

ILSC BOARD MEETING NO 268
Held through Microsoft Teams

Wednesday, 9 December 2020 at 12:30 pm ACST

MINUTES

ATTENDANCE:

Mr Edward Fry	Chair
Ms Patricia Crossin	Director
Mr Roy Ah-See	Director
Dr Donna Odegaard, AM	Director

APPROVED LEAVE OF ABSENCE:

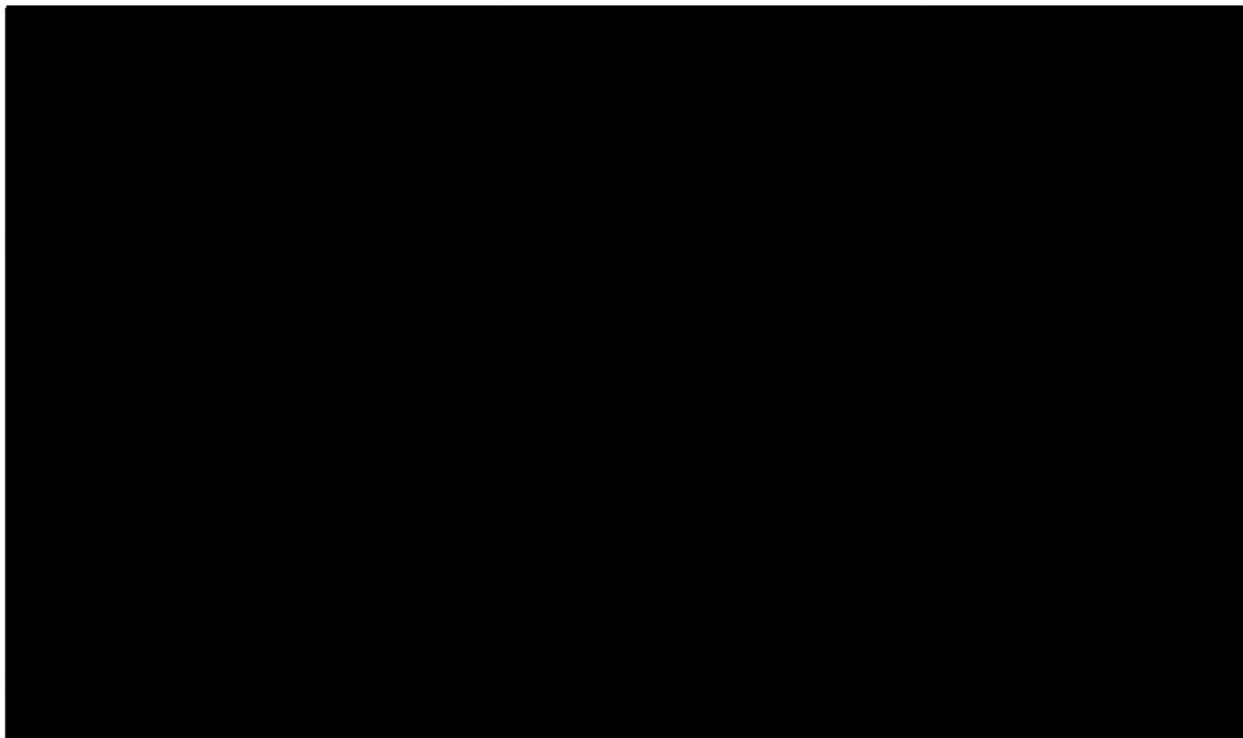
Mr Daniel Tucker, AM	Director
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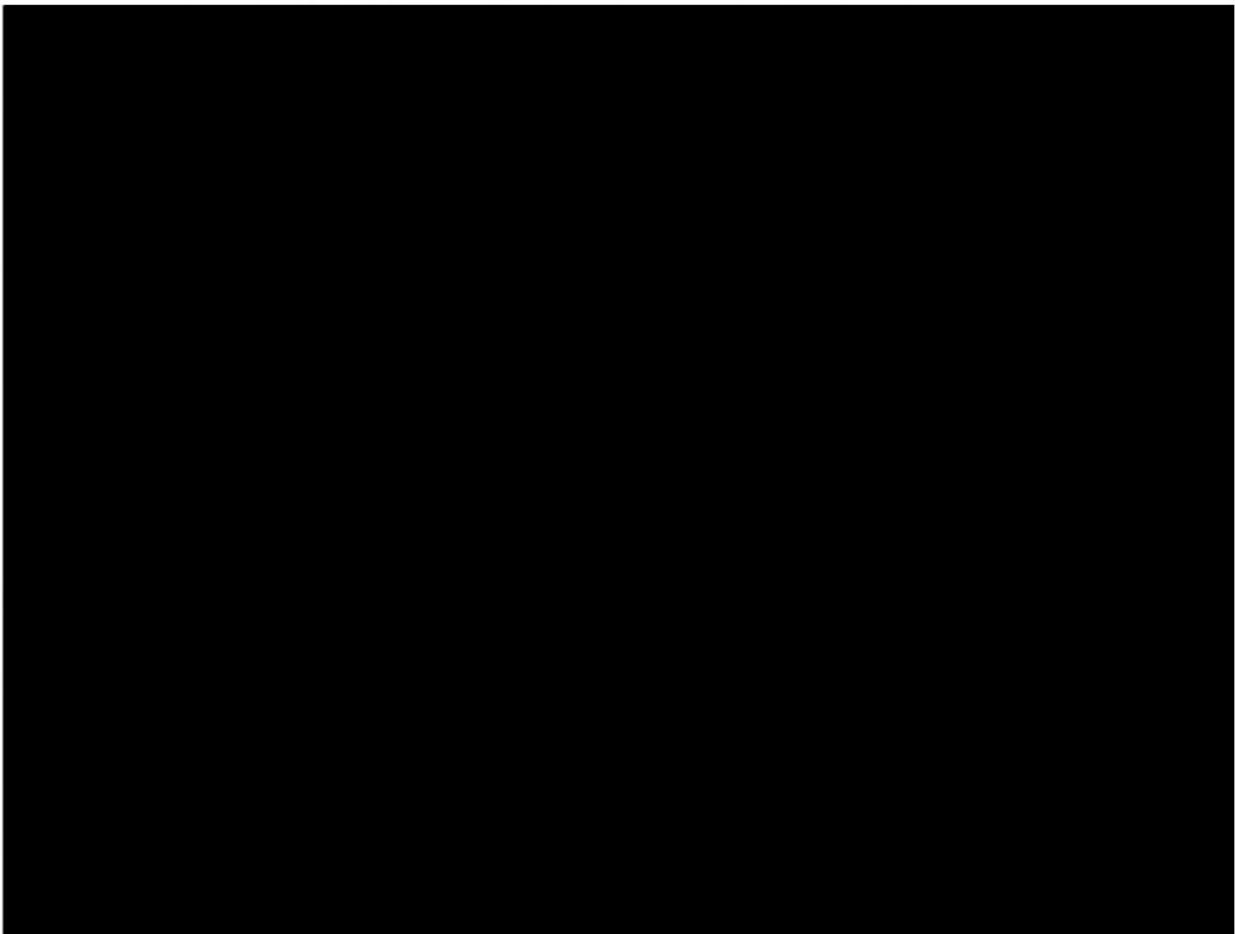
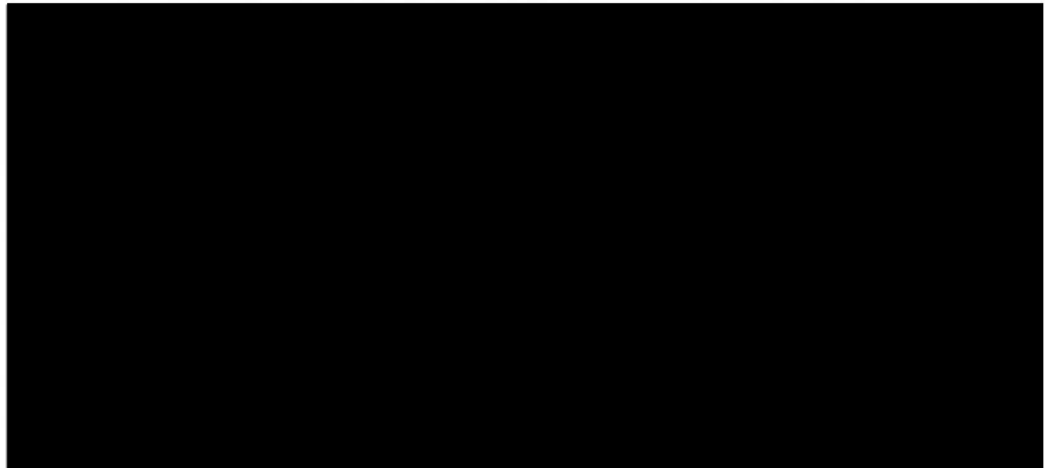
The following attended all or part of the meeting:

Ms Tricia Stroud	Acting GCEO
Mr Trevor Edmond	ILSC Group General Counsel
Mr David Silcock	ILSC Group Chief Financial Officer
Mr Tim Larkin	ILSC Executive Director, Program Delivery
Ms Angela Keane	ILSC Minute taker

A copy of the agenda is attached.

The Chair (**Chair**), Mr E Fry welcomed Directors and declared the meeting open at 12:38 pm ACST having noted a quorum of Directors was present. Director Martin has not responded.





Mr T Larkin joined meeting at 3:42 pm ACST

4.2 NCIE Divestment Strategy

The Acting GCEO took the paper as read and introduced Mr T Larkin, Executive Director, Program Delivery who provided a presentation to Directors; a request previously made by the Board at its 21 October meeting.

