



Australian Government

**Australian Government Response to the
Senate Environment, Communications
and the Arts References Committee
Report:**

**Forestry and mining operations on the
Tiwi Islands**

December 2011

Recommendation 1

The committee recommends that, as a matter of urgency, relevant Federal and Northern Territory agencies work with the Tiwi Land Council and Tiwi Islanders to:

- *undertake an urgent assessment of the ongoing economic viability of the plantations and, if a model or models of management are found to be economically viable, assist in the preparation of business plans necessary to support their successful execution; and*
- *consider the provision of infrastructure support, especially for the port facilities, if it will assist in the economic viability of the plantations.*

Response

In 2009, Indigenous Business Australia (IBA) and the Indigenous Land Corporation (ILC) commissioned Pöyry Forest Industry Pty Ltd to conduct a viability assessment for the Tiwi Forestry Project. The Pöyry Report findings were released in January 2010 and found that the project is viable.

In March 2011, the IBA Board approved, subject to satisfactory completion of due diligence, an equity investment of \$5 million in the Tiwi Forestry Project via IBA subscribing for cumulative preference shares in Tiwi Plantations Corporation Pty Ltd.

In addition, support from the Aboriginals Benefit Account totalling \$6 million was provided in early 2010 through the ILC to administer a grant for land and environmental management activities relating to the maintenance of the plantation. This program delivers the following environmental management activities:

- fire planning, fire consultation, fuel reduction burning, wildfire suppression and fire education;
- joint research with CSIRO on fire/carbon dynamics;
- control of woody weeds, especially *Acacia mangium* – wildling control, annual mapping and control;
- water resource planning by development of a Tiwi Islands Water Management Plan;
- protection of rare, endangered and vulnerable flora and fauna on the Tiwi Islands by Red Goshawk surveys and monitoring;
- eradication of the Tropical Fire Ant (*Solenopsis geminate*) – monthly inspection of nests, training and information sharing with representative from CSIRO;
- coastal surveillance patrols; and
- development of Cadet Ranger program at Tiwi College.

The construction of the port was initially grant funded through the Aboriginals Benefit Account. The Government considers that ongoing investment into the Tiwi forestry operation should be sourced from commercial investors. The Tiwi Land Council has advised that it has received an insurance payment resulting from damage sustained from Cyclone Carlos in early 2011 which, together with private investment already sourced, will be used towards repairing the island's port infrastructure. The Tiwi Land Council has advised that harvesting is scheduled for the 2012/13 financial year.

Recommendation 2

The committee recommends that, consistent with the view of Oakton and the Land Council, that the Department of Families, Housing, Community Services and Indigenous Affairs should work with the Tiwi Land Council and other major stakeholders to develop guidelines for the distribution of money to traditional owners.

Response

Under the *Aboriginal Land Rights (Northern Territory) Act 1976*, Land Councils are generally responsible for the distribution of money to traditional owners. The Tiwi Land Council has advised that it undertakes the following actions in relation to the distribution of money to Tiwi landowners:

- requires all landowning groups to develop budgets that reflect general landowner benefits prior to distributions being made;
- analyses budgets and benefits by the Strategic Economic Planning Group and the Tiwi Land Council Independent Audit Committee;
- monitors distributions through private accountants and requires regular audit of statements;
- sets investment criteria for Tiwi landowners that receive significant revenues from commercial activities; and
- receives monthly statements from Tiwi landholder corporations and monitors distributions.

Recommendation 3

The committee recommends that the Tiwi Land Council and the business entities of the Tiwi people work to ensure that those business entities operate in the most efficient and transparent manner possible.

Response

Under the *Aboriginal Land Rights (Northern Territory) Act 1976*, the functions of a Land Council include, 'assisting Aboriginals 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'.

