

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Budget Estimates Hearing 25-29 May 2015

Prime Minister and Cabinet Portfolio

Department/Agency: Tiwi Land Council

Outcome/Program: Outcome 2: Indigenous

Topic: Port Melville Lease arrangements

Senator: Senator Nova Peris OAM

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Question:

Mr Tipungwuti: Senator, we might take that on notice because we have been briefed on that in part, not to the full extent. We want to be sure exactly.

CHAIR: You have answered the question: you have had a partial briefing on it. That is sufficient, thank you.

Mr Tipungwuti: With regard to that partial agreement, if you would really like to know, once the port gets to a development stage and through the processes, there is going to be opportunity for any vessels floating around the Tiwi Islands to pull in a fuel up.

CHAIR: Thank you. Senator Peris. Can you give us the background to that? What consultations were done?

Mr Clancy: We had been working with the NT government probably back from when the Blue Mud Bay thing happened, so over a number of years. Back in December last year, after consultations with the communities and with traditional owners—I have not got the details here but I am happy to take that on notice.

Senator PERIS: If you are able to provide the details of that lease: how long it is for, what benefits the Tiwi people get. If you are opening up waterways, I would assume that the Tiwi Land Council would monitor what is coming in and out. I know the Tiwi Land Council has strict liquor licencing. If you are able to take that on board and the method of consultation.

Mr Clancy: Thank you, Senator.

Answer:

- It is a 20 year agreement to be reviewed after 12 months. The agreement was considered multiple times by the Tiwi Land Council in the second half of 2014, and was back-dated to come into effect as of 1 July 2014.

As this is a multi-pronged question, the following covers the agreement in detail:

- Permit-free fishing access for commercial (including fishing tour operators) and recreational fishers to key fishing areas off Bathurst and Melville Island, as well as the Vernon Islands.
- The exclusion zone does not apply to traditional owners who can continue to fish as they did before the agreement was signed.
- Visitors will also be permitted to visit the townships of Wurrumiyanga and Pirlangimpi where they will be able to contribute to the Tiwi economy by purchasing fuel, supplies and visit the art galleries.
- \$135,000 a year for 20 years to support the Marine Ranger Program.
- The better resourced marine ranger program carrying out fisheries patrols and providing written reports back to the Department of Primary Industry and Fisheries.
- A commitment to enhance Marine Ranger powers through amendments to the Fisheries Act.
- The amendments will give appropriately trained Marine Rangers enhanced fisheries enforcement powers such as the authority to inspect vessels, fishing gear and catch, and to issue infringement notices.
- The amendments are expected to be in place by the end of 2015.
- A one-off \$30,000 payment to build a new recreational fishing camp along the Apsley Strait.
- An enhanced Aboriginal coastal licence for community members through amendments to the Fisheries Regulations. (Under the current licence, communities are only allowed to use recreational fishing gear and cannot sell their catch to the local store).
- The proposed changes will improve the Aboriginal Coastal Licence so it becomes a more viable licence with the ability to use enhanced fishing gear, traditional fish traps and the capacity to sell to local and adjacent community stores.
- A voluntary Code of Conduct to improve communication and ensure visitors respect the rights of Traditional Owners.
- The Code of Conduct is now publicly available through handouts and via the Department of Primary Industry and Fisheries website www.nt.gov.au/d/Fisheries.
- The new fishing arrangements are a result of the 2008 Blue Mud Bay High Court decision, which found that a permit is required to access inter-tidal waters over Aboriginal land. Approximately 80% of the Northern Territory coastline is Aboriginal land and impacted by this decision. Since 2008, the Northern Territory Government has been working with Traditional Owners to reach agreements that provide economic and employment opportunities in exchange for permit-free access for commercial (including fishing tour operators) and recreational fishers. To date, seven agreements have been signed, with this agreement the most recently announced in November 2014.
- Recreational fishers will be able to access the coastal areas highlighted in yellow below. (See Attachment A – detailed map, also included in Attachment B – the publicly available information brochure)
- The areas highlighted in red are fishing exclusion zones and can only be accessed by Tiwi Islands Adventures, Traditional Owners and Tiwi Land Council approved non-

Tiwi residents of the Tiwi Islands. There are currently two designated camping areas for use by fishers and campers.

