



**FAMILIES, HOUSING, COMMUNITY SERVICES AND
INDIGENOUS AFFAIRS**

**TIWI LAND COUNCIL TIMBER INDUSTRY
ARRANGEMENTS**

REVIEW – 2008/2009

FINAL REPORT

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1. EXECUTIVE SUMMARY

1.1 Introduction

The Tiwi Land Council (TLC) is responsible for representing Tiwi land owners in order to administer and direct the use of Tiwi land. The TLC receives appropriations under the *Commonwealth Authorities and Companies Act 1997* through the Department of Families, Housing, Community Service and Indigenous Affairs (FaHCSIA).

The TLC has entered into timber industry arrangements with Great Southern Plantations Ltd for forestry activity (the Forestry Project). The Forestry Project is based on Melville Island and direct land use rental returns are paid to the local land owners. Recent political interest in this project has compelled FaHCSIA to seek a review of the Forestry Project.

1.2 Review Objectives

The objective of the review was to review:

- the reasonableness of financial returns to the Tiwi community from the Forestry Project;
- whether returns are in accordance with the terms of the Forestry Project arrangements entered into by the TLC; and
- the process followed in obtaining the Council's agreement to contractual arrangements associated with the Forestry Project.

1.3 Review Scope

The scope of the review was to examine the Forestry Project arrangements entered into by the TLC and advise and assess whether:

- the community is receiving a reasonable return for the costs it has, and will incur, in terms of resources, inconvenience and other opportunities foregone; and
- whether those returns are in accordance with the terms of the arrangements entered into by the TLC.

The review also considered the process followed in obtaining the TLC's agreement to various contractual arrangements associated with the Forestry Project, in order to assess whether the TLC was fully informed in reaching its decisions.

1.4 Review Methodology

The review included the following steps:

- developing a test plan;
- entry meeting with key stakeholders;
- interviews with staff from the TLC, Great Southern Plantations, an external contracted firm and one community elder; and
- travel to the Tiwi Islands to view and understand the plantation structure;

- detailed file review;
- analysis of information received; and
- drafting of report and an informal exit interview with key FaHCSIA officers.

1.5 Review Team

Director—Mark Saunders

Principal Consultant—Greg Healy

Principal Consultant—Colin McLachlan

Senior Consultant—Janna Gilbert

1.6 Conclusion

The review found that the financial returns to the Tiwi people from the timber industry (the Forestry Project) to be reasonable, and include:

- a rental return for land use;
- future two per cent of Net Harvest Proceeds; and
- future 33.3 per cent of Great Southern's Management Entitlement to the Net Harvest Proceeds.

Land use rental returns are distributed to traditional owners of plantation land. Net Harvest Proceeds and Management Entitlement proceeds will begin in 2012. The method for distributing this money needs to be established by the TLC. Additional non-financial returns also result from the Forestry Project, including employment, training and contracting opportunities.

The financial returns that the Tiwi people receive from the Forestry Project are in accordance with agreements entered into by the TLC, and the review team considers that the process followed in obtaining the TLC's agreement to contractual arrangements was and is fair. The development of these financial arrangements was undertaken through negotiation between the parties, where the TLC utilised the services of specialist solicitors in Melbourne who were able to draw on their experience of similar agreements across the forestry industry. The review team also sighted minutes of full TLC meetings where contractual arrangements were discussed. These activities provide a transparent process and provide a reasonable return to the Tiwi people.

2. BACKGROUND

The Tiwi Islands, consisting of Bathurst and Melville islands, lie approximately 60 kilometres north of Darwin. The Tiwi Forestry Project¹ is an important component in the local economy. This project has developed over time, and is influenced by a complex number of factors including land suitability and Commonwealth laws.

This section outlines the Department of Families, Housing, Community Services and Indigenous Affairs' (FaHCSIA's) relationship to the Tiwi Land Council (TLC), and key factors of the Tiwi Forestry Project. Discussion points include:

- Tiwi land rights and the TLC;
- FaHCSIA's relationship with the TLC;
- the history of forestry on the Tiwi Islands;
- current forestry on the Tiwi Islands; and
- Tiwi organisational arrangements.

2.1 Tiwi land rights and the Tiwi Land Council

In 1976, the Tiwi Land Trust was granted title to the Tiwi Islands under the *Aboriginal Land Rights (Northern Territory) Act 1976 (the Act)*. This land is to be used for the 'benefit' of Tiwi Islanders. The TLC is a statutory authority that was established to direct and administer the Tiwi Land Trust. It is responsible for consulting with and representing Tiwi land owners in this role. It is also charged with assisting Tiwis:

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.

Consequently, the TLC's vision for the future is for:

*an independent and resilient Tiwi society built on the orderly and well managed utilisation of our natural and human resources through reliance upon our own management, maintenance and protection of unique cultural and natural resource values for the enjoyment and benefit of future generations of Tiwi.*²

One method of achieving an independent and resilient Tiwi society is through economic development. The Tiwi Forestry Project began in 1999, and the TLC views the related employment and contracting opportunities to be a valuable benefit of the project.³

¹ Tiwi forestry activities are referred to with various names, including the Timber Industry Project and the Tiwi Island Plantation Forests Project. For consistency and ease, this report will refer to the Tiwi Forestry Project.

² Tiwi Land Council, 2008, Tiwi Land Council Annual Report 2007-08, p.4.

³ Tiwi Land Council, 2008, Tiwi Land Council Annual Report 2007-08, p.6, 33.

2.2 FaHCSIA's relationship with the TLC

FaHCSIA manages the payment of appropriations, under the *Commonwealth Authorities and Companies Act 1997* (CAC Act), to the TLC. It does this through the Aboriginals Benefit Account.