The Tiwi Land Council has advised that it undertakes the following actions:

- engages external commercial lawyers to assist where appropriate;
- monitors agreements and corporate relationships that business entities enter into by assisting and supporting Tiwi commercial entities;
- requires minimum standards of audit and compliance among Tiwi corporations and investors;
- convenes a Strategic Economic Planning Group of skilled members, with transparent access to all corporate arrangements and Tiwi Land Council files, protocols and processes;
- requires Indigenous corporations work towards a majority of skilled directors on corporate boards;
- developed a Tiwi training program and sourced capable lecturers for delivery of governance training from the Australian Institute of Company Directors; the Australian Forestry Institute, and through the Tiwi Employment and Training Board;
- supports training that is consistent with Tiwi commercial business requirements;
- has developed and identified training of junior members for leadership roles through Tiwi College, and engaged in developing programs for this purpose;

- retains external auditors (KPMG Chartered Accountants) to measure effectiveness and diagnose structural flaws and capacity of education and training sub-committees; and
- retains external auditors (ISO 14001) for land and resource management sub-committee.

The Tiwi Land Council has advised that it has documented the links between the operations of the Land Council and external commercial entities operating within its region. The relevant documents disclose:

- the shares and interests held in commercial entities;
- joint programs, projects and activities between Tiwi landowners and commercial entities monitored by the Tiwi Land Council;
- the benefits to Aboriginal people planned and contemplated through the commercial activities;
- governance compliance and conditions of audit and annual financial statements required of all commercial undertakings;
- landowner consultation and regular meeting schedules between Tiwi landowners and investors;
- scrutiny and due diligence requirements assisted through the Macquarie Bank Pro Bono Guiding Panel comprising business appraisal, corporate structuring, legal and other senior skilled Macquarie personnel providing a continuing oversight of projects and detailed interrogation of all Tiwi corporate proposals; and
- the Macquarie Bank Pro Bono Panel also assists the Strategic Economic Planning Group established 2009.

Recommendation 4

The committee recommends that the Tiwi Land Council and the business entities of the Tiwi people initiate new communication strategies to ensure that their structures, roles and activities are more widely understood by the Tiwi people.

Response

The Tiwi Land Council has advised that it has responded to the Senate Inquiry's recommendation to initiate new communication strategies to ensure that the Land Council's structures, roles and activities are more widely understood by the Tiwi people through the following initiatives:

- displaying and putting up notices regarding Tiwi Land Council meetings and decisions made at those meetings at many public sites;
- providing information booklets to the Tiwi people in relation to proposals to be considered and acted upon by the Tiwi Land Council (such as township leasing and forestry operations);
- providing and distributing DVDs of meetings and discussions held for cultural, commercial and dispute resolution purposes;
- verbal communication (both formally and informally) between Tiwi Land Council members and the Tiwi people in general;
- printing in excess of 100 copies of all minutes of Tiwi Land Council meetings for distribution;
- publicising the availability of all Annual Reports since 1978 at all six on-island offices of the Tiwi Land Council;
- providing opportunities for the Tiwi people to provide feedback, comments, or complaints via suggestion box, email, verbally and written and actively considering such feedback, comments, or complaints at Tiwi Land Council meetings;
- holding meetings for the Tiwi people to provide information and the opportunity to ask questions; and

- re-designing the Tiwi Land Council website with links and information brochures including all monthly publications.

Government Response to the Minority Report Recommendations

Recommendation 1

That, as a matter of priority, relevant Federal and Northern Territory agencies work with the Tiwi Land Council and Tiwi Islanders to:

- a) Undertake an adequately resourced research project to determine the most appropriate process for rehabilitating the plantation area; and*
- b) Consider the provision of financial and technical support to ensure the full range of employment and rehabilitation opportunities is explored and that ongoing management of the area is undertaken.*

Response

Support from the Aboriginals Benefit Account totalling \$6 million has been provided through the ILC to administer a grant for land and environmental management activities relating to the maintenance of the plantation with a particular focus on training and employment. The Tiwi forestry operation is managed by a skilled workforce of seventeen Tiwi employees including twelve forestry graduates or Tiwi apprentices in training.