- Access to these camping areas requires a permit, which can be applied for through the Tiwi Land Council. Visitors are also permitted to enter the town site at Wurrumiyanga and Pirlangimpi where they may be able to buy fuel and supplies or visit the art gallery provided 24 hours' notice is given.
- People can apply for an Aboriginal coastal licence through the Department of Primary Industry and Fisheries by calling 8999 2144 or visiting the office.
- The licence is customised to permit fishing in coastal waters contained within a community's country estate (sea country).
- The Northern Territory Government intends to enhance this licence by 1 July 2015. Under these enhancements, licence holders will be able to:
 - use bigger nets (drag nets up to 100m with a mesh size of 65mm)
 - use semi-permanent fish traps
 - Sell their catch to community and adjacent community stores.
- Traditional Owners are also able to purchase or lease commercial fishing licences such as commercial barramundi and mud crab licences on the open market.
- While not a full commercial licence, the Aboriginal Coastal Licence is only available to Aboriginal people and provides the opportunity to operate a small scale licence to develop the necessary commercial fishing, quality control and marketing skills required for a full scale commercial licence.
- A number of studies have been undertaken on Tiwi waterways. The most recent study occurred in 2009 which showed that fish stocks in the waterways surrounding the Tiwi Islands are healthy and in good condition.
- The Department of Primary Industry and Fisheries will contact the Tiwi Land Council directly to discuss this further as they are keen to use Marine Rangers in future research programs.

MONITORING/LIQUOR

- Water Police are responsible for enforcing fisheries legislation.
- Alcohol restrictions on Tiwi land still apply, as they did before the agreement was signed.
- Penalties vary depending on the severity of the breach.
- The better resourced marine ranger program has the ability to carry out fisheries patrols and providing written reports back to the Department of Primary Industry and Fisheries.
- A commitment to enhance Marine Ranger powers through amendments to the Fisheries Act.
- The amendments will give appropriately trained Marine Rangers enhanced fisheries enforcement powers such as the authority to inspect vessels, fishing gear and catch, and to issue infringement notices.
- The amendments are expected to be in place by the end of 2015.

- Those appropriately qualified and trained Marine Rangers will have enhanced powers to enforce fisheries legislation.

In regard to the required consultation process:

- Consultation has been broad and inclusive since 2008. They have involved discussions and consultations and review of a number of decisions that the Land Council has grouped under three limbs:
 1. Consultations and discussions following the High Court decision – “Blue Mud Bay” – Northern Territory of Australia v Arnhem Land Aboriginal Land Trust 2008.
 2. Consultations and discussions – Vernon Islands Land Claim number 9 of 1983, more particularly related to conditions required by Minister Macklin (3 May 2011) for the Land Council to negotiate and satisfactorily conclude, with the Northern Territory Government, “detrimental issues associated with the intertidal zone” as a condition precedent “before proceeding to a grant of land title.”
 3. Consultations and discussions directly related to our concluding agreement with the Northern Territory Government being a Settlement Deed.
- The Agreement does not refer to land access or resources of the land. It contemplates access to that intertidal zone, and to those resources within that zone determined by the High Court. The High Court also provided a purpose – for the economic benefit of landowners.

The Land Council is satisfied that Traditional Owners understand the nature and purpose of this Settlement Deed:

- Executive Meeting 234 of 17 November 2008 (11 Elders) review “Blue Mud” with TLC Audit Committee. Resolve more discussions, assessment and planning required for management of coastal resources.
- Executive Meeting 235 of 3rd December 2008 (7 Elders) determine development of a Coastal Management Plan with Tiwi Rangers.
- Mantiyupwi Landowners (Directors and others) meeting 8th December 2008 discuss coastal management.
- TLC Full meeting 256 of 12 December 2008 (57 landowners) detailed discussions that determine proactive Tiwi role in managing their own waters and coastal resources. Resolve to invite public submissions.
- Trustees and Elders (11) meet with NT Government officials 17th December 2008 for briefing and discussion of the effects of the High Court decision.
- Trustees and Elders (16) meet with FaHCSIA officials 6th January 2009 briefing and discussion of Tiwi responses to the High Court decision in “Blue Mud Bay.”
- Executive Meeting 238 of 27 January 2009 (14 Trustees and other aboriginal residents) meet with AFANT (Recreational Anglers NT) discuss processes of access to Tiwi waters for fishing.