The TLC, as a CAC Act body, is legally and financially separate from the Commonwealth. FaHCSIA is responsible for ensuring that the payments made to the TLC are consistent with the relevant statutory framework. This includes reporting on the use of the appropriation, ensuring compliance with all other aspects of the FMA Act applicable to the management of the appropriation, and ensuring payments are consistent with the TLC's enabling legislation, the *Aboriginal Land Rights (Northern Territory) Act 1976*.⁴

In 2007-08, FaHCSIA paid \$1.93 million to the TLC for administrative costs. This was an increase from \$1.86 million in 2006-07.⁵

2.3 History of forestry on the Tiwi Islands

The Commonwealth Government planted approximately 4 900 hectares of Caribbean and Cypress pine before 1975. In 1978, the plantations were ceded to the TLC.

There were no other major forestry initiatives on the Tiwi Islands until the 1990s, when Sylvatech Ltd, then owned by Forbio Ltd, started the Forestry Project. Forbio encountered financial difficulties in the late 1990s and sold Sylvatech to Australian Plantation Group Ltd. Sylvatech began to develop some initial trial plantations and by 1999 it had an option agreement over 100 000 hectares of land over both Melville and Bathurst islands.

2.4 Current forestry on the Tiwi Islands

In April 2005, Great Southern Plantations Ltd (GSP) purchased Sylvatech Ltd. An overview of GSP is included at Attachment A. As at November 2008, approximately 32 000 hectares of forest (4 per cent of total Tiwi land) have been planted.

The trees used for this project are the *Acacia Mangium* variety. They are used for wood chipping to make paper and have a fast growth cycle of approximately ten years. The previous pine plantations are also now included within the GSP plantation.

GSP has set up a permanent camp at Maxwell Creek on Melville Island to house plantation workers. Some Tiwi people live in this camp, as well as others such as Darwin-based workers and backpackers. GSP has also established new infrastructure, such as roads and sewerage management facilities on Melville Island.

Selecting forestry locations

Selecting the site for a plantation involves a number of steps. These are outlined below:

- GSP conduct a desktop study of sites;
- GSP engage environmental surveyors for site surveys;

⁴ See Finance Circular No.2008/09, *Appropriations for payment to CAC Act Bodies*. Online, available at: www.finance.gov.au/publications/finance-circulars/2008/09.html <accessed 9.12.08>.

⁵ FaHCSIA 2007-08 Annual Report, p.395

- GSP fund development of a site selection environmental interim report and map; and
- GSP fund development of a final environmental survey, tranche plan and block map.

Key land factors that indicate suitability for forestry include that the land is flat to minimise soil erosion, and that existing trees grow tall and strong (an indicator of soil quality). Due to soil suitability, cost and lack of infrastructure, GSP have advised that they do not have any plans to begin operations on Bathurst Island.

GSP can only progress through each of these steps with approval from the traditional Tiwi land owners. If owners do not give permission to continue work, GSP cannot progress. The approval process is further discussed below.

Who can approve forestry activity?

The Tiwis have established a system, through the TLC, where the family group that owns land must approve potential forestry. That same family group receives the associated forestry land use rental payments (discussed in Section 3.1).

A map of family group ownership of the Tiwi Islands is included in Attachment B.

2.5 Tiwi organisational arrangements

There are five organisations of interest related to the Tiwi Forestry Project. These are:

- Pirntubula Pty Ltd;
- Tiwi Resources Pty Ltd;
- Tiwi Enterprises Pty Ltd;
- Tiwi Forestry Trust; and
- Tiwi Land Council.

PIRNTUBULA PTY LTD

The TLC, under s.23 (1) (ea) of the Act, is to assist Tiwis to 'carry out commercial activities ...in any manner that will not cause the Land Council to incur financial liability or enable it to receive financial benefit'. Consequently, it established Pirntubula Pty Ltd in 1986 to take onboard financial risk and benefit.

Pirntubula is an asset holding company, and was set up when pine ownership was passed to the Tiwis by the NT Government. Pirntubula has eight shareholders, which are the eight land trustees appointed to the Tiwi Land Trust. Pirntubula's two key assets are:

- Port Melville wharf; and
- the pine forest developed under the Commonwealth Government before land was granted to the Tiwi Land Trust.

GSP pays \$241 000 per year in rent to Pirntubula for the use of the wharf, under a lease agreement. This money is used to assist the development of the Tiwi College.

TIWI RESOURCES PTY LTD

Tiwi Resources Pty Ltd receives the land use rental payments from GSP. It is controlled by the TLC, and also has eight shareholders. eNTITY 1 Pty Ltd is subcontracted to distribute the land use rental payments to family and sub-family groups.

TIWI ENTERPRISES PTY LTD

Tiwi Enterprises Pty Ltd is a contracting company which was set up in 2007 as a vehicle for the Tiwi to win contracts arising from the Forestry Project.

The TLC advised that Tiwi Enterprises was initially funded by local families via an interest-bearing loan arrangement. The prime challenge to the success of Tiwi Enterprises, as reported by the TLC, is the ability to get engaged and work-ready Tiwi workers. Workforce availability directly affects the level of financial gain for the Tiwi people from forestry.

TIWI FORESTRY TRUST

The Tiwi Forestry Trust will be set up by 2009 to manage money provided by GSP and the TLC. GSP will provide up to \$66 000 per annum plus CPI to this fund, only if the TLC makes a co-contribution. The purpose of these funds are for 'education and forestry training' programs. These are further discussed in Section 3.1.