These activities include weed and feral animal control, nursery propagation of plants for the revegetation of old mineral sand and mining sites, propagation of plants and food, control of coastal erosion, monitoring of water quality and biodiversity, fencing and site protection for threatened species including the Red Goshawk. The work will also include any remediation works required on the Tiwi forestry lease should the commercial operations cease.

The ILC program delivers the following benefits to Aboriginal people living on the Tiwi Islands:

- knowledge and skills gained in weed and pest surveillance, prescribed burning practices, fire management strategy/program, coastal patrols, feral weed and animal control, natural resource planning and community awareness and education; and
- work undertaken by Tiwi Rangers to ensure that forestry operations are carried out in an environmentally sensitive manner, including monitoring of the Red Goshawk which is on the on *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and Northern Territory threatened bird species list.

Recommendation 2

That the Federal Environment Minister ensures that all existing environmental requirements are met.

Response

The Department of Sustainability, Environment, Water, Population and Communities is working with the Tiwi Land Council to ensure that existing environmental obligations under the EPBC Act are met. This will continue to be achieved through close monitoring of the project conditions.

The Tiwi Land Council has provided a draft Rehabilitation Management Plan to the Department of Sustainability, Environment, Water, Population and Communities for consideration. Subject to approval, Tiwi Land Council will seek access to the \$1 million bond posted by Sylvatech Ltd (the original proponent) to carry out the necessary survey and research to implement rehabilitation requirements.

Four hundred and fifty thousand dollars was required to be paid by Sylvatech Ltd in the three calendar years 2009 to 2011 to the Tiwi Land Council for offset projects which included control of feral animals, control of priority weeds, development and implementation of ecologically sensitive burning regimes, and monitoring of threatened flora species. This work has recommenced with environmental funding provided through the Aboriginals Benefit Account.

Plantation Management Partners (the operations staff employed by Tiwi Plantations Corporation Pty Ltd to manage the plantation) maintains AS/NZS ISO 14001 accreditation. The AS/NZS ISO 14001 standard establishes a structured approach to planning and implementing environment protection measures and provides for monitoring of environmental performance. The Tiwi forestry operation is audited against this ISO standard twice a year - once by an independent auditor and once by internal audit. The independent findings of the December 2010 audit record that the Environmental Management System operated by Plantation Management Partners complies with the requirements of ISO standard. The independent auditor records that the management and staff of Plantation Management Partners, Tiwi Plantation Corporation, Tiwi Land Council and interested parties on the Tiwi Islands all expressed understanding and commitment to environmental protection in balance with socio-economic needs. The internal audit completed on 25 August 2011 found that the Tiwi forestry operation remains compliant with the requirements of the ISO standard.

Recommendation 3

That there should be no further clearing of native vegetation for additional plantations on the Tiwi Islands.

Response

The Tiwi Land Council has advised that there are no plans for additional plantations to be established on the Tiwi Islands. The Australian Government notes that establishing any additional plantations on the Tiwi Islands is a business decision for the relevant Tiwi landowners. The Tiwi islands are Aboriginal land held by the Tiwi Land Trust under the *Aboriginal Land Rights (Northern Territory) Act 1976*. Decisions over the use of Aboriginal land must be consented to by the relevant Tiwi landowners as a group and ratified by the Tiwi Land Council. Any future plantation development may require consideration under the EPBC Act before it can proceed.

Recommendation 4

That the remediation plan to address environmental damage in breach of the EPBC conditions for the project should be made available for public comment before its implementation.

Response

The Australian Government supports this recommendation.

Recommendation 5

That the actual and potential hydrological impacts of the plantation operations be assessed, with specific attention to the management of erosion and other associated land management issues.

Response

On 12 August 2001, the then Minister for the Environment and Heritage approved the Tiwi Forestry Project pursuant to section 133 of the EPBC Act. The impacts of the plantation were considered in the environmental impact assessment of the project conducted as part of the statutory approval process. Mitigation measures, including erosion and sediment controls, were also taken into account when the original approval was granted.