- The advertisement calling for submissions for our management of our intertidal zone was placed in local newspapers and distributed widely on the Islands and among landowners in January 2009.
- Meeting landowners and Fisheries Consultants (13) 25th February 2009 review coastal waters management and suggestions.
- Landowner (43) meeting of 25th February 2009 discusses coastal management options.
- Meeting with Fisheries (7 Elders) 3rd March 2009 discuss coastal management options and processes.
- Landowners (28) meeting of 10 March 2009, further discuss fishing access and coastal zone management.
- Landowners (33) meeting 17th March 2009 discuss fisheries and coastal management among other issues.
- Landowners (71) meeting 18th March 2009 discuss management of coastal waters and opportunities for landowner benefits to accrue; plus other issues.
- Landowners (15) meet with Tiwi Rangers 27th March 2009 and develop plans for managing the coastal zone.
- Executive meet with Sacred Sites (AAPA) – impact of managing coastal zone.
- Executive (7) review Coastal management plans 30 April 2009.
- TLC Full meeting 258 of 22 May 2009 (47 landowners) discuss Vernon Islands claim with NLC lawyers and coastal zone management for best Tiwi benefit.
- Landowners (15) meet with NT Government officials and Ministers 25 and 26 May 2009 – briefing of Government view of recreational and commercial fishing in Tiwi waters.
- Landowners and Tiwi Rangers (17) meet 10 June 2009 confirming coastal management processes to manage Tiwi coastal resources and Vernon Islands.
- Executive meeting 30 June 2009 reviews NT Government approach and re-asserts Tiwi position in management of coastal waters and access to those waters.
- Landowners (16) meet 20th July 2009 with NT politicians review access to Tiwi waters and processes for best Tiwi benefit from these resources.
- Landowners (23) meet 5th August 2009 – discuss and review fishing access and Tiwi benefit.
- Rangers and landowners (10) discuss fisheries management and Tiwi benefit 10th August 2009.
- Mantiyupwi landowners and Directors (6) 31 August 2009, discuss Vernon Islands and coastal zone management.
- Landowners (18) 3rd September 2009 discuss a review approaches to sea resources and coastal zone management.

- Landowners (12) meet 24 September 2009 with Tiwi Enterprises and discuss training for fisheries and coastal zone management.
- 30th September 2009 Executive meets with NT Government discuss a Code of Conduct for fisheries and access to Tiwi waters.
- Landowners (12) meet with Tiwi Rangers 13 October 2009 – management of access to Tiwi waters.
- Landowners (33) meet 28 October 2009 – discuss marine protective areas; access to fishing and Tiwi benefit from fishing resources.
- Executive meet with Shire 10 November 2009 – fish stock sustainability and management of coastal zone.
- 25th November 2009 Executive meet with NT Fisheries – authority to manage Tiwi waters.
- Executive meet 9th December 2009 with landowners develop “Blue Mud Bay” strategy for best Tiwi benefit.
- TLC Full meeting (37) landowners meet 15th December 2009 determine Tiwi want benefits of their own from Tiwi waters in any agreement with NT Government and a plan needs be put in place within three months.
- Executive (8) meet with Shire Council 12 February 2010 – discuss Tiwi ownership of waters and to achieve best Tiwi benefit from resources.
- Executive (7) meet 24 February 2010 – review NT Government approaches to coastal management and Tiwi waters.
- TLC Full Meeting (52 landowners) meet with NT Government and resolve that Tiwi will take control of the management of Tiwi waters prior to 1 May 2010 in the absence of any acceptable plan by NT Government for joint management.
- Executive (7) 12th March 2010 review management of Tiwi waters.
- Landowner meeting (24) of 23 March 2010 discuss management of coastal waters among other issues.
- Rangers and landowners (14) on 18th March 2010 discuss “Blue Mud Bay” issues and coastal management planning and issues.
- Strategic Economic Planning Group (30 landowners) and managers meet 24 March 2010 – discuss Coastal waters and fisheries and Tiwi benefit from Tiwi control.
- Landowners (38) 8th April 2010 discuss with advisers resort development including Tiwi management of coastal resources.
- Full Land Council meeting 30th April 2010 (39 landowners) resolve Tiwi assert their ownership and management of all Tiwi waters from 1st July 2010 and that public notices be placed in newspapers and to all stakeholders including all island residents.