3. REVIEW FINDINGS AND RECOMMENDATIONS

3.1 Financial returns from the Forestry Project

Finding

- The largest financial returns from the Forestry Project include:
 - rent for land usage;
 - future two per cent of Net Harvest Proceeds; and
 - future 33.3 per cent of Great Southern's Management Entitlement to the Net Harvest Proceeds.
- The origin of the decision for land use rental money to be paid to family owners is unclear. TLC could not provide evidence showing when this was agreed upon.
- Financial returns are in line with agreed contractual arrangements.
- Financial returns are paid regularly and in a timely way to Tiwi Resources by GSP.
- Indirect benefits also flow to the Tiwis from the Forestry Project. Some of these include:
 - training opportunities;
 - employment opportunities;
 - contractual opportunities; and
 - increased knowledge and awareness about the local environment.

Discussion

The review found that the Tiwi Islanders receive both direct and indirect returns from the Forestry Project. The review assessed how the direct financial returns are processed and paid to the Tiwi land owners, and whether these returns are in accordance with the Forestry Project contracts. Returns from the Forestry Project are further discussed below.

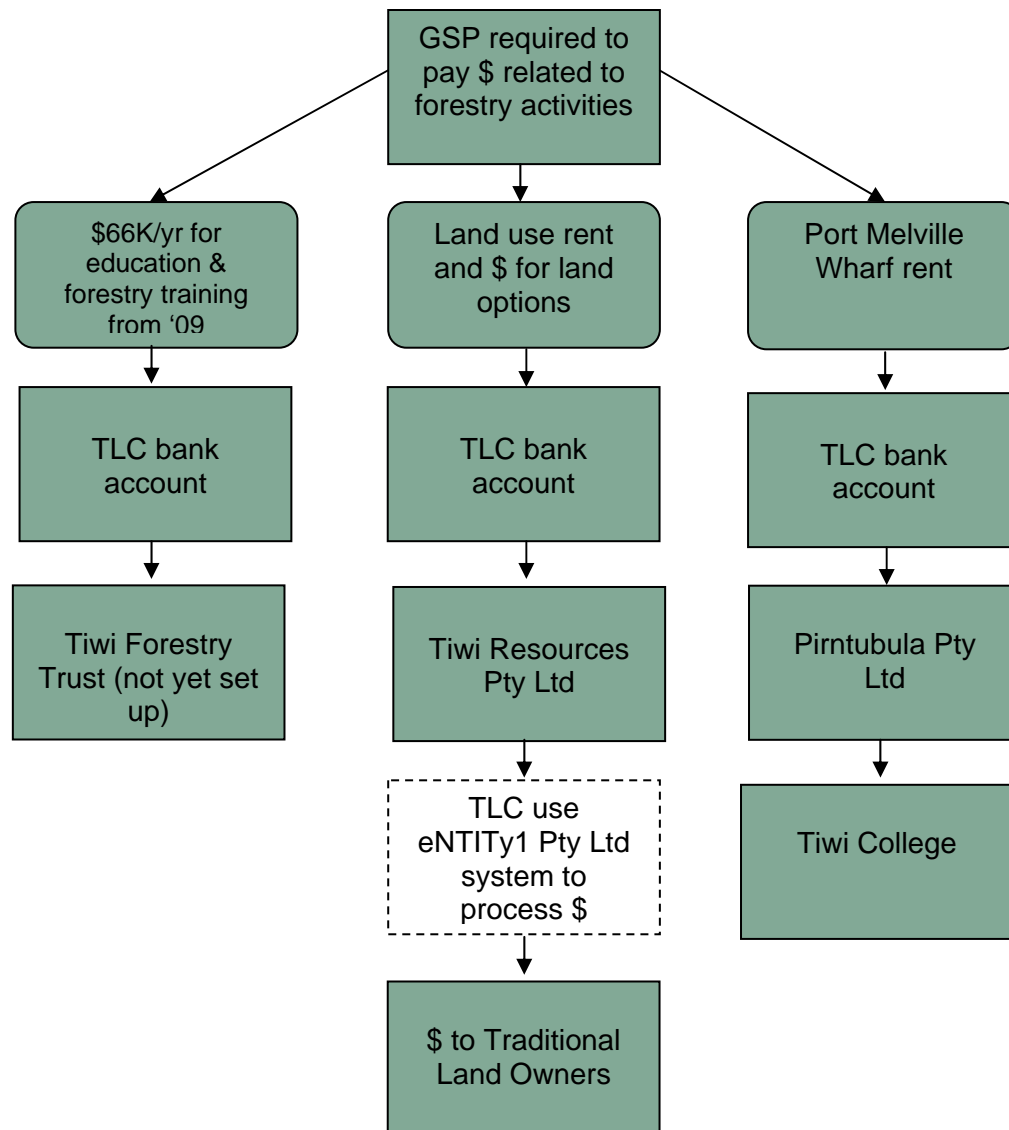
Direct financial returns from the Forestry Project

Direct financial returns (realised to date) paid by GSP for the Forestry Project are illustrated in Diagram 1 below and include:

- land use rental returns;
- returns from GSP's options on additional forestry land;
- the 2008 one-off back-payment of outstanding land use rent; and
- returns from GSP's usage of Port Melville Wharf.

When harvesting begins, the Tiwis will also be entitled to a two per cent return on Net Harvest Proceeds and to 33.3 per cent of GSP's Management Entitlement to the Net Harvest Proceeds. These returns are further explained in 'Harvest Royalties' below.