Following the presentation the Acting GCEO sought the Board's 'in principle' approval in the divestment of 160-202 George Street, Redfern, NSW (**NCIE**)

(Property) to the New South Wales Aboriginal Land Council (NSWALC); and to consent to develop a conditional Divestment Deed between the ILSC and NSWALC over the governing of the conditional granting of the Property. The Divestment Deed serving as assurance to the NSWALC that the ILSC will divest and transfer the Property after all agreed conditions have been met. As previously noted to the Board, the NSWALC are the only Indigenous controlled and representative body with the financial capacity, capability and statutory purpose to own, manage and invest in the Redfern asset and who have access to statutory funding from the NSW Government. As an *aide memoire* to Directors, since October 2006 the ILSC has invested \$65 million into the Property and subsidised operations of NCIE Limited (Company) by approximately \$2-3 million per annum. As such, maintaining the Property represents a significant risk/liability for the ILSC.

There was also discussion as to the impact any divestment would have on the Company. It was noted that the proposal was for the ILSC to seek expert third party advice on the options available to transition the Company and have that presented to the Board in 2021.

The GGC outlined that two ILSC Board Directors in attendance (Directors Ah-See and Odegaard) are current Directors on the NCIE Limited Board, thus confirming a conflict of interest and abstention from voting on Resolution No. 4.

It was noted that Resolutions 1-3 all Directors were resolved.

It was further noted that Resolution No. 4, Directors Ah-See and Odegaard abstained from voting. Directors Fry and Crossin agreed to vote and approve the resolution.

Resolved:

ILSC Board resolved to note and approve the following resolutions:

1. Note the contents of this paper.
2. Approves an 'in principle' divestment of the property at 160-202 George Street, Redfern, NSW to NSWALC.
3. Approves the development of a conditional Divestment Deed between the ILSC and NSWALC, to support the granting of the property, on terms and conditions to be approved by the ILSC Board at its meeting of February 2021.
4. Note that ILSC management will present to the Board at its February 2021 meeting a Terms of Reference to engage an independent consultant to assess and prepare options and recommendations on the future of the National Centre of Indigenous Excellence Limited.

Mr T Larkin left the meeting at 4:21 pm ACST.

Board-in-Confidence

ILSC BOARD MEETING No 268

Wednesday, 9 December 2020 commencing at 10:00 am AEST
To be held via Microsoft Teams

Board Members:

Edward Fry (Chair)
Patricia Crossin
Bruce Martin
Donna Odegaard, AM
Roy Ah-See
Daniel Tucker, AM

AGENDA

		<i>Discussion Leader</i>
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1.	STANDING AGENDA ITEMS	
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2.	FINANCE, RISK AND COMPLIANCE	
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3.	STRATEGY, POLICY, LEGISLATION, STAKEHOLDERS	
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4.	MANDATE AND INVESTMENTS	
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*	4.2 NCIE Divestment Strategy	AGCEO
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5. GOVERNANCE AND ADMINISTRATION		
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6. SUPPLEMENTARY READING		
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7. OTHER BUSINESS		Chair
8. IN CAMERA		Chair
9. NEXT MEETING		Chair
	Tuesday, 16 February 2021 (Strategy Day)	
	Wednesday, 17 February 2021 (Board Meeting)	

*** Decision required**

CHAIR – Chair, ILSC (Edward Fry)
GGC - Group General Counsel (Trevor Edmond)
ARC - Chair, Audit and Risk Committee (Maria Storti)

AGCEO – Acting Group Chief Executive Officer (Tricia Stroud)
GCFO - Group Chief Financial Officer (David Silcock)



BOARD DECISION PAPER
BOARD MEETING NO 270 – 17 FEBRUARY 2021

ITEM 4.1
REVIEW OF NATIONAL CENTRE FOR INDIGENOUS EXCELLENCE LTD

PURPOSE

To present for the ILSC Board's consideration recommendations on the agreed review and transition planning exercise for NCIE Ltd, and for proposed governance arrangements to support this review and transitional environment.

RECOMMENDATION

It is recommended that the ILSC Board:

1. **Notes the contents of this paper;**
2. **Endorses the attached Terms of Reference to engage an independent consultant to assess and prepare options and recommendations on the future operations of the National Centre of Indigenous Excellence Limited.**
3. **Authorises the ILSC GCEO to write to NCIE Ltd on any matter that in the reasonable opinion of the ILSC GCEO is a matter that falls within the s19G Deed with NCIE Ltd.**

Since June 2018, the ILSC has worked extensively with the New South Wales Aboriginal Land Council (**NSWALC**) towards a divestment of 160-202 George Street, Redfern NSW (National Centre for Indigenous Excellence).

At its December 2020 meeting the ILSC Board received a detailed presentation on NSWALC's concept plans for the property and:

1. Approved an 'in principle' divestment of the property at 160-202 George Street, Redfern, NSW to NSWALC;
2. Approved the development of a conditional Divestment Deed between the ILSC and NSWALC, to support the granting of the property, on terms and conditions to be approved by the ILSC Board at its meeting of February 2021; and
3. Noted that ILSC management will present to the Board at its February 2021 meeting a Terms of Reference to engage an independent consultant to assess and prepare options and recommendations on the future of the National Centre of Indigenous Excellence Limited.

As per the GCEO Report, negotiations with NSWALC on the Conditional Divestment Deed have not progressed to a stage that the Board will be asked to approve at this meeting.

ISSUES

ILSC has now developed a Terms of Reference (**ToR**) for the engagement of a third-party consultant to complete an assessment of key aspects of the enterprise and to provide recommendations for the ILSC as to its options for the future of NCIE Ltd (see **Attachment A**).

The proposed review process incorporates two stages. **Stage 1** will include a current state analysis of key issues such as legal, tax and statutory obligations, along with industrial relations advice to ensure NCIE's employees are treated and consulted appropriately. At the completion of Stage 1, a report will be submitted outlining key findings, options and a recommendation as to the preferred future for NCIE Ltd.

Based on the preferred option endorsed by the ILSC Board at the completion of Stage 1, a **Stage 2** Transition Plan will be developed outlining the key workstreams, actions, timeframes, resourcing and budget required to achieve the agreed future state for NCIE Ltd.

Whilst the attached ToR contains background information to inform an external tender process, the key elements of the assessment and deliverables include:

Stage 1 – Current State Analysis

1. **Governance**
 - Provide a description of the NCIE Ltd legal entity including matters relating to its incorporation, objects and charitable purpose, Board governance, corporate structure and legal relationship to the ILSC as parent company.
2. **Legal and Tax**
 - Review and provide commentary on NCIE Ltd's charitable, DGR and tax-exempt status including the implications of each on the ILSC's future options for the company.
 - Review and document all contractual and legal commitments associated with NCIE Ltd including key details associated with those commitments (e.g timeframes, financial considerations and potential assignment of contracts).
 - Identify, review and document other related legal matters including trademarks, intellectual property and other assets held by the company.
3. **Industrial Relations**
 - Review and provide analysis of the current staffing arrangements of NCIE Ltd including employments contracts, industrial instruments and other relevant issues/risks that may arise from those including potential consultation and redundancy provisions and considerations.
4. **Financial**
 - Complete a review NCIE Ltd's financial performance and provide an assessment of the financial viability of NCIE Ltd and its operating model, including identification of its key revenue streams and financial commitments.
5. **Operations**
 - Review, describe and provide analysis of the current suite of programs, services and commercial activities NCIE Ltd delivers. This should include a description of how each of these activities are funded, an assessment of their ongoing profitability and financial sustainability and their potential to be transferred to another local Indigenous entity with similar objects as NCIE Ltd.
6. **Communications**

- Complete an internal and external stakeholder mapping exercise and submit a high-level Communications Plan to support the recommended option for NCIE's future state.
- 7. **Risk Register**
 - Establish a Project Risk Register documenting key issues/risks the ILSC and NCIE Ltd must treat and manage during the development and implementation of the Transition Plan.
- 8. **Stage 1 Report**
 - Submit a Stage 1 Report outlining findings and observations in relation to the workstreams outlined above. In consideration of the findings and observations, provide the ILSC with an outline of its options for the future of NCIE Ltd, including a recommendation of a preferred option.

Stage 2 – Transition Plan (final scope and budget to be negotiated subject to outcomes of Stage 1 Report)

- 9. Based on the preferred future state for NCIE Ltd approved by the ILSC Board (which may include a divestment or winding up of the company), prepare a detailed Transition Plan outlining the key workstreams, actions, timeframes, resourcing and budget required to achieve the desired future state for NCIE Ltd.

The Board should note that the ILSC Group CEO has met with the NCIE Ltd CEO and Executives to communicate the December 2020 ILSC Board decision, and to outline the ILSC's expectations with regard to the review process, and in particular, how internal and external communications to NCIE Ltd staff and stakeholders will be managed. This will include the development of internal and external messaging in the interim, before a full Communications Plan is developed as part of the Transition Plan.

It is respected that the potential of an NCIE Ltd windup is sensitive, and while used in this paper, is not part of the current communications. While no assumptions are being made about what the independent review and transition planning activity will result in, it is most likely that a number of NCIE Ltd's current activities will be divested, in part or full, to other local Indigenous organisations, therefore requiring all or part of NCIE Ltd being wound up.

CURRENT SITUATION

While the ILSC undertakes this review and subsequent transitional planning it is recommended that revised governance arrangements are necessary to; protect the integrity of the review process and the ILSC Board's deliberations; and to have a clear line of sight on staffing, stakeholder and reputational exposure risks.

As is the usual case when the ILSC determines to divest an asset, the ILSC's operations (albeit through a subsidiary) serve in a caretaker capacity with the focus being on business as usual. In these scenarios the ILSC's subsidiary role is to preserve the asset for divestment; maintain the operations; and where required support the ILSC in transitioning the subsidiary operations. As per the attached Terms of Reference, it is expected that the NCIE Ltd Executive and Board will support the ILSC to (as per an approved Transition Plan) transition the operations (functions, systems and assets) and the staffing - in the manner approved by the ILSC Board. It is noted however this needs to be balanced with the statutory duties that attach to NCIE Ltd's Board and Executive staff.