Condition 4 of the EPBC Act approval required the proponent to submit a plan for the responsible Minister's approval dealing with, amongst other things, erosion and sediment control. This plan has already been approved. An annual report on compliance against all EPBC Conditions, including Condition 4 continues to be provided regularly to the Department of Sustainability, Environment, Water, Population and Communities. In addition, an annual erosion survey is carried out. The Department of Sustainability, Environment, Water, Population and Communities will continue to monitor closely the effectiveness of the erosion and sediment controls.

Recommendation 6

That the Commonwealth establish a full forensic financial inquiry into logging and plantation operations on the Tiwi Islands to uncover the details of:

- a) The extent of taxpayer money that has been spent on infrastructure and support for this project,*
- b) The reasonable market value for the 40,000 tonnes of Red Tiwi logs,*
- c) The circumstances surrounding the export of native hardwood logs, where they were exported, to whom, at what rate of return,*
- d) What profit (if any) was received by Pirntubula on behalf of the Tiwi Traditional Owners from the export of native hardwood logs, and*
- e) Which other companies or interests received profits from these exports.*

Response

The Tiwi Land Council has provided the following advice in relation to this recommendation.

- a) The Aboriginals Benefit Account provided a grant of \$4 million dollars in 2004 for the original wharf facility. The Aboriginals Benefit Account provided a grant of \$6 million in early 2010 through the ILC to administer a grant for land and environmental management activities relating to the maintenance of the plantation.
- b) Forty thousand tonnes of Red Tiwi remain stored at Port Melville. The current market value of these logs is minimal as the age of most of these logs is in excess of five years.
- c) Logs were exported from 2004 to 2007 into Asian markets including Indonesia, Malaysia and China. A number of markets were trialled such as plywood veneer, sawlog for flooring and furniture. Characteristics of a hard, high density Australian eucalypt made it a difficult product for Asian manufacturers to process.

The hardwood logs yielded a negative return in the order of \$600,000. It should be noted the logs were sold under 'CRF' arrangements (meaning the seller was responsible for the freight to market).

In 2006-07, shipping rates out of Australia were pushed to record levels as a result of the mining boom. It should also be noted that the logs were sold in \$US which meant the return in \$AUD was severely affected by the strengthening \$AUD.

- d) No profits were made or received. The sale of hardwood logs yielded a negative return.
- e) Entities known to be involved with the sale of these logs were Pentarch Forest Products for Marketing and Shipping and Pensyl Pty Ltd (owned by Great Southern) for operational costs.

Recommendation 7

That the Commonwealth provide training and support in governance to develop capacity and decision-making processes on the Tiwi Islands, with particular attention to the inclusion of women and fiduciary issues.

Response

The Northern Territory Land Councils are independent statutory authorities and are responsible for meeting their legislative responsibilities under the *Aboriginal Land Rights (Northern Territory) Act 1976*. Land Council administration costs are met through payments made from the Aboriginals Benefit Account.

The Tiwi Land Council 2009-10 Annual Report records (at pages 21 - 22) that the Strategic Economic Planning Group was established in 2009 at the request of the Tiwi Land Council Managers to provide guidance and advice to the Tiwi leaders in relation to corporate enterprises on the Tiwi Islands. Membership includes Mr. Ray Allwright, CEO of Tiwi Enterprises, Mr. Roger Smith, CEO of Tiwi Plantations Corporation, Mr. Craig Phillips, Director of Plantation Management partners, Mr. Mike Baxter, owner operator of Melville Lodge Fishing Resort, Mr. Guy Reynolds, Executive Director, Macquarie Bank and Mr. Brian Clancy, Secretariat. The group met three times during the 2009-10 financial year.