DIAGRAM 1: OVERVIEW OF HOW GSP MONEY IS DISTRIBUTED



Direct land use rental returns are paid to land owners

Family groups that own forestry land receive land use rental payments. The TLC advise that this arrangement was decided by the Tiwi Land Council, however the review team could not find evidence of this decision being clearly made in a TLC meeting. The review team did, however, sight minutes where traditional owners agreed on land boundaries within the Tiwi Islands, and marked these on a map. Minutes also reflect that whilst the decision wasn't clearly documented, it was generally understood and accepted.

In 2007-08, approximately \$467 000 was distributed as land use rental payments. The families that received the most money for 2007-08 included:

- Munupi family (total \$254 554.31);
- Yimpinari (total \$90 813.73); and
- Marrikawuyanga (total \$49 373.11).

The rate of rental returns are linked to the value of the land, and this is reviewed every five years. The rate is indexed by CPI annually. A desktop valuation conducted in 1998 by the

Australian Valuation Office, and based upon information provided by the TLC, valued the land rental at \$3 per hectare, per annum. Sylvatech had offered \$10 per hectare per annum, and the valuer 'strongly recommended that the proposal submitted by [Sylvatech] be accepted'.

Under Section 4.1 of the Master Deed, the lessor and lessee must determine rental rates by agreement. If they are unable to agree, then rent is to be determined by a qualified valuer. The new rental rate cannot be lower than the existing rate.

The rental return was last revalued in January 2008. Both the TLC and GSP sought valuations to assist in deciding the rental value. These are summarised in Table 1 below.

TABLE 1: 2008 VALUATIONS ON LAND RENTAL VALUE

	TLC valuation	GSP valuation
VALUER	Australian Valuation Office	Integrated Valuation Services (NT)
RENTAL VALUE	\$22 per hectare	\$10 per hectare
MAXIMUM/ MINIMUM RENTAL VALUE	\$20 to \$26 per hectare	\$3.50 to \$10 per hectare

GSP advised that their lower valuation took into account the increased costs (approximately \$1 000 per hectare) of adhering to environmental requirements and the cost of infrastructure development in the Tiwis.

The TLC and GSP agreed on a return of \$18 per hectare, plus the approximate equivalent of an additional \$2 per hectare (total up to \$66 000) for five years to be provided by GSP, if it is matched by the TLC. This money is to be used for educational and forestry training programs.

The TLC advised that money will be paid into a trust fund called the Tiwi Forestry Trust, however it has not yet been established. Payments are due to begin in 2009.

The agreement on the new rental rate appears to be fair and reasonable, and the TLC provided clear evidence that this was discussed and agreed at an Executive Management Meeting in October 2008, with 15 TLC members present plus visitors. What is not yet decided, is what 'educational and forestry training programs' will be delivered with the money.

Options on additional forestry land

Sylvatech Ltd (now owned by GSP) signed an agreement in 1998 to have options over 100 000 hectares of land over both Melville and Bathurst islands. The cost of these options is \$1 per hectare, per annum. Approximately 32 000 hectares of plantation have been planted, so GSP pay \$68 000 per annum in options over the remaining 68 000 hectares.

Back-payment of outstanding land use rent

The original Master Deed (and subsequent deeds) for the Forestry Project required all payments to include CPI. GSP advised that Sylvatech, the previous company, began all rental payments under new head leases at \$15 per hectare, with CPI added each year. Consequently, the land use rent for new forestry blocks was less than that for older forestry blocks. This is illustrated in Table 2 below.

TABLE 2: ILLUSTRATION OF PREVIOUS METHOD FOR CALCULATING RENTAL PAYMENTS

Lease start date	Y1	Y2	Y3
2000	\$15	\$15+Y2CPI	\$15+Y2CPI+Y3CPI
2001		\$15	\$15+Y3CPI
2002			\$15

GSP decided that this discrepancy was not in the 'spirit' of agreements with the Tiwis. Therefore, they back-paid outstanding rent of over \$150 000 and equalised all payments for each forestry block. The review team saw evidence of this money being paid to the Tiwis. Table 3 illustrates that all new and existing leases are paid at the same rate.

TABLE 3: ILLUSTRATION OF CURRENT METHOD FOR CALCULATING RENTAL PAYMENTS

Block	Y1	Y2	Y3
2000	\$15	\$15+Y2CPI	\$15+Y2CPI+Y3CPI
2001		\$15+Y2CPI	\$15+Y2CPI+Y3CPI
2002			\$15+Y2CPI+Y3CPI

PORT MELVILLE WHARF RENTAL MONEY

As discussed in the background section, GSP pay rent for the use of the Port Melville Wharf to Pirntubula Pty Ltd. This totals \$260 000 per year, and the money is used to assist the development of the Tiwi College.

