent statistics from Australia's national greenhouse gas inventory.¹¹¹

Savannah burning in 2006 was 2.6% of Australia's greenhouse gas emission and 38.5% of this was the result of savannah burning in the NT. The NT has experienced an increase of 71.3% of emissions from savannah burning since 1990 levels.

¹¹¹ Department of Climate Change, Australia's National Greenhouse Accounts, National Greenhouse Gas Inventory 2006 and State and Territory Greenhouse Gas Inventories 2006, 2008, www.climatechange.gov.au/inventory

The increase is largely attributable to a decline in relatively mild fires early in the dry season, to more intense fires later in the dry season. Indeed, between 1997 and 2005 the Tiwi islands experienced hot fires late in the fires season (except for 2005).¹¹²

Therefore large reductions in Carbon emissions can occur through re-establishment of traditional (or non-traditional) fire management regimes on the Tiwis which reduce intensity of fires and amount of net carbon produced. Indeed we understand that the CSIRO is currently conducting research on this on the Tiwis.

4.5.2.2. Regulated Domestic and International Carbon Markets

The Policy Position of the Green Paper was that “the Government will facilitate the participation of Indigenous land managers in carbon markets and will further investigate the potential for offsets from reductions in emissions from savannah burning and will consult with Indigenous Australians on forestry opportunities under the Scheme”.

The Joint Development Mechanism allows offsets to pass between Kyoto compliant countries.

4.5.2.3. The Voluntary Domestic and International Carbon Market

It should be recognised the significance and growth potential of the unregulated market or voluntary offsets – as they provide a principal means by which corporations and individuals can claim to be “carbon neutral”.

The West Arnhem Land Fire Abatement Project has been a success in generating wealth through carbon abatement. Under the WALFA Project, TOs are provided about 1 million a year by Conoco Phillips for 17 years.

The predictable boom in gas and LNG processing facilities in Darwin and North-West Coast being driven by the development of gas reserves in the sea would appear to provide a perfect opportunity for Tiwi people to make deals in the voluntary market.

Indeed the boom in onshore and offshore gas development Australia wide presents no reason why such opportunities cannot be pursued for operators in Western Australia (Woodside Energy) and the East Coast of Queensland (Queensland Gas Company and Santos).

4.5.2.4. The Biodiversity Market

Scientific Reports for the Tiwi Islands specifically note that a loss of traditional burning activities has occurred on the Tiwis, and has contributed, along with Forestry clearing, to the decline of listed threatened species.

Whilst much attention has focussed on carbon offset schemes, Biodiversity offset schemes are now established in Queensland, New South Wales, Victoria, South Australia and Western Australia. Biodiversity markets have also been created to supplement these schemes which have created a market from developers to purchase offsets.

There is also a large voluntary Biodiversity Offsets market scheme. For example Rio Tinto has a Policy of no net loss to biodiversity and frequently voluntarily purchase offsets.

¹¹²

<http://www.environment.gov.au/land/publications/acris/pubs/bioregion-tiwi-cobourg.pdf>

Cover Photos Source: Source (Eucalypt Forest - Pual Munns, John Woinarski, Kym Brennan, Ian Cowie, Raelee Kerrigan and Craig Hempel – Biodiversity conservation on the Tiwi Islands, Northern Territory August 2003; Photos of Land Clearing and Opposition - ECNT