On the basis NCIE Ltd is effectively in caretaker mode now, it is recommended that internal governance and delegation of authority controls are necessary to better protect the rights and

wellbeing of staff as well as the communications – matters which are the greatest risk to a smooth transition and successful divestment.

The ILSC and NCIE Executives have agreed to form a Working Party which will be fundamental to supporting the ILSC and NCIE Ltd through the review and transitional phases.

Recognising the heightened sensitivities from an employee relations and stakeholder management perspective there are a number of critical business decisions that, in a caretaker environment, require a greater line of sight for the ILSC. These include:

- Major staffing matters such as tenure (appointments, separations and grievances).
- Significant contractual decisions relating to tenancies; procured services over \$100k and for greater than 6 months; and funding partnerships.
- Internal and External Communications which relate to divestment and future operations.

It is noted that while NCIE Ltd has failed to return the Governance Deed approved by the ILSC Board in 2020, there is an existing s191G Deed with NCIE Ltd dated 12 May 2015 (**s191G Deed**).

Under the s191G Deed, NCIE Ltd agrees to comply with ‘any written directions’ issued by the ILSC provided they are directed ‘to ensuring compliance with’ NCIE Ltd’s obligations under the Deed (see clause 5.1(b) of the s191G Deed).

The s191G Deed sets out the basic obligations of NCIE Ltd, including the undertaking of land management activities on the property at Redfern, ‘in an efficient manner’. NCIE Ltd is also required to have prior consultation with the ILSC on significant issues and matters of governance assurance (**including** WHS management plans).

As the proposed divestment of the Redfern property is clearly a significant decision, it is a requirement of the *Public Governance, Performance and Accountability Act 2013* (Cwth) (**PGPA Act**), that the ILSC keep the Minister for Indigenous Australians fully informed. It is critical that, in order to be able to comply with that obligation, the ILSC has total control of all aspects of the divestment and the related determination of the future of NCIE Ltd. This is also confirmed in the s191G Deed.

Therefore, while the ILSC cannot directly pass resolutions establishing delegated authorities for NCIE Ltd, the s191G Deed allows the ILSC, through written directive to do or not do certain acts without the prior written approval of the ILSC.

To support the internal Working Group and to ensure that the ILSC’s review and transition process does not present risks to the ILSC’s compliance with the PGPA Act it is necessary for clarity of the ILSC’s expectations of NCIE during this caretaker period.

It is recommended that the ILSC Board authorises the ILSC GCEO to write to NCIE Ltd requiring consultation that may be necessary on significant staffing, contractual and communication matters as set out above.

Endorsement

Prepared by: Name: Tricia Stroud Title: Deputy CEO Date: 2 February 2021	Supported by: Name: Joe Morrison Title: Group Chief Executive Officer Date: 2 February 2021
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In making this recommendation, I declare I have *no* interest | In supporting this recommendation, I declare I have *no* interest



Australian Government

Indigenous Land and Sea Corporation



The ILSC GROUP

Commercial in Confidence
BOARD DECISION

Decision No

BOARD MEETING NO: 270
MEETING DATE: 17 FEBRUARY 2021
FOR: **REVIEW OF NATIONAL CENTRE FOR INDIGENOUS EXCELLENCE LTD**

THE BOARD OF DIRECTORS OF THE INDIGENOUS LAND AND SEA CORPORATION

It is recommended that the ILSC Board:

4. Notes the contents of this paper;
5. Endorses the attached Terms of Reference to engage an independent consultant to assess and prepare options and recommendations on the future operations of the National Centre of Indigenous Excellence Limited.
6. Authorises the ILSC GCEO to write to NCIE Ltd on any matter that in the reasonable opinion of the ILSC GCEO is a matter that falls within the s19G Deed with NCIE Ltd.

SIGNED, Mr Edward Fry, Chair: Date: 17 February 2021



Australian Government

Indigenous Land and Sea Corporation



The ILSC GROUP

PEOPLE. COUNTRY. OPPORTUNITY.

Item 4.1.1
Attachment A

Terms of Reference – Future State Options for NCIE Ltd

Background

The Indigenous Land and Sea Corporation (ILSC) is a Corporate Commonwealth Entity established under Part 4A of the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act). The purpose of the ILSC is to assist Aboriginal and Torres Strait Islander people to acquire and manage Indigenous-held land, so as to provide economic, environmental, social or cultural benefits.

The ILSC is governed by the ILSC Board of Directors whose responsibility is to ensure the proper and efficient performance of the functions of the ILSC and to determine the policies of the ILSC. The ILSC is required to fulfil the requirements of the ATSI Act along with the requirements of the *Public Governance Performance and Accountability Act 2013* (PGPA Act). The ILSC has, over a number of years, created wholly-owned subsidiary companies to carry out specific activities on behalf of the ILSC. The ILSC generally enters into an agreement with a subsidiary on its creation (Section 191G of the ATSI Act Agreements) which gives authority to the subsidiary to carry out specific functions (which must fall within the ILSC's own statutory remit). One of these subsidiaries is the National Centre of Indigenous Excellence Ltd (NCIE Ltd).

The ILSC established NCIE Ltd in October 2008 as a company limited by guarantee. It is established as a charitable entity and its purpose is to manage and promote the ILSC-owned National Centre of Indigenous Excellence in Redfern, New South Wales. The project to establish the National Centre of Indigenous Excellence (NCIE) formed part of the ILSC's broader strategic plan to acquire land in urban centres for the purpose of addressing Indigenous disadvantage through targeted cultural, social, environmental and economic initiatives.

The objectives of the acquisition and development of the NCIE asset were as follows:

Project Objectives	Target Outcome
Long term social benefits for Indigenous people	Support organisations who will foster talent, improve self-esteem and confidence in young Indigenous people.
Long term educational benefits for Indigenous people	Build facilities to assist students to improve literacy and numeracy and behavioural skills.
Long term cultural benefits for Indigenous people	Promote the development of successful Indigenous organisations by supporting good governance structures and increased capacity building.
Wealth creation for Indigenous people through employment and economic activity	Provide opportunities in skilled and unskilled labour markets within the Sydney region and increased economic activity through public and private sector investments.

Creation of a national model for Indigenous development in the social, sporting and educational fields	Provide standards of facilities; methods of development techniques; and management procedures that can be applied to other Indigenous organisations
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The ILSC purchased the Redfern Public School site at 180 George St Redfern NSW (Cnr. George and Phillips St) from the City of Sydney Council in October 2006. The ILSC then undertook a major construction project to establish NCIE, which includes sports and recreation facilities; community service spaces; commercial space for tenants; and dormitory-style accommodation for residential programs.

The ILSC entered into a subsidiary agreement with NCIE Ltd for it to have responsibility for the promotion and management of the NCIE asset, to provide direct relief to young Indigenous Australians who are suffering disadvantage (such as poverty, sickness, distress, misfortune, helplessness or social dislocation) through the provision of skills through education and training and assisting in their physical development and by providing associated accommodation sporting, recreation and education facilities. The facilities opened for business in January 2010.

Summary of investment by the ILSC to date:

Capital investment to date:

- Acquisition costs \$15.45m (original Redfern public school \$14.8m, part of Renwick St for oval and car park \$626K, transaction costs \$24k)
- Development costs \$32.05m (including recent additions to pool enclosure and rectification of defects)

ILSC funding to NCIE was held as an intercompany loan until 30 June 2013. A loan of \$5,647,297 was written off at 30 June 2013. Funding is now provided to NCIE via a grant arrangement.

Since 2013, the ILSC has provided approximately \$16.4 million in relevant funding support to underwrite NCIE Ltd's operations and management of the facility.

ILSC Governance and Oversight of its subsidiaries:

ILSC governance and oversight of its subsidiaries is exercised through:

- Shareholding/membership arrangements
- Section 191G agreements (including Decision and Authority Framework)
- Nominated ILSC Directors occupying some positions on the relevant subsidiary Boards
- Relevant constitutional arrangements, including the ILSC appointing or removing Directors of the subsidiary Board
- Provision of monthly reports on operations, financial performance and training and employment outcomes.

Current Situation and Requirement of the Review

As per the ILSC's legislative mandate to grant all land it acquires to Aboriginal and Torres Strait Islander Corporations within a reasonable time, the ILSC has entered discussions with a third-party entity to explore the possible divestment of the asset.

The third-party entity proposes to re-develop the site to increase cultural space; education and research facilities; commercial office space; mixed use retail; and affordable housing options. For the benefit of this review it should be assumed the granting, re-development and operating model assumptions will be confirmed with the successful tender.

The third-party has committed in principle for the NCIE to be included in the future re-developed site, but detail on its footprint on the site and the activities it will deliver must be factored into future development plans. To allow future allowance for any involvement, the ILSC must provide a clear position to the third party on the future of NCIE Ltd, and in particular if required, its future operating model and tenancy requirements. The ILSC also has legislative constraints to its capacity to continue to maintain a subsidiary company's activities on a divested property, where the new landowner itself has demonstrated the capacity to effectively manage the land. This issue will be explored further as part of the tender process.

The ILSC currently provides an annual subsidy of approximately \$2.5 million to NCIE Ltd to cover shortfalls in its revenue streams. The ILSC Board has made it a clear priority for the ILSC to reduce the amount of subsidy it provides to its subsidiaries, with the requirement that NCIE Ltd would be self-supporting in any future capacity.

The ILSC therefore, seeks the services of a suitably qualified consultant to conduct a review of NCIE Ltd to provide the ILSC board with options for the future operations for NCIE Ltd. Once a decision has been made by the ILSC Board as to the future state of NCIE Ltd, the service provider will be required to develop a detailed project plan to guide the transition of the entity.

The selected service provider will be required to deliver the following outcomes under the Terms of Reference:

Stage 1 – Current State Analysis

1. Governance

- provide a description of the NCIE Ltd legal entity including matters relating to its incorporation, objects and charitable purpose, Board governance, corporate structure and legal relationship to the ILSC as parent company.