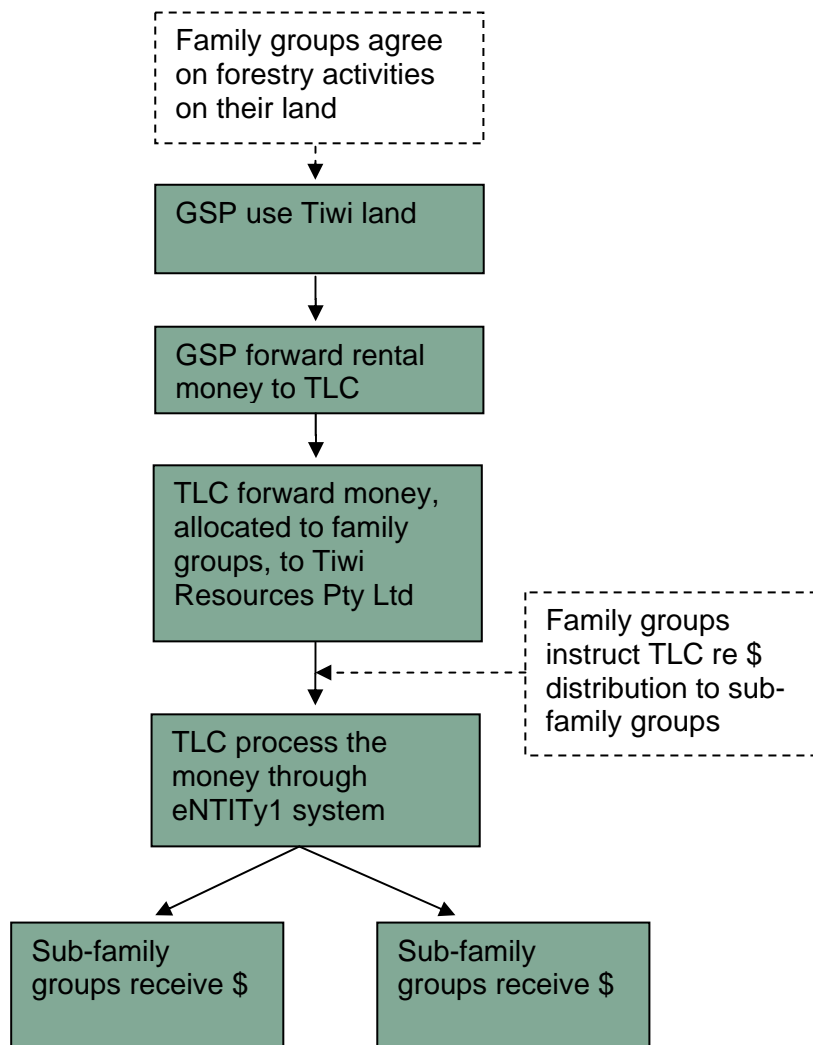
How rental payments are processed

As discussed in Section 2, GSP pay rental payments into Tiwi Resources Pty Ltd, a shelf company. The TLC then use a contracted accounting firm, eNTITY1, to assist in distributing the money to family groups.

To spend money, family members of that family group must fill out an application form that is signed by the appropriate number of signatories. Completed forms are provided to a TLC officer on Bathurst Island, who approves spending and records details on the eNTITY1 system. Each family group can deal directly with this TLC staff member if they want to further divide money within the family group. If all relevant signatories agree, new sub-groups are implemented by the TLC officer. This is outlined in Diagram 2 below.

In October 2008, an independent audit of Tiwi Resources Pty Ltd for 2007-08 found the financial statements to be true and fair, and in accordance with the *Corporations Act 2001*. The auditor identified three low risk issues and noted that two of them had been addressed. The third risk relates to the tax status of the entity.

DIAGRAM 2: PROCESS FOR PAYMENT OF LAND USE RENTAL RETURNS



HARVEST ROYALTIES

In addition to the land use rental payments, the Tiwi people are entitled to:

- a two per cent cut of the Net Harvest Proceeds, and
- 33.3 per cent of GSP Management Entitlement

payable three months after each harvest of trees. The first harvest is due in 2012.

The Harvest Proceeds are earnings from the sale of timber, less the cost of 'harvesting, handling, loading, transport, processing, shipping and delivery and reasonable administrative expenses'. Administrative expenses include office expenses such as wages, salaries and expenses 'directly attributable' to harvesting the timber. These expenses exclude any expense or overhead paid or payable to a related entity of GSP.⁶

The Management Entitlement is 'any amount which [GSP] has a right or entitlement to be paid, whether by royalty, service fee, administration fee, management fee, consultancy fee or otherwise in relation to the Net Harvest Proceeds.'⁷

GSP provided the review team with their estimate of the returns payable to the Tiwi upon harvest in 2009. Expected Tiwi earnings per hectare, based on an approximation of 144 green metric tonnes yield per hectare, are \$231. On an average of 3 000 hectares of harvest per annum, approximate total returns are \$693 000 per year. This is outlined in Table 4.

TABLE 4: OVERVIEW OF ESTIMATED ANNUAL TIWI ROYALTY EARNINGS

Estimated annual Tiwi royalty earnings		
FOB ^a Price/Green Metric Tonne (GMT) ^b	\$185	
Harvest Costs		
Harvesting/Chipping \$/GMT	(\$30.50)	
Haul & harvest roading \$/GMT	(\$10.50)	
Loading \$/GMT	(\$15.00)	
Net Harvest Proceeds/Ha	\$6 055	
GSP Management Entitlement/Ha (5.5%)	\$333	
Tiwi share of Net Harvest Proceeds/Ha	2%	\$121
Tiwi share of Management Entitlement/Ha	33%	\$110
Total Tiwi share/Ha		\$231
Expected Tiwi Earnings/harvest (on 3 000 Ha/annum)		\$693 018

^a FOB is a shipping term of sale and means 'Free on board'.

^b There are approximately 144 green metric tonnes per hectare of forest.

Within 28 days after GSP's Annual General Meeting, GSP must give the TLC an audited statement with full details of the Net Harvest Proceeds and Management Entitlement.

⁶ Plantation Management Deed, 18 March 1999, clause 18.1.

⁷ Plantation Management Deed, 18 March 1999, clause 18.1.

DISTRIBUTING ROYALTY MONEY

The TLC Secretary advised that as of December 2008, there is no agreed procedure for the distribution of Net Harvest Proceeds or the Management Entitlement. He expressed concern that possible community conflict could stem from how the money is allocated. Under s.12AAA(1)(3) of the Act, Tiwi land is required to be used for the 'benefit' of the Tiwis, however this is subject to interpretation. Possible interpretations could include:

- distribution to all Tiwi people evenly;
- distribution to Tiwi forest area traditional land owners; and
- withholding some money for investment on behalf of all Tiwi people and distributing the balance to traditional land owners.