The Tiwi Land Council 2009-10 Annual Report records (at page 22) that one role¹ of the Strategic Economic Planning Group is to ensure Tiwi participation by:

- assisting Tiwi personally seeking to create or participate in business opportunities to be 'business ready' and suitably skilled and motivated to undertake this roles;
- assisting in providing full access to appropriate training, support programs and services;
- contributing at a strategic level in the development and implementation of appropriate financial and workforce strategies to ensure good business governance and the ongoing development of organisational capabilities;
- providing assistance, mentorship and attitudinal leadership to ensure that Tiwi build the knowledge, skills and abilities necessary to keep their businesses operating effectively and efficiently;
- encouraging quality management practices, continuous improvement, innovation and the adoption of best business and health & safety practices;
- assisting to safeguard against fraud, corruption or unscrupulous practices;
- assisting in preserving the commercial nature of business activities to ensure that they are operated in a purely business-like manner without social activities or other objectives diluting their focus;

¹ The Tiwi Land Council 2009-10 Annual Report records (at pages 21 - 22) that the Strategic Economic Planning Group has two roles. These include, developing 'new business opportunities' and facilitating 'Tiwi participation'. Refer to the Government's response to Recommendation 8 below for discussion on the 'new business opportunities' role.

- assisting to ensure that business profits are correctly distributed, rather than filtering into private pockets or arms-length shareholders; and
- assisting with securing grants and/or business loans as required.

In the Senate Inquiry report, the Committee reserved its position in relation to the inclusion of women in the decision-making process. The Committee did not make a recommendation as it had not (at 4.77):

‘... had an opportunity to address all of the cultural matters [to which] this relates, nor seek wider input on these matters, evidence from anthropological experts or others.’

The Tiwi Land Council has advised that the Tiwi landowners continue to draw women into decision-making about land whilst maintaining male line ownership inheritance. This approach is reflected in landowner consultative forums and landowner meetings which are both well attended by local women. These fora provide a platform for feedback, advice and recommendations to be made to the Tiwi Land Council. The Minister for Families, Housing, Community Services and Indigenous Affairs has written to the Tiwi Land Council requesting that the level of involvement by women in the Land Council be given further consideration.

Recommendation 8

That the Commonwealth facilitate a comprehensive planning process to direct future economic and community development on the Tiwi Islands.

Response

The Northern Territory Land Councils are independent statutory authorities and are responsible for meeting their legislative responsibilities under the *Aboriginal Land Rights (Northern Territory) Act 1976*. Land Council administration costs are met through payments made from the Aboriginals Benefit Account. The Tiwi Land Council 2009-10 Annual Report (at pages 21 - 22) sets out the objectives, strategy and role of the Strategic Economic Planning Group. These are detailed below.

The Objectives of the Strategic Economic Planning Group are to:

- stimulate and support the sustainable advancement of the Tiwi economy for the benefit of current and future generations;
- create employment opportunities and to increase participation of Tiwi people in the economy;
- guide and assist the Tiwi in ultimately becoming independent of welfare and government; and
- assist the Tiwi Education Board and the Tiwi Islands Training and Employment Board in improving educational, training, participation and employment outcomes.

The strategy of the Strategic Economic Planning Group is to:

- identify and foster the development of commercially viable projects and business opportunities which have a financial benefit to the people and economy of the Tiwi Islands;
- increase the participation of Tiwi individuals and Tiwi owned or partnered businesses within the Tiwi economy; and
- attract high quality non-Tiwi business partners who have the proven expertise to sustain self funded and commercially viable business operations on the Tiwi Islands.

One role of the Strategic Economic Planning Group is to develop new business opportunities by:

- evaluating potential new business opportunities by analyzing business models and strategies;
- conducting appropriate background checks and reviewing compliance issues and risk;
- ensuring that proposed business partners are suitably skilled, financed and motivated;
- ensuring that a proposed new venture is suitable and in harmony with the overall needs and objectives of the Tiwi;
- helping to identify, develop and maximise Tiwi employment opportunities within new and existing businesses;
- making recommendations to and seek approvals from Tiwi landowners, community leaders and the Tiwi Land Council; and
- closing new business deals by coordinating requirements, developing and negotiating contracts, integrating contract requirements with business operations.