2. Legal and Tax

- review and provide commentary on NCIE Ltd's charitable, DGR and tax-exempt status including the implications of each on the ILSC's future options for the company;
- review and document all contractual and legal commitments associated with NCIE Ltd including key details associated with those commitments (e.g timeframes, financial considerations and potential assignment of contracts).
- Identify, review and document other related legal matters including trademarks, intellectual property and other assets held by the company.

3. Industrial Relations

- Review and provide analysis of the current staffing arrangements of NCIE Ltd including employment contracts, industrial instruments and other relevant issues/risks that may arise from those including potential consultation and redundancy provisions and considerations.

4. Financial

- Complete a review NCIE Ltd's financial performance and provide an assessment of the financial viability of NCIE Ltd and its operating model, including identification of its key revenue streams and financial commitments.

5. Operations

- Review, describe and provide analysis of the current suite of programs, services and commercial activities NCIE Ltd delivers. This should include a description of how each of these activities are funded, an assessment of their ongoing profitability and financial sustainability and their potential to be transferred to another local Indigenous entity with similar objects as NCIE Ltd;

6. Communications

- Complete an internal and external stakeholder mapping exercise and submit a high-level communications plan to support the recommended option for NCIE's future state.

7. Risk Register

- Establish a Project Risk Register documenting key issues/risks the ILSC and NCIE Ltd must treat and manage during the development and implementation of the Transition Plan.

8. Stage 1 Report

- Submit a Stage 1 Report outlining findings and observations in relation to the workstreams outlined above. In consideration of the findings and observations, provide the ILSC with an outline of its options for the future state of NCIE Ltd, including a recommendation of a preferred option.

Stage 2 – Transition Plan (final scope and budget to be negotiated subject to outcomes of Stage 1 Report)

9. Based on the preferred future state for NCIE Ltd approved by the ILSC Board (which may include a divestment or winding up of the company), prepare a detailed Transition Plan outlining the key workstreams, actions, timeframes, resourcing and budget required to achieve the desired future state for NCIE Ltd.

The service provider will be expected to prepare and present a draft and final Transition Plan. They will also be expected to have consulted closely with the relevant ILSC staff and NCIE Ltd Board and staff as appropriate (TBC).

ILSC BOARD MEETING NO 270

Held through Microsoft Teams

Wednesday, 17 February, 2021 at 09:00 am ACST

MINUTES

ATTENDANCE:

Mr Edward Fry	Chair
Ms Patricia Crossin	Director
Mr Roy Ah-See	Director
Dr Donna Odegaard, AM	Director

APPROVED LEAVE OF ABSENCE:

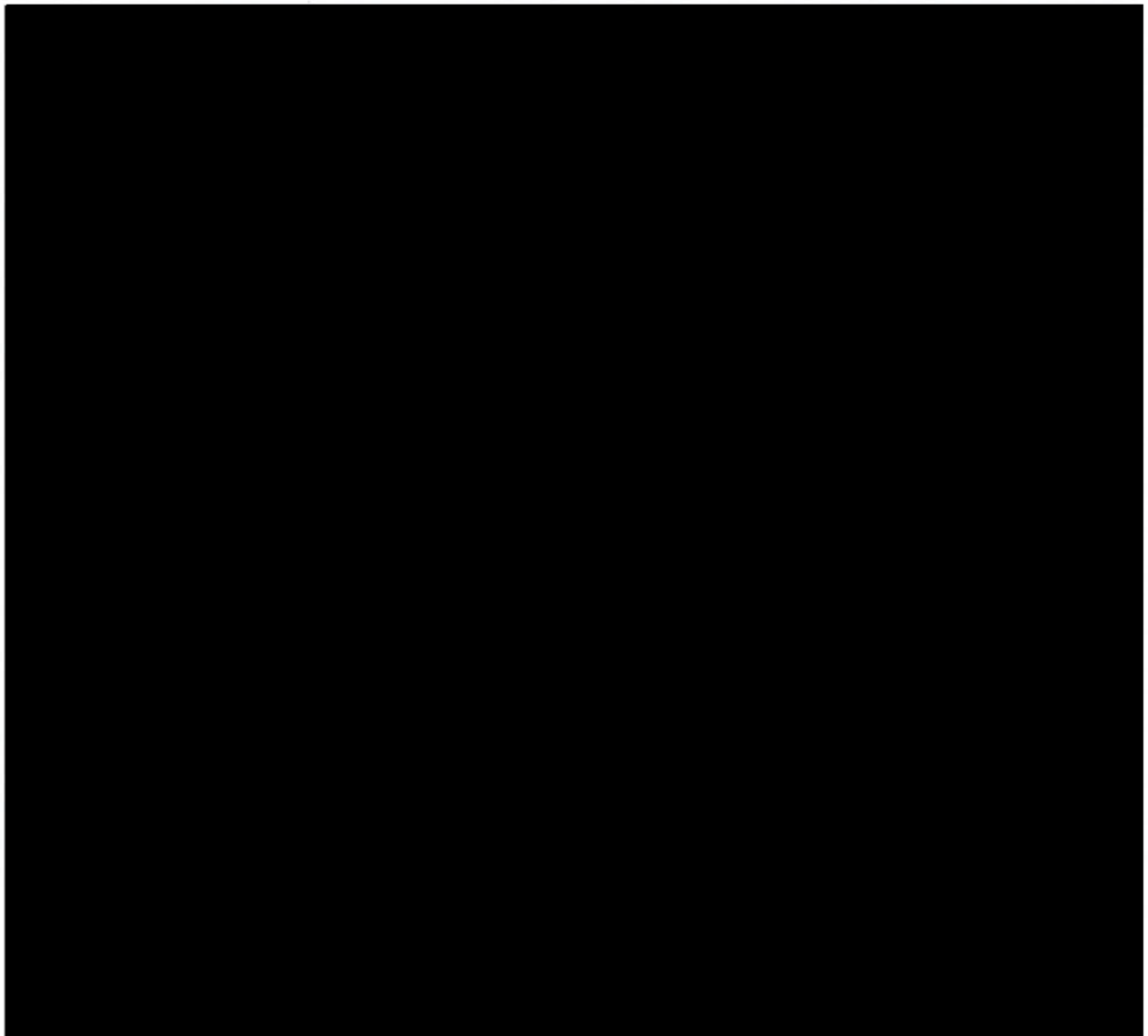
Mr Bruce Martin	Director
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The following attended all or part of the meeting:

Mr Joe Morrison	ILSC Group Chief Executive Officer
Ms Tricia Stroud	ILSC Deputy Group Chief Executive Officer
Mr Trevor Edmond	ILSC Group General Counsel
Mr David Silcock	ILSC Group Chief Financial Officer
Mr Tim Larkin	ILSC Executive Director, Program Delivery
Ms Angela Keane	ILSC Minute taker

A copy of the agenda is attached.

The Chair (**Chair**), Mr E Fry welcomed Directors and declared the meeting open at 9:15 am ACST having noted a quorum of Directors was present.



Mr T Larkin, Executive Director, Program Delivery joined the meeting at 1.35 pm ACST

4.1 NCIE Review

The Chair introduced Mr T Larkin who updated Directors on the progress on the NCIE Divestment following his earlier report on 9 December, 2020. It was noted at that time Directors approved the development of a conditional Divestment Deed between the ILSC and NSWALC. Since then NSWALC have returned with a number of requirements to the Divestment Deed. From that a Terms of Reference (**ToR**) is presented at today's meeting. The overall purpose is to engage an independent consultant to undertake a comprehensive assessment on the future of NCIE Ltd. Mr Larkin continued and outlined the scope of work to be undertaken in two Stages. Key elements of Stage 1 will be to incorporate high-level governance arrangements and identify legal and tax implications and obligations. Following, a report will be submitted to the Board outlining key findings with recommendations as to the future of NCIE Ltd. Based on preferred options accepted by the Board, a Stage 2 Transition Plan will be undertaken outlining key workstreams, timeframes, resourcing and budget.

Mr Larkin was now seeking Board endorsement on the proposed ToR.

Director questions followed.

Actions:

1. Director Crossin requested the Risk Register (as outlined in the ToR) be forwarded to Directors.
2. Director Crossin requested Communications plan (as outlined in the ToR) be brought back to the Board.
3. Mr Larkin to develop internal Communications notice to NCIE employees this week.

It is noted that Directors Odegaard and Ah-See refrained from voting owing to their conflict of interest as Deputy Chair and Director respectively.

Directors Fry and Crossin resolved to approve the following resolutions.