The TLC want the Minister for Families, Housing, Community Services and Indigenous Affairs to decide what 'benefit' to the Tiwi people means, and advise that they have requested this in the past. The confusion about 'benefit' poses a risk to the perceived integrity of the Forestry Project. If the TLC is required to make a decision about harvest profit distribution, its decision could possibly be subject to political commentary and aspersions.

Returns are in accordance with signed contracts

The review team considers that the returns to the Tiwi people are in accordance with the signed contracts. This is based on an assessment of contract requirements.

The Schedule attached to the Master Deed requires the payment of rent 3 months in arrears from the commencement date. The review team has viewed evidence showing that this occurs.

The Tiwis have not yet received any royalty money from harvest, so the review team cannot comment on whether those returns are in accordance with signed contracts.

Non-monetary benefits and returns

In addition to the direct financial returns outlined above, there are other benefits linked to forestry in the Tiwi Islands. A clear requirement for the Forestry Project is to provide non-monetary benefits to the Tiwis.

At the time the initial Master Deed was signed, Sylvatech (now GSP) also signed the Community Services Deed. This emphasises other benefits associated with forestry on the Tiwi Islands, and requires GSP to use its 'best endeavours' to provide the Tiwi people with:

- training opportunities;
- employment opportunities; and
- opportunities to conduct contractual work on the plantation.

TRAINING OPPORTUNITIES PROVIDED

GSP fund apprentices to work on the plantations. In 2007-08, eight apprentices graduated from the Certificate III Forestry and Forest Products, and another four were studying for this qualification.

GSP also fund the training of rangers that work with the Ranger Program. In 2007-08, eight Tiwis completed the Certificate II in Environmental Land Management, and continued on to study Certificate III in Environmental Land Management.

From 2009, GSP will provide approximately \$66 000 per annum towards educational and forestry training programs. This will only occur if the TLC matches these payments, dollar for dollar.

EMPLOYMENT OPPORTUNITIES PROVIDED

PLANTATION EMPLOYEES

GSP employed an average of 12 full-time Tiwi people from October 2007 until September 2008. GSP report that the total salary package of these employees is \$500 000 per annum, with additional camp accommodation and meals (three per day) totalling \$270 000 per annum.

TIWI RANGER PROGRAM

GSP initiated, and also fully fund, the Tiwi Ranger Program, which began in 2006. Introduced to monitor the local environment, there are approximately eight Tiwi land rangers. GSP report that wage payments to these rangers between October 2007 and September 2008 was approximately \$240 000. They are managed by the TLC.

Some of the rangers' activities include weed control and animal monitoring, and as an example they implement the Tiwi Islands Pest and Weed Control Program.

The TLC manager reported that the feeling of self-worth in these rangers has improved dramatically. The rangers have developed a code of conduct that they voluntarily enforce. The Tiwis now have a workforce that can action weeds and other threats to the environment.

OPPORTUNITIES TO CONDUCT CONTRACTUAL WORK

Forestry economists have verified to the TLC that the annual value of contracting opportunities arising from the Forestry Project, from 2012 onwards, will be approximately \$38 million per annum.⁸

In an attempt to take advantage of these contracting opportunities, the Tiwi have established Tiwi Enterprises Pty Ltd (further discussed in the *Background* section). In October 2007, Tiwi Enterprises was awarded a one year contract worth \$500 000 for forestry activity. GSP advised that approximately \$150 000 of this work had been completed over 15 months to December 2008, and that further work is available 'if Tiwis [are] ready to perform the work'.⁹ Tiwi participation and willingness to work is an issue for Tiwi Enterprises.

The review team understands that GSP, in accordance with the Community Services Deed, would prefer the Tiwis to win contractual work. This reduces GSP's costs (for example transportation costs for external workers are high). The flow-on benefit is that both the two per cent net harvest return, and the 33.3 per cent of Management Entitlement return to the Tiwis will increase.

In an attempt to improve Tiwi participation rates, the TLC produced and distributed 1000 booklets and flyers detailing forestry work opportunities within the 2007-08 financial year.

Additional benefits from the Forestry Project

UNDERSTANDING OF FLORA AND FAUNA

Whilst the review team acknowledge the potential environmental risks flowing from forestry, increased information about the Tiwi environment is another benefit flowing from the Forestry Project.

In 2007-08, GSP paid over \$1 million to achieve compliance with conditions imposed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC). This was used to carry out detailed land assessments and surveys to enable protection of the environment and species, and to monitor threatened species. Without forestry on the island, these surveys would not have occurred. The Tiwis now have extensive knowledge about some species, including:

- the Red Goshawk;
- Butler's Dunnarts; and
- Masked Owls.

INFRASTRUCTURE

GSP report that they have invested approximately \$3.5 million in road infrastructure in the past two years. This money has been spent to upgrade key roads in Melville Island, so as to improve access to plantation sites. These roads are more elevated than other roads on the Tiwis and are more durable in the wet season. The review team travelled along these roads and noted that they were of better quality than other roads, for example those near the Pickataramoor (Melville Island) airstrip.

⁸ Tiwi Land Council, 2008, 2007-08 Annual Report, p.33.

⁹ Great Southern Plantations, email to review team, dated 3 December 2008.

OTHER BENEFITS

GSP reports that it provides a number of other benefits to the Tiwi community. Some of these benefits include:

- funding of ongoing maintenance and operations of the Port Melville Wharf;
- company donations (to the Tiwi Bombers football team, and World Youth Day);
- staff donations for medical equipment and towards a men's health program;
- cypress plantation clearing compensation;¹⁰ and
- support for the Melville Island bus service (free accommodation to bus service employees and provision of the GSP workshop to enable buses to be serviced).