- Executive meet 7th May 2010 to implement permits and compliance process related to coastal management and access.
- Executive meet 18 May 2010 – design processes and strategy to implement management of coastal zone.
- Rangers and landowners (12) meet 21 May 2010 – compliance and training for coastal zone management.
- Strategic Economic Planning Group (28 landowners and managers) meet 26 May 2010 – review Tiwi management of the coastal zone and Tiwi benefit from these resources. Discussion to also protect Tiwi Fishing Lode exclusive access.
- Executive 8th June 2010 – respond to NT Government and issues of permits and controls for fishing and access.
- Landowners (51) meet with Executive 25 June 2010 discuss coastal zone management and access and support for Fishing Lodges.
- TLC Full Meeting (53 landowners) of 20 October 2010 appointed 16 Tiwi Permit Officers for management of coastal zone and permits related to access.
- The nature and purpose of the Settlement Deed to be executed includes the above consultations and discussions consistently reflecting Tiwi economic benefit from resources of the coastal zone.
 - a. At 3 May 2011 the Minister wrote to us joining a satisfactory agreement with the Northern Territory Government to conclude negotiations of issues associated with the intertidal zone.
 - b. Meetings with landowners through 2011 discussed the Vernon Island claim. These have been itemized in hearings of the Land Titles Commissioner that continue. A total of seven meetings involving over 200 landowners through 2011 and 2012 directly related to Vernon Islands included the issues related to a concluded agreement with NT Government.
 - c. The Full Land Council 14 April 2011 (38 landowners) meeting with the Tiwi Shire discussed permits issued for fishing with costs exceeding revenue from permits.
 - d. Executive and landowner meetings throughout 2011 discussed and reviewed fishing permits at over 30 meetings through to 2012.
 - e. TLC Full meeting of 25 June 2012 (63 landowners) discussed a letter from the Aboriginal Land Commissioner and agreed the Vernon Islands claim required settlement of issues with NT Government.
 - f. TLC Full meeting of 14 August 2012 (42 landowners) with visitors reviewed fishing permits and discussed coastal management.
 - g. TLC Full meeting of 15th October 2012 with over 40 landowners attending tabled the attached “Tiwi Islands Zone Closures” discussion paper. That meeting

resolved to continue discussions with the Northern Territory Government to achieve a balance of exclusivity for Tiwi tourist fishing business whilst permitting access to recreational fishermen who numbered only 400 a year.

- h. Comments of the mainstream media publishing the resolve the Land Council appeared 19th October 2012. The Land Council received “concerned” submissions from AFANT (2); Fishing Tour Operators NT and three private Darwin fishermen.
- i. Landowners (7) and TLC Executive met 5 December 2012 with the NT Minister and commenced a series of regular meetings to develop an agreement acceptable to our landowners, the Land Council and Government.
- j. The Settlement Deed to be executed was developed and reviewed in discussion and consultation:-
 - i. Executive and NT Government 21 January 2013.
 - ii. TLC Audit Committee with NT Government 18 March 2013.
 - iii. Meetings with 176 landowners and TLC Executive 18 March 2013; 9th April 2013; 26 April 2013 (with Minister NTG); 9th May 2013 studied maps of exclusive and permit free areas and resolved to complete negotiations with NT Government.
 - iv. Mantiyupwi landowner meetings through April 2013 accepted TLC Conservation Management Plan for Vernon Islands and gained acceptance of the plan from NT Government.
 - v. Full Land Council 7th June 2013 (67 landowners and members) reviewed exclusivity and zoning. Resolved to complete the agreement (Settlement Deed) with NT Government.
 - vi. Executive (9) meeting 13 June 2013 with NT Government review and discuss detail of the Settlement Deed.
 - vii. Meeting of Executive and Landowners and Training Board 21 June 2013, discussed Ranger funding and requirements of funding arrangements under Deed of Settlement.
 - viii. Annual Report 2012/2013 p.19 notes Vernon Islands requirements for NTG agreement acceptable to the Land Council and Permit and Exclusive zones are understood and important components.
 - ix. Meeting 8th August 2013 Executive and Trustees (9) discuss Marine Ranger funding required under Deed of Settlement and request increase funding.
 - x. Meeting 2nd September 2013 in Darwin discussed all issues at length with NTG Fisheries Staff, Exec Members and TIA staff in attendance.