Resolved:

ILSC Board resolved to note and approve the following resolutions:

1. **Notes the contents of this paper;**
2. **Endorses the attached Terms of Reference to engage an independent consultant to assess and prepare options and recommendations on the future operations of the National Centre of Indigenous Excellence Limited.**
3. **Authorises the ILSC GCEO to write to NCIE Ltd on any matter that in the reasonable opinion of the ILSC GCEO is a matter that falls within the s191G Deed with NCIE Ltd.**



Board-in-Confidence

ILSC BOARD MEETING No 270

Wednesday, 17 February 2021 commencing at 10:30 ACST
To be held via Microsoft Teams

Board Members:

Edward Fry (Chair)
Patricia Crossin
Bruce Martin
Donna Odegaard, AM
Roy Ah-See
Daniel Tucker, AM

AGENDA

Discussion Leader

1. STANDING AGENDA ITEMS

2. FINANCE, RISK AND COMPLIANCE

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3. STRATEGY, POLICY, LEGISLATION, STAKEHOLDERS

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4. MANDATE AND INVESTMENTS

*	4.1 NCIE Review		ED PD
	4.1.1 Att A - NCIE Review - Terms of Reference		
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5. GOVERNANCE AND ADMINISTRATION

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6. SUPPLEMENTARY READING

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7. OTHER BUSINESS Chair

8. IN CAMERA Chair

9. NEXT MEETING Chair

*** Decision required**

CHAIR – Chair, ILSC and RANC (Edward Fry)
GCEO – Group Chief Executive Officer (Joseph Morrison)
DGCEO – Deputy Group Chief Executive Officer (Tricia Stroud)
ARC - Chair, Audit and Risk Committee (Karen Prentis)

GGC - Group General Counsel (Trevor Edmond)
GCFO - Group Chief Financial Officer (David Silcock)
ED PD – Executive Director, Program Delivery (Tim Larkin)

ILSC BOARD MEETING NO 272

Held through Microsoft Teams

Wednesday, 14 April, 2021 at 09:00 am ACST

MINUTES

ATTENDANCE:

Mr Edward Fry	Chair
Ms Patricia Crossin	Director
Mr Roy Ah-See	Director
Dr Donna Odegaard, AM	Director

NON APPROVED LEAVE OF ABSENCE:

Mr Bruce Martin	Director
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The following attended all or part of the meeting:

Mr Joe Morrison	ILSC Group Chief Executive Officer
Ms Tricia Stroud	ILSC Deputy Chief Executive Officer
Mr Trevor Edmond	ILSC Group General Counsel
Mr David Silcock	ILSC Group Chief Financial Officer
Mr Tim Larkin	ILSC Executive Director, Program Delivery
Ms Karen Prentis	ILSC ARC Chair
Ms Renae Roberts	ILSC WHS Manager
Ms Angela Keane	ILSC Board Secretariat

A copy of the agenda is attached.

The Chair (**Chair**), Mr E Fry welcomed Directors and declared the meeting open at 09:15 am ACST having noted a quorum of Directors was present. The Chair acknowledged the Kurna people as the traditional custodians of the Adelaide Plains upon which we met, and paid respect to Traditional Owners, past, present and emerging.



Mr T Larkin, Executive Director, Program Delivery re-joined the meeting at 3:40 pm ACST

4.3 NCIE Divestment Deed

Executive Director, Program Delivery, Mr T Larkin presented the paper seeking Board approval in the finalisation and execution of the NCIE Divestment Deed. Mr Larkin advised negotiations between the ILSC and New South Wales Aboriginal Land Council (NSWALC) are proceeding well to date, with agreement to the key terms. The drafting and wording of the document to be finalised over the coming weeks. Furthermore, Mr Larkin briefed the Board on the KPMG Project Development Plan including the critical milestone elements of the pre-transfer plan.

The DCEO continued, advising the Board that transition options will commence shortly following the appointment of the new CEO, Mr Darren Hammond. She advised that it is proposed that in the short-term an Executive will be at their Sydney offices at least one day a week. She advised that a number of communications have been forwarded to Indigenous advisory groups and organisations, keeping them abreast of initial plans. Ms Stroud explained that since external communications have been sent out, service providers have been very positive and enquired how they too could become part of the transition.

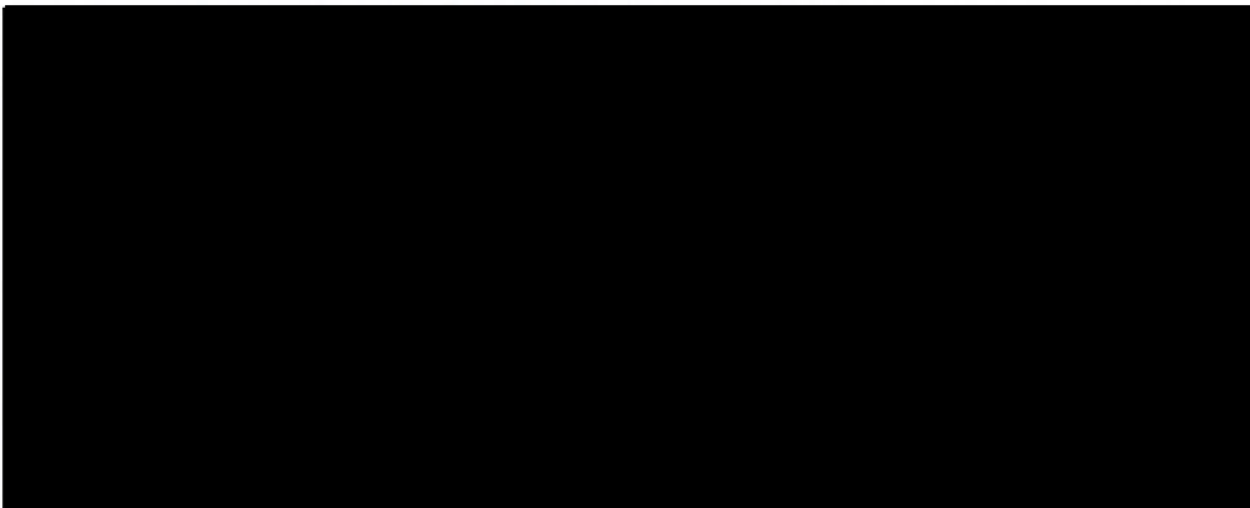
Director Ah-See unexpectedly left the meeting at 4:03 pm ACST

The meeting from herein was inquorate.

Mr Larkin left the meeting at 4:03 pm ACST

It was further noted that Items 4.3 NCIE Divestment Deed; [REDACTED] were not discussed nor resolved owing to the meeting becoming inquorate.

Notwithstanding the lack of a quorum, the remaining Directors agreed to continue discussing the remaining item.





Board-in-Confidence

ILSC BOARD MEETING No 272

Wednesday, 14 April 2021 commencing at 09:00 AM ACST
To be held via Microsoft Teams

Board Members:

Edward Fry (Chair)
Patricia Crossin
Bruce Martin
Donna Odegaard, AM
Roy Ah-See

AGENDA

		<i>Discussion Leader</i>
<hr/>		
1.	STANDING AGENDA ITEMS	
	■ [REDACTED]	■
	■ [REDACTED]	■
	■ [REDACTED]	■
■	■ [REDACTED]	
■	■ [REDACTED]	
	■ [REDACTED]	■
	■ [REDACTED]	■
	■ [REDACTED]	■
<hr/>		
2.	FINANCE, RISK AND COMPLIANCE	
	■ [REDACTED]	■
	■ [REDACTED]	
<hr/>		
3.	STRATEGY, POLICY, LEGISLATION, STAKEHOLDERS	
*	■ [REDACTED]	■
	■ [REDACTED]	
■	■ [REDACTED]	■
■	■ [REDACTED]	■
	■ [REDACTED]	
■	■ [REDACTED]	■
	■ [REDACTED]	■
	■ [REDACTED]	
<hr/>		
4.	MANDATE AND INVESTMENTS	
*	■ [REDACTED]	■
	■ [REDACTED]	
■	■ [REDACTED]	■
	■ [REDACTED]	
*	4.3 NCIE Divestment Deed	DCEO
<hr/>		
5.	GOVERNANCE AND ADMINISTRATION	
	■ [REDACTED]	■
	■ [REDACTED]	
	■ [REDACTED]	■

[REDACTED]

6. SUPPLEMENTARY READING

[REDACTED]

7. OTHER BUSINESS

Chair

8. IN CAMERA

Chair

9. NEXT MEETING

Chair

*** Decision required**

CHAIR – Chair, ILSC and RANC (Edward Fry)
GCEO – Group Chief Executive Officer (Joseph Morrison)
DGCEO – Deputy Chief Executive Officer (Tricia Stroud)
ARC - Chair, Audit and Risk Committee (Karen Prentis)

GGC - Group General Counsel (Trevor Edmond)
GCFO - Group Chief Financial Officer (David Silcock)
ED PD – Executive Director, Program Delivery (Tim Larkin)
WHS – Executive Director, P&C (Anthony Piantadosi)



Australian Government
Indigenous Land and Sea Corporation



The ILSC GROUP

INDIGENOUS LAND AND SEA CORPORATION

ABN 59 912 679 254

**DIRECTORS' RESOLUTION IN WRITING IN ACCORDANCE WITH CLAUSE 5.6
 OF THE ILSC BOARD CHARTER**

NCIE DIVESTMENT DEED

We, the undersigned, being not less than 75% of the Directors of the Indigenous Land and Sea Corporation, entitled to vote on this matter, having read any relevant papers, and in accordance with the ILSC Board Charter, resolve to approve the following:

The ILSC Board of Directors resolve to:

1. Note the content of this paper.
2. Note the progress made in negotiating the Divestment Deed.
3. Note that negotiations do not involve material matters or deviation from the Board endorsed conditional criteria.
4. Authorise the ILSC Group CEO to finalise negotiations and execute the Divestment Deed with the New South Wales Aboriginal Land Council (NSWALC) to support a future grant of 160-202 George Street, Redfern NSW to NSWALC.

Edward Fry

.....
Edward Fry, Chair

Date *19-4-2021*

Donna Odegaard

.....
Donna Odegaard, Director

Date 19.04.21

Roy Ah-See

.....
Roy Ah-See, Director

Date 21.04.21

.....
Patricia Crossin, Director

Date

.....
Bruce Martin, Director

Date



Australian Government
Indigenous Land and Sea Corporation



The ILSC GROUP

INDIGENOUS LAND AND SEA CORPORATION

ABN 59 912 679 254

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2. Note the progress made in negotiating the Divestment Deed.
3. Note that negotiations do not involve material matters or deviation from the Board endorsed conditional criteria.
4. Authorise the ILSC Group CEO to finalise negotiations and execute the Divestment Deed with the New South Wales Aboriginal Land Council (NSWALC) to support a future grant of 160-202 George Street, Redfern NSW to NSWALC.