Exposure

- If the TLC is required to decide what 'benefit' to the Tiwi people means when distributing the two per cent net harvest profit from 2012, the TLC may be viewed as a politicised body.

Recommendation 1

FaHCSIA should work with the TLC to discuss the meaning of 'benefit to the Tiwi people' and develop guidance and potential options for distribution of harvest royalties.

¹⁰ GSP reported that this timber had no current or foreseeable commercial value and that they paid the Tiwis a payment of \$87 500 to clear this plantation, and replant with Acacia Mangium.

3.2 How the TLC agreed to contracts with the timber industry

Finding

- The Forestry Project contracts were drawn up by experienced forestry lawyers.
- The deed structures are complex, involving numerous different agreements dated from 1999. The key original deeds included a Master Deed, a Community Services Deed and a Plantation Management Deed.
- Documentation indicates that the TLC actively participated in the development of the initial forestry leases.

Discussion

The Forestry Project contracts were signed in 1999. The review team found that the Tiwi Land Council participated in the development of these contracts, and that they engaged lawyers to assist in this process. This section outlines:

- the contract/deed structures;
- the process for developing the contracts; and
- the community's involvement in approving Tiwi forestry.

DEED STRUCTURES FOR FORESTRY PROJECT

The original deeds/contracts set up for the Forestry Project were signed in 1999. The signatories were the TLC, Pirntubula Pty Ltd, and the Australian Plantation Group Ltd.¹¹ The key deeds were signed on the same day and included the:

- Master Deed. This outlines the land used for forestry, permitted land use, the land use rental arrangements, rental review dates and also the term of the agreement. The Master Deed requires compliance with the Community Service Deed and Plantation Management Deed.
- Community Services Deed. This requires the plantation management company to 'provide training, employment, establish a nursery and achieve benefits for the Tiwi people'.¹²
- Plantation Management Deed. The aim of this deed is to ensure that the plantations of trees are 'undertaken in accordance with prudent forestry practice and record the method of payment of charges by the Company'.¹³ It outlines the method for determining financial returns paid to the Tiwi.

¹¹ The Australian Plantation Group Ltd owned Sylvatech Ltd, this is now owned by GSP Ltd.

¹² Community Services Deed, 1999, Clause A.

¹³ Plantation Management Deed, 1999, Clause C.

As extra land has been included in the Forestry Project, new Head Leases and variations have been developed. An overview of these is included in Attachment C.

LAWYERS DEVELOPED THE FORESTRY PROJECT CONTRACTS

The Tiwis engaged Coltmans Price Brent, 'experienced forestry lawyers' from Melbourne to cover the legal aspects of the contracts. The TLC still deal with this firm and it is now called 'Middletons'. Middletons advertise that they have over 20 years of experience in energy and resources, including forestry.¹⁴

During the development of these contracts, in 1999, the TLC met to discuss proposed clauses. In these discussions, the TLC proposed amendments such as environmental impact compliance and mandatory Tiwi access through the forest. These clauses were included in the contracts and the TLC then recommended the contracts for approval.

COMMUNITY INVOLVEMENT IN APPROVING FORESTRY

The TLC meeting minutes indicate that there was open discussion about the clauses to be included in initial Forestry Project contracts, for example in 1998 there were meetings between Sylvatech and Tiwi leaders.

For new leases developed in 2007-08, the TLC provided the review team with documentation that indicates extensive consultation between GSP and Munupi and Yimpinari land owners. In these meetings, land owners asked questions about the proposed forests, financial returns and the impact of these forests. Questions were answered directly by GSP. The proposals to develop new forests were passed unanimously. At these meetings, the TLC reminded attendees that it could 'only work on advice from the group'.

The review team consider that the TLC's process for agreeing to new Forestry Project contracts is fair. It has engaged an experienced legal firm and conducts communication meetings with landowners that include discussions about contracts.

¹⁴ Middletons, 2008, Energy and Resources area of service. Online at: www.middletons.com.au/areas/area_detail.asp?id=26 [accessed 10.12.08].



ATTACHMENTS

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ATTACHMENT A—GREAT SOUTHERN LTD

Great Southern Plantations is a subsidiary company of Great Southern Ltd, which describes itself as 'an investment manager specialising in the agribusiness sector'.¹⁵

Great Southern Ltd listed on the Australian Stock Exchange in 1999. The company's head office is located in West Perth.

Great Southern's core business is forestry, and it has plantations around Australia including Western Australia, the 'Green Triangle' region in Victoria, Tasmania and Queensland. In recent years it has expanded its product range to include wine grapes, almonds, olives and beef cattle.

Great Southern has sourced its funding from investors through Managed Investment Scheme (MIS) arrangements. It promotes, on its website, that its range of agribusiness products are 100 per cent tax deductible and 'offer the potential for sound future returns'.¹⁶ These returns are guaranteed and are payable after plantation harvesting begins.

In 2008, the company announced a proposal to acquire eight MIS projects by converting investors' 'project interest' into company shares. The Tiwi Forestry Project is included in this proposal. Implementation of this proposal depends on investors' positive vote, and voting is open until 22 January 2009. The 26 remaining projects will still be under MIS arrangements.

Reports commissioned by Great Southern, and published via the Australian Stock Exchange website indicate that the company's finances will be 'stretched' if the proposal does not proceed.¹⁷ In this instance, Great Southern will be heavily reliant on continued MIS sales to break even.