- xi. Meeting 27th August 2013 NT Government Ministers, staff with Trustees and Landowners (18) discuss detail and terms of Settlement Deed.
- xii. Meeting 4th October 2013 Trustee and landowners (26) review landowner funding from fishing and support Settlement Deed granting TIA exclusivity for this purpose.
- xiii. Meeting 7th November 2013, Executive (14 landowners) review fishing revenues and requirements for exclusive fishing zones to protect Tiwi business.
- xiv. Meeting 13th November 2013, Trustees and Executive reviewed exclusivity zones.
- xv. Meeting 4th March 2014 (13 landowners) Trustees and Executive resolved to recommend Vernon Islands completion to the Land Council. Resolved to recommend NT Government Settlement Deed for zones and payments and conditions to Full Land Council.
- xvi. Full TLC with 54 Landowners, Trustees and Executive 5th March 2014 review all clauses of Settlement Deed. Agree with terms. Request consumption of alcohol at camp sites denied Tiwi consumers and could TLC make representations about this issue. Note: Is a land matter not intertidal zone. NT Government support alcohol management plans to permit recreational consumption by Tiwi. This cannot be part of the Settlement Deed.
- xvii. Meeting in Darwin 2nd May 2014. Executive members. Further discussions. Resolved to recommend to table final draft deed at next Full Land Council meeting.
- xviii. Full TLC meeting 3rd June 2014 (37 Landowners) with Executive and NT Government officials, tables deed and resolves unanimously to enter into the Settlement Deed.
- xix. Wulirankuwu Land Group Meeting at Milikapiti on 2nd of September 2014 – Directors of Wulirankuwu Group met at Milikapiti. All directors agreed with the draft agreement.
- xx. Djurrupuwu (Yimpanari) Land Group Meeting at Milikapiti on 2nd of September 2014 – senior members of this group agreed with the draft agreement.
- xxi. EXECUTIVE MEETING NUMBER 372 AT MILIKAPITI 3rd September 2014
- xxii. Community consultation outside TLC office, following Exec meeting, saw approximately 50 traditional owners based at Milikapiti attend. P.A. system used to answer residents questions regarding proposed fisheries agreement.

- xxiii. EXECUTIVE MEETING NUMBER 377 AT PIRLANGIMPI 8TH October 2014
- xxiv. Community consultation outside Tiwi Islands Regional Council office, following Exec meeting, saw approximately 40 traditional owners based at Pirlangimpi attend. P.A. system used to answer residents questions regarding proposed fisheries agreement.
- xxv. EXECUTIVE MEETING NUMBER 379 AT WURRUMIYANGA 22nd October 2014
- xxvi. Community consultation outside Piliyaminirra Store, following Exec meeting, saw approximately 60 traditional owners based at Wurrumiyanga attend. P.A. system used to answer residents questions regarding proposed fisheries agreement
- xxvii. NT Fisheries Agreement Consultations; Pirlangimpi; 9th of December, 2014; TLC office; approximately 20 Traditional Owners with TLC Executive.
- xxviii. Full Land Council on 10th December 2014 with 32 senior traditional land owners in attendance, plus all 8 trustees, resolved unanimously to approve the agreement.
- Further discussions have taken place at several TLC and land owning group meetings since December 2014, with a view to possible inclusions of issues raised to form part of the 12th month review.
 - A Fisheries Agreement Consultative Committee has been established (commencing July 2015) to monitor the Agreement and provide guidance for the built in review processes.