.....
Edward Fry, Chair
Date

P. M. Crossin

.....
Patricia Crossin, Director
Date 25.04.21

.....
Donna Odegaard, Director
Date

.....
Roy Ah-See, Director
Date

.....
Bruce Martin, Director
Date

DEED OF GRANT OF ASSET/S

BETWEEN

INDIGENOUS LAND AND SEA CORPORATION
ABN 59 912 679 254
(ILSC)

AND

NEW SOUTH WALES ABORIGINAL LAND COUNCIL
ABN 82 726 507 500
(Recipient)

The parties will not be legally bound unless and until this Deed is executed and exchanged by both parties. Any actions taken by the proposed Recipient in anticipation of execution would be at its risk.

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DEED OF GRANT OF ASSET/S dated in **Item 1**

BETWEEN:

INDIGENOUS LAND AND SEA CORPORATION ABN 59 912 679 254 of Level 7, 70 Franklin Street, Adelaide SA 5000 (**ILSC**)

AND:

The body corporate whose name and contact details are in **Item 2 (Recipient)**

INTRODUCTION

- A. ILSC is a body corporate established under the ATSI Act.
- B. The Recipient is an Aboriginal or Torres Strait Islander Corporation.
- C. This Deed provides for ILSC acting under section 191D(1) or section 191E(1) to grant the Assets to the Recipient, subject to some Conditions Precedent and also some continuing conditions.

TERMS

PART A - PRELIMINARY

1. DICTIONARY

In this Deed:

Agreed Value means, in respect of an Asset, a sum specified against that Asset in the Schedule and that is agreed to be the market value of that Asset (before GST) as at the Transfer Date.

Applicable Law means:

- (a) the *Australian Meat and Live-stock Industry Act 1997* (Cwth), *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwth), *Environment Protection and Biodiversity Conservation Act 1999* (Cwth), *Fair Work Act 2009* (Cwth);
- (b) the following legislation of South Australia (or if an Asset is at the time located or being exploited in a State or Territory of Australia other than South Australia, then in relation to that Asset the substantially equivalent legislation in that other State or Territory) – the *Aboriginal Heritage Act 1988*, *Animal Welfare Act 1985*, *Development Act 1993*, *Dog Fence Act 1946*, *Environment Protection Act 1993*, *Equal Opportunity Act 1984*, *Heritage Places Act 1993*, *Livestock Act 1997*, *Local Government Act 1999*, *Native Vegetation Act 1991*, *Natural Resources Management Act 2004*, *Work Health and Safety Act 2012*;
- (c) any other legislation that covers conduct relating to the ownership, occupation, use, of an Asset.

Assets mean, as applicable, individually and collectively, any of the Land, Goods or Other Property.

ATSI Act means the *Aboriginal and Torres Strait Islander Act 2005* (Cwth) and, unless otherwise stated, reference to a **section** (or **s.**) means a section of that legislation.

Business Day means a day other than:

- (a) a Saturday, Sunday;
- (b) a day which is a public holiday or bank holiday in South Australia or in the other State or Territory of Australia (if any) in which the Recipient's mailing address specified in **Item 2** is located; or
- (c) a day that falls between any 22 December in any year and 10 January in the following year (inclusive).

Caveat means a document or filing to protect or note ILSC's interest in any Asset under clause 12.1 and / or section 191SA(1)(b), and that either or both:

- (a) forbids (absolutely or permissively) registration of a dealing with an Asset on a public or private register on which that Asset is registered;
- (b) requires the registrar notify ILSC of a proposed future dealing with an Asset on the register.

Conditions Precedent mean condition/s stated in **Item 8**.

CPI Indexed means an amount is to be adjusted by multiplying the amount by a proportion obtained by dividing the CPI for the calendar quarter last occurring before a Review Date by the CPI for the calendar quarter last occurring before the Transfer Date (with the amount so adjusted being rounded up to the nearest whole dollar), and for this purpose:

- (a) **CPI** means Consumer Price Index (all groups index for Adelaide) published by the Australian Statistician under *Census and Statistics Act 1905* (Cwth). If after its first publication for any reference period of time that Index is revised, use only the first publication;
- (b) **Review Date** means each anniversary of the Transfer Date.

Goods mean, individually and collectively:

- (a) goods of the kind and quantity described in **Item 4**;
- (b) any accessories / parts / operator's manual / tools supplied with those goods;
- (c) any components or parts (including in case of a motor vehicle, replacement tyres) on or after the Transfer Date added to the original goods by or for the Recipient.

GST and other expressions in clause 62 have their meaning in *A New Tax System (Goods and Services Tax) Act 1999* (Cwth) (**GST Act**).

Item means an item in the Schedule.

Land means:

- (a) an estate or interest in real property described in **Item 3**;
- (b) in case of a freehold estate, any permanent improvements or other things upon that real property having the legal character of fixtures on the Transfer Date;
- (c) in case of a freehold estate, any permanent improvements on or after the Transfer Date made to that real property by or for the Recipient.

Other Property means, individually and collectively, any rights, privileges or personal property described in **Item 5**.

Permitted Use means as regards an Asset the use/s stated for that kind of Asset in **Item 6**.

Proposal means at any time in relation to an Asset a proposal (by whatever name) by the Recipient for its proposed acquisition, exploitation, management or development of that Asset and last approved in writing by:

- (a) the Indigenous Land and Sea Corporation Chief Executive Officer (or acting Indigenous Land and Sea Corporation Chief Executive Officer) for the time being; or
- (b) another member of ILSC's staff at the time holding sufficient delegated authority for that purpose under section 193T.

PPSA means the Personal Property Securities Act 2009 (Cwth)

Security Interest means any:

- (a) mortgage, charge, hypothecation, pledge, lien or trust;
- (b) security interest within the meaning of the PPSA.

Transaction Cost Contribution means money of the amount/s, at the time/s and for the purpose/s stated in **Item 9**.

Transfer Date means the date 20 Business Days after all Conditions Precedent are either satisfied or waived in writing by both ILSC and Recipient.

Transfer Document means, in relation to an Asset, any instrument required to perfect transfer of title of that Asset to the Recipient.

Trigger Event means any of the following events or circumstances occurring in relation to the Recipient:

- (a) it commits a breach of this Deed not capable of remedy; or
- (b) it commits a breach of this Deed capable of remedy but fails to remedy that breach within 20 Business Days (or such later time as the non-defaulting party may reasonably determine) after written notice from ILSC identifying the breach and requiring its remedy; or
- (c) any other contract made or later made between these same parties is terminated by reason of the Recipient's breach; or
- (d) it allows anything that brings ILSC into disrepute; or
- (e) it ceases to be an Aboriginal or Torres Strait Islander Corporation.

Subject to all the above, expressions in this Deed have the same meaning as in a provision of the ATSI Act that deals with the same matter.

2. INTERPRETATION

The Introduction is correct and forms part of this Deed. In this Deed: neuter includes masculine and feminine; singular includes plural and *vice versa*; reference to a person includes a body politic or corporate, an individual and a partnership and *vice versa*; headings do not affect construction; no rule of construction applies to the disadvantage of a party because that party put forward this Deed or any portion of it; another grammatical form of a defined word has a corresponding meaning; reference to legislation includes: (i) the legislation as at any time amended or replaced; (ii) any subordinate legislation under

that legislation; and (iii) any orders, standards or codes of practice under that legislation; reference to a section of legislation includes that section as at any time amended or replaced.

3. ACKNOWLEDGEMENT

The Recipient acknowledges that before commitment to this Deed the Recipient had fair opportunity to read, understand, take independent advice on, and to negotiate with ILSC on the terms and conditions of, this Deed.

4. STATUS OF THE RECIPIENT

The Recipient warrants and represents that the Recipient:

- 4.1 is and on the Transfer Date will be, an Aboriginal or Torres Strait corporation;
- 4.2 is and on the Transfer Date will be, able to pay all its debts, as and when they become due and payable;
- 4.3 has the power and authority to enter into this Deed and perform its obligations under this Deed, and it is able to do so without the consent of any other person;
- 4.4 has taken all necessary action to authorise its execution, delivery, observance and performance of this Deed in accordance with its terms;
- 4.5 unless otherwise stated in this Deed, enters into this Deed and would receive the Assets on its own account and not as trustee, agent or other fiduciary capacity.

5. ABOUT THIS DEED

For the purposes of section 191D(1A), without limiting any other function of this Deed, this Deed states the terms and conditions of the grant of the Land and any water-related right (if any) effected under this Deed.

6. SEVERANCE

If a provision of this Deed would, but for this clause 6, be unenforceable:

- 6.1 the provision must be read down to the extent necessary to avoid that result; or
- 6.2 if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of this Deed.

PART B - GRANT

7. AGREEMENT FOR THE GRANT

The parties agree for ILSC to grant the Assets to the Recipient on the Transfer Date and generally on the terms of this Deed.

8. CONDITIONS PRECEDENT TO THE GRANT

- 8.1 The grant of the Assets under clause 7 is not effective unless and until the Conditions Precedent are in writing waived by ILSC or satisfied no later than the applicable date/s stated in **Item 8**.
- 8.2 Neither party may hinder the satisfaction of a Condition Precedent.

- 8.3 Within 5 Business Days after a party has actual knowledge a Condition Precedent is satisfied or is incapable of being satisfied, and the other party lacks that knowledge, that party must notify that fact to the other party.
- 8.4 A Condition Precedent is not satisfied if a third party's consent, approval, authorisation, agreement or other step required to satisfy that Condition Precedent:
- 8.4.1 issues upon terms and conditions not customary and not acceptable to these parties acting reasonably; or
 - 8.4.2 is the subject of an appeal, administrative review or judicial review not finally disposed of; or
 - 8.4.3 before the Transfer Date expires, is revoked or ceases to be effective by failure of a condition attached to that above step and not replaced.
- 8.5 If a Condition Precedent is not waived or satisfied within time, either party not in default under clause 8.2 may terminate this Deed upon giving notice to the other party, and in that case:
- 8.5.1 ILSC may yet retain all information it holds about the Recipient (including any copies or extracts thereof) obtained in negotiations for this Deed;
 - 8.5.2 obligations of confidentiality in clause 48 continue;
 - 8.5.3 otherwise, neither party has further rights against the other in connection with this Deed except in respect of prior default under this Deed.