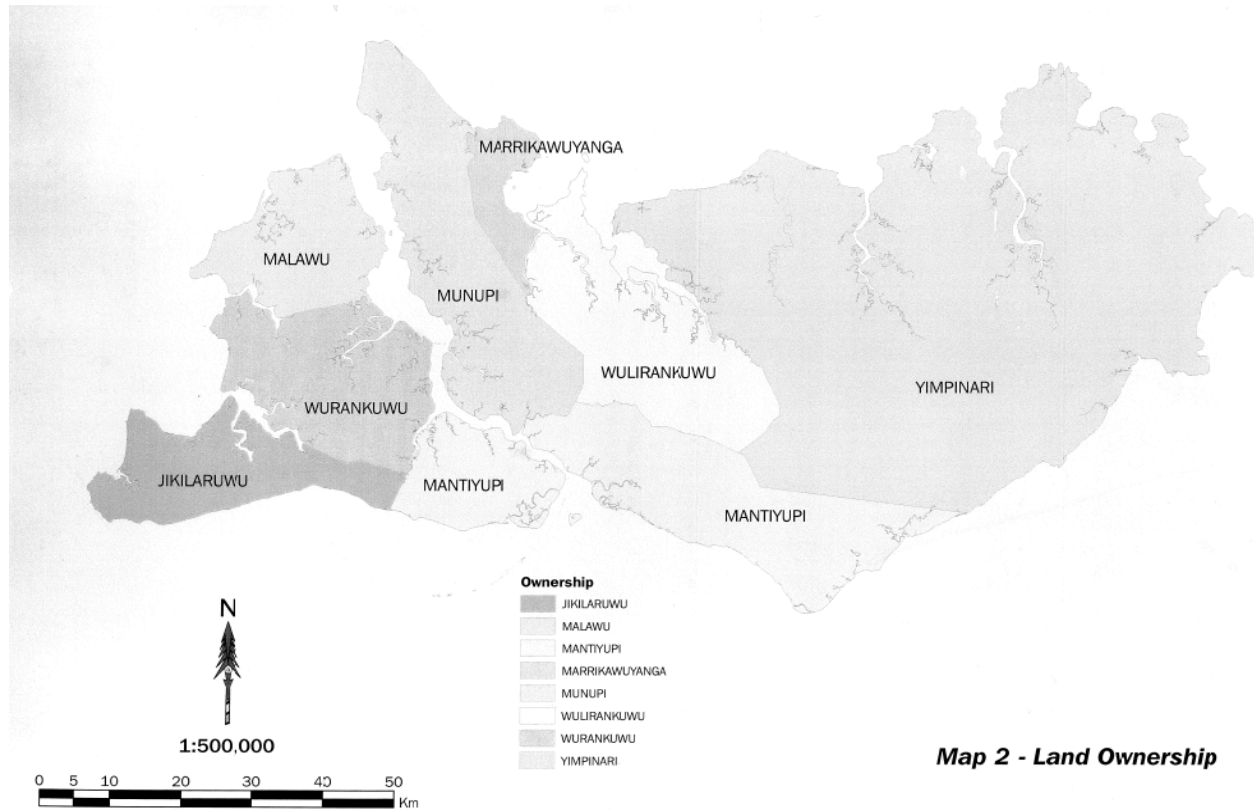
Great Southern has announced an (unquantified) preliminary financial loss for the year ended 30 September 2008.

¹⁵ See: www.great-southern.com.au/About_Us.aspx

¹⁶ See: www.great-southern.com.au/default.aspx?MenuID=340

¹⁷ For example, Austock Equities Research, 2008, Great Southern (GTP)...to a significant land and forestry play. Online at: www.asx.com.au/asx/research/CompanyInfoSearchResults.jsp?searchBy=asxCode&allinfo=&asxCode=gtp&companyName=&principalActivity=&industryGroup=NO [accessed 12.12.08].

ATTACHMENT B—TIWI LAND OWNERSHIP MAP



ATTACHMENT C—FORESTRY PROJECT DEED STRUCTURE

A high-level overview of the key deeds in place for the Forestry Project are outlined below. In addition to these head leases, there are a number of supporting sub-leases. The sub-leases are not outlined below, however their purpose is to establish a sub-lease between Sylvatech Ltd and Great Southern Ltd.

Lease date/overview	Signatories	Purpose
1998. Deed of Option	Tiwi Aboriginal Land Trust, the Tiwi Land Council and Sylvatech Ltd	Gave Sylvatech the option to develop up to 100 000 hectares of land for forestry. Sylvatech paid \$1 per hectare of this land.
18 March 1999 Master Deed Community Services Deed Plantation Management Deed	Tiwi Aboriginal Land Trust, Tiwi Land Council, Australian Plantation Group Ltd.	These are outlined in Section 3.2.
3 September 2000 Head Lease	Tiwi Aboriginal Land Trust, Tiwi Land Council, Australian Plantation Group Ltd	For forestry on extra land (NT Portion 1640, 1644, 3042).
10 June 2003 Head Lease	Tiwi Aboriginal Land Trust, Tiwi Land Council, Minister for Immigration, Multicultural and Indigenous Affairs, Sylvatech Ltd	Lease of land—NT Portion 1640, 1644, 3042—to Sylvatech Ltd.
28 October 2005 Head Lease	Tiwi Aboriginal Land Trust, Tiwi Land Council, Minister for Immigration, Multicultural and Indigenous Affairs, Sylvatech Ltd.	For forestry on extra land—NT Portions 6524(a) to 6573 (a). Amount of land approximately 24 500 hectares.
8 November 2005 Pine Head Lease	Tiwi Aboriginal Land Trust, Sylvatech Ltd, Minister for Immigration, Multicultural and Indigenous Affairs	Grants lease of existing pine forest to Sylvatech Ltd.