9. WHEN THE GRANT IS EFFECTIVE

Effective on the Transfer Date, ILSC grants the Assets to the Recipient and the Recipient accepts that grant.

10. HANDOVER OF GOODS

- 10.1 On the Transfer Date, title, risk and right to possession of any Goods pass from ILSC to the Recipient.
- 10.2 If on the Transfer Date the Recipient does not have custody of the Goods, ILSC at its cost will arrange transport of the Goods to the Recipient. However, except to the extent caused by ILSC's wilful default, ILSC is not liable for any delay in delivery nor for damage to the Goods in the course of delivery.
- 10.3 If on or after the Recipient obtains custody of the Goods ILSC so requires, the Recipient must give written confirmation of that fact to ILSC.
- 10.4 On first taking custody of Goods, the Recipient must:
- 10.4.1 inspect the Goods and advise ILSC of any manifest damage or problem - otherwise Goods are taken to be free from manifest damage or problem at that time;
 - 10.4.2 become familiar with any operational parameters / characteristics of the Goods; and
 - 10.4.3 know any laws regulating custody or use of the Goods.

11. TRANSFER OF TITLE

If perfection of the grant of an Asset under this Deed requires a Transfer Document, then:

- 11.1 if the Asset is Land a registration of transfer of which is able to be effected electronically in accordance with the *Electronic Conveyancing National Law (South Australia)* (or equivalent legislation in the jurisdiction in which the Land is situated) (**EC Law**), then in a timely manner each party must do all things reasonably necessary to achieve transfer on the Transfer Date in conformity with the EC Law and the *Participation Rules* made under the EC Law, and:
 - 11.1.1 the Representative acting for the Recipient must be the Responsible Subscriber (within the meaning of the *Participation Rules*);
 - 11.1.2 subject to clause 59, the Recipient must provide sufficient funds to its Representative to enable payment of stamp duty (if any) and lodgement of the transfer to be effected electronically on the Transfer Date;
- 11.2 if and to the extent clause 11.1 does not apply, then:
 - 11.2.1 if a Transfer Document is executed before the Transfer Date, that Transfer Document is not effective pending the Transfer Date;
 - 11.2.2 (if not done beforehand) as soon as practicable after the Transfer Date the Recipient at its expense must have prepared, dated, duly executed by the Recipient and then given to ILSC such Transfer Document as required to perfect the grant;
 - 11.2.3 as soon as practicable after receiving such Transfer Document, ILSC must duly execute, have a lawyer / conveyancer certify ILSC's execution (if law so requires), and then return that Transfer Document to the Recipient; and
 - 11.2.4 thereafter the Recipient at its expense must cause the Transfer Document to be stamped (if required by law to be stamped) and lodged promptly with the proper authorities;
- 11.3 subject to all the above, the parties must do all things necessary to perfect the grant of the Assets in accordance with law;
- 11.4 any failure by either or both parties to comply with any above provisions of this clause 11 does not affect the grant and acceptance of the Assets given effect by clause 9.

Notes: Under section 193R(2) stamp duty is not payable in respect of the grant of an 'interest' in land, or 'water-related right' by ILSC under section 191DA(1)(a) if the grant occurs within 12 months after the interest or right was acquired by ILSC.

12. CHARGE

- 12.1 Effective on the Transfer Date, the Recipient charges the Assets as security for the Recipient's observance and performance of this Deed, including payment of all costs and expenses incurred by ILSC in respect of its enforcement of the Recipient's liability or obligation in this Deed.
- 12.2 The charge in clause 12.1 is intended to be, and must remain, a first-ranking Security Interest.
- 12.3 The charge in clause 12.1 adds to the charge of the Land (and any water-related right comprised in the Assets) given force by section 191SA(1)(b).

Notes: Section 191SA(1)(b) is that the Recipient's obligation not to dispose of or charge the Land or any 'water-related right' comprised in the Assets without ILSC's consent is taken to be an interest of ILSC in that Land or water-related right. Section 191SA(2) is that the Land or water-related right is charged with payment of all costs and expenses incurred by ILSC in respect of its enforcement of the obligation. Section 191SA(2) on its own would support a Caveat lodged by ILSC as regards that Land or water-related right (but not any other Assets).

13. PPSA

If the charge under clause 12.1 extends to any personal property to which the PPSA applies, then in relation to that charge the parties contract out of those provisions of the PPSA capable of being contracted out of.

Notes: See PPSA s. 115 for the list of PPSA provisions capable of being contracted out of by a grantor and / or the secured party.

Under PPSA s. 8 the PPSA does not apply to certain kinds of personal property (such as a licence to hold or take water).

The parochial law of a State / Territory may also exclude certain kinds of property from the PPSA – see, for example, the *Statutes Amendment (Personal Property Securities) Act 2011 (SA)* which had the effect of excluding, amongst other things, aquaculture licences, fisheries licences, mining tenements, water licences.

14. CAVEAT

14.1 At any time during the Term, ILSC may register and maintain at its cost a Caveat to protect ILSC's interest in any Asset under clause 12.1 and / or section 191SA(1)(b).

14.2 If at any time the registration or continuance of an above Caveat requires the Recipient grant a written consent or other instrument, within 5 Business Days after ILSC's written request the Recipient must sign and deliver that instrument to ILSC for delivery to the body administering the register on which the Caveat is registered or intended to be registered.

15. PERFECTION OF THE CHARGE

If at any time during the Term ILSC so requires in writing and at its cost, within 20 Business Days the Recipient must:

15.1 execute in favour of ILSC such registrable mortgage or other collateral security document over any Asset as ILSC requires and in the form ILSC requires, provided that such document is in the minimum form required to protect ILSC's interest in that Asset under clause 12.1 and / or section 191SA(1)(b);

15.2 take any steps in writing directed by ILSC to perfect ILSC's interest in that Asset under clause 12.1 and / or section 191SA(1)(b).

16. THIRD PARTY MORTGAGES OR CHARGES

16.1 Except with ILSC's consent, the Recipient must not grant a mortgage or charge (legal or equitable, registrable or not) of any of its legal or beneficial interest in an Asset to any third party.

16.2 As a matter of record, section 191S(2) is that the Recipient must not, without ILSC's consent, give a charge of the Land or any 'water-related right' comprised in the Assets.

PART C - RISK

17. ILSC'S LIABILITY

17.1 To the extent the law allows and subject to clause 17.2, ILSC does not warrant, represent, guarantee or grant other assurance as to the state, condition, history,

fitness for purpose, other characteristic or lawful uses that may be made of any Asset.

- 17.2 If and to the extent however, a third party who conveyed the Assets to ILSC (before ILSC grants those Assets to the Recipient) extended and honours any warranty, representation or guarantee about those Assets to ILSC, ILSC extends the same warranty, representation or guarantee to the Recipient.
- 17.3 ILSC does not warrant, represent, guarantee or grant other assurance as to the prospects or profitability of any enterprise the Recipient may carry on in using or exploiting the Assets (despite any support or training arranged by ILSC).

Notes: If an Asset is a vehicle or trailer acquired for use principally in the transport of goods on public roads, the Recipient might be a 'consumer' as regards that Asset under the *Australian Consumer Law* and so entitled to various 'consumer guarantees' as regards that Asset that cannot be contracted out of.

18. NO DUTY OF CARE

A recommendation, approval, consent or inspection by ILSC in connection with the making or performance of this Deed:

- 18.1 does not create a liability to the Recipient or any third party;
- 18.2 is not an assumption of a duty of care, nor implies the exercise of any care or skill;
- 18.3 does not relieve the Recipient from its liabilities or obligations under this Deed.

19. INSURANCES

On and after the Transfer Date, as applicable, the Recipient must insure against:

- 19.1 risk of loss / damage to improvements at that time upon the Land, to replacement values;
- 19.2 public liability in respect of the Land or any other area upon which the Recipient is undertaking an activity in exploitation of the Assets, to a prudent level of cover (at least \$20 million per event);
- 19.3 risk of loss / damage to the Goods to replacement values;
- 19.4 any risk stated in **Item 7**.

If at any time ILSC requires, within 5 Business Days the Recipient must produce credible evidence of such insurance/s (at least certificates of currency issued by an insurance broker).

20. INDEMNITY

As a continuing obligation, except to the extent caused by ILSC's wilful default or negligence, effective on the Transfer Date the Recipient indemnifies and holds harmless ILSC from and against all loss, costs (including legal costs and expert's fees on an indemnity basis), liability and expenses in connection with the ownership, occupation, use or exploitation of any Asset occurring at any time on or after the Transfer Date, including for:

- 20.1 claims or allegations in respect of personal injury or death, or loss of or damage to any property, or infringement of any right;
- 20.2 costs or expenses incurred as a result of a claim or allegation as above.

PART D - ABOUT THE ASSETS

Notes: Under section 191E(3), in performance of its 'management functions' ILSC must give priority to pursuing sound land, water and environmental management practices.

21. APPLICABLE LAWS

On and after the Transfer Date the Recipient must not allow to be contravened any Applicable Law in respect of the ownership, occupation, use or exploitation of any Asset.

22. PROPOSALS

Except with ILSC's consent, on and after the Transfer Date the Recipient must:

- 22.1 use and exploit an (each) Asset in the manner and within the time/s forecast in the Proposal (if any) for that Asset;
- 22.2 not allow any Asset to be used or exploited except in conformity with, and not extending beyond, the Proposal (if any) for that Asset.

23. PERMITTED USE

Except with ILSC's consent, on and from the Transfer Date the Recipient must not allow any Asset to be used or exploited substantially or repetitively for other than its Permitted Use (if any).

24. OUTGOINGS

The Recipient must pay and bear when due all outgoings in respect of the ownership, occupation, use or exploitation of an Asset in so far as incurred on or after Transfer Date, including, without limitation, costs of:

- 24.1 in case of Land, rates, taxes, levies or charges imposed by government – and in particular the Recipient must not allow any such outgoings as are a statutory charge on the Land to remain unpaid more than 10 months after first due;
- 24.2 in case of Land, electricity, gas, water, telecommunications and other utilities, site security patrols;
- 24.3 insurance (includes comprehensive insurance of any road vehicles, public liability insurance, insurance against loss or damage);
- 24.4 maintenance, repair, alterations or additions;
- 24.5 fuels, oils, hydraulic fluids, tyres or other consumables;
- 24.6 training of operators;
- 24.7 government registrations, certifications, licences or permits.

Where an outgoing is referable to a period of time some of which is before and some of which is on or after the Transfer Date, such outgoing is taken to accrue on a daily basis.

25. TITLE TO LAND

Except with ILSC's consent or as exists at the Transfer Date, the Recipient must not as regards the Land:

- 25.1 grant or allow any restrictive covenant, *profit à prendre*, easement or (excepting a caveat lodged by the Recipient or ILSC) caveat or order of Court over the Land;
- 25.2 transfer any carbon rights as might accrue in respect of the Land;
- 25.3 sub-divide or consolidate the Land.

26. LEASEHOLD ESTATE

If any of the Land comprises a lease, tenancy or right to occupy real property (**Lease**) granted by a third party (**Landlord**), then on and from the Transfer Date the Recipient must:

- 26.1 observe and perform all its obligations under the Lease, and take reasonable steps to ensure the Landlord observes and performs the Lease;
- 26.2 (except with ILSC's consent) not:
 - 26.2.1 vary the Lease (except to extend or renew the period of the Lease);
 - 26.2.2 surrender the Lease in whole or in part;
 - 26.2.3 abandon the premises the subject of the Lease;
- 26.3 if any time ILSC requires, obtain a covenant (in form acceptable to ILSC) between the Recipient, ILSC and the Landlord under which the Landlord agrees not to terminate the Lease:
 - 26.3.1 if the Recipient defaults under the Lease - except after having notified ILSC of the default and allowed ILSC a reasonable period to cure the default;
 - 26.3.2 if the Recipient becomes insolvent - except after allowing ILSC a reasonable period to introduce to the Landlord a reputable and creditworthy Aboriginal or Torres Strait Islander corporation to take an assignment of the benefit of the Lease from the Recipient.

27. IMPROVEMENTS ON LAND

Except with ILSC's consent, on and after the Transfer Date the Recipient must not allow any improvements upon the Land to be:

- 27.1 in worse condition and state of repair than as at the Transfer Date (fair wear and tear excepted);
- 27.2 removed or demolished unless replaced promptly with improvements of at least equal value and utility.

28. GENERAL CONDITION OF LAND

Except with ILSC's consent, on and after the Transfer Date the Recipient must not allow the Land to be other than in good order and condition (having regard to seasons of the year, bushfire, and inclement weather) and reasonably tidy, free of weeds, vermin, plant or soil pests, viruses and diseases.

29. PRIMARY PRODUCTION LAND

If the Permitted Use of any of the Land is for the cultivation of the soil, the gathering in of crops, or the rearing of livestock, then on and after the Transfer Date the Recipient must in relation to that Land:

- 29.1 maintain firebreaks;
- 29.2 ensure there is erected and kept in good repair all necessary rabbit-proof, wild dog-proof, livestock and other fencing;
- 29.3 ensure reasonable steps are taken to minimise erosion, soil salinity and soil compaction; and
- 29.4 generally ensure it is managed in accordance with sound land management practices.

30. POSSESSION

Except with ILSC's consent, on and after the Transfer Date the Recipient must not:

- 30.1 part with or share right to possession of the Land (includes grant any lease, tenancy or licence to occupy the Land);
- 30.2 (except in an emergency or a person doing work for the Recipient) allow a third party to have custody of any moveable Asset.

31. LOCATION OF GOODS

On and after the Transfer Date the Recipient must only allow any Goods to be habitually stored or garaged at locations known to ILSC and secured against theft or improper interference.

32. GENERAL CONDITION OF GOODS

On and after the Transfer Date the Recipient must keep Goods in use in as good, safe, operating condition (fair wear and tear excepted) as when first taken into custody by the Recipient.

33. USING GOODS

On and after the Transfer Date the Recipient must allow Goods to be used only:

- 33.1 for a use for which designed and supplied;
- 33.2 in compliance any operator's manual supplied with those Goods; and
- 33.3 in a safe manner.

34. SUBSTITUTIONS

Except as ILSC may agree in writing and in advance:

- 34.1 if an Asset is sold by the Recipient, the net proceeds of sale to the Recipient (and anything acquired with those proceeds) replace that Asset as if the subject of the original grant under this Deed;
- 34.2 if an Asset is traded-in or exchanged by the Recipient for another asset (whether of the same or different kind, and with or without payment of money), the thing so acquired replaces that Asset as if the subject of the original grant under this Deed;
- 34.3 if an Asset comprising a lease, tenancy or right to occupy gives the Recipient a right of extension or renewal:

- 34.3.1 the Recipient must exercise that right; and
- 34.3.2 the lease, tenancy or right to occupy as extended or renewed replaces the Asset as if the subject of the original grant under this Deed;
- 34.4 if an Asset comprising a lease, tenancy or right to occupy does not give the Recipient a right of extension or renewal but the landlord offers to grant a new lease, tenancy or right to occupy substantially the same premises to the Recipient:
 - 34.4.1 the Recipient must accept that offer; and
 - 34.4.2 the new lease, tenancy or right to occupy replaces the Asset as if the subject of the original grant under this Deed;
- 34.5 if an Asset comprising a lease from the Crown in right of the Commonwealth or the Crown in right of a State or Territory of Australia or an instrumentality of any of them is surrendered by the Recipient in exchange for the freehold of the premises (with or without payment of money), that freehold replaces the Asset as if the subject of the original grant under this Deed;
- 34.6 if any Asset comprising an occupational licence, permit or authorisation (such as, for example, a fisheries licence) issued by government gives the Recipient a right of extension or renewal:
 - 34.6.1 the Recipient must exercise that right; and
 - 34.6.2 the occupational licence, permit or authorisation as extended or renewed replaces the Asset as if the subject of the original grant under this Deed;
- 34.7 if any Asset is to any extent compulsorily acquired by government or an instrumentality of government, the net proceeds must be applied only to such uses as ILSC may consent.

When an Asset is sold or compulsorily acquired, pending its net proceeds being used as this clause 34 requires or allows, the Recipient holds that money on trust for the Recipient and ILSC.

35. DISPOSALS

- 35.1 On and from the Transfer Date the Recipient must not dispose of any of its legal or beneficial interest in any Asset to any third party except:
 - 35.1.1 with ILSC's consent;
 - 35.1.2 any Goods or chattels beyond their effective life and being scrapped;
 - 35.1.3 any Goods or chattels being exchanged or traded-in for as good or better items.
- 35.2 To avoid doubt, for the purposes of clause 35.1 a **disposal** includes:
 - 35.2.1 a sale, exchange, gift, declaration of trust, transfer or surrender;
 - 35.2.2 where an Asset is a licence or permit to catch fish, crabs, abalone, oysters, lobsters or other aquatic animal – a sale, lease or transfer of a right to catch a quantity of such produce separate from the licence or permit;

35.2.3 where an Asset is a licence or permit to take water – a sale, lease or transfer of a right to take a quantity of such water separate from the licence or permit.

35.3 As a matter of record, section 191SA(2) is that the Recipient must not, without ILSC's consent, dispose of the Land or any 'water-related right' comprised in the Assets.

Notes: Under section 191SA(2), the Recipient may dispose of an interest in the Land or a water-related right in the Assets to ILSC itself, upon terms and conditions to be agreed.

36. THIRD PARTY CLAIMS

The Recipient must not at any time:

36.1 breach its contract with a third party in respect of an Asset;

36.2 allow an Asset to be taken in execution by a third party judgment creditor.

37. OCCUPATIONAL AUTHORISATION FROM GOVERNMENT

If any Asset comprises an occupational licence, permit or authorisation (such as, for example, a fisheries licence) issued by government (**Authorisation**), the Recipient must:

37.1 observe and perform all the Recipient's obligations under the Authorisation and under the legislation under which the Authorisation issued;

37.2 (except with ILSC's consent) not:

37.2.1 vary the Authorisation (except to extend or renew the period of the Authorisation);

37.2.2 surrender the Authorisation in whole or in part.

38. DE FACTO CONTROL OF ASSETS

The Recipient must not, without ILSC's consent, enter into or give effect to any scheme by which the Recipient's effective control over, or interest in, any of the Assets is in practice diminished in favour of a third party.

For this purpose:

(a) **control** includes the capacity to make decisions affecting the Assets including decisions regarding the physical or legal possession thereof, access thereto or the granting of rights therein;

(b) **scheme** means any agreement, arrangement, understanding, promise or undertaking, or any scheme, plan, proposal, course of action or course of conduct, whether express or implied and whether legally enforceable or not, and whether done alone or in association with others.

PART E - INFORMATION

39. RECORDS

During the Term, the Recipient must keep commercially sensible records of its ownership, use and exploitation of the Assets.

40. ANNUAL AND HALF-YEARLY REPORTS

- 40.1 If a Proposal states that for any whole or part financial years after the Transfer Date the Recipient would give a report to ILSC, then to that extent the Recipient must give to ILSC (preferably by email):
- 40.1.1 no later than each 21 January a report as regards the then immediately preceding 1 July to 31 December (both inclusive);
 - 40.1.2 no later than each 15 July a report as regards the then immediately preceding 12 months ended 30 June.
- 40.2 Except as expressly otherwise stated in a Proposal, a report under this clause 40 must:
- 40.2.1 use a template ILSC provides for that purpose;
 - 40.2.2 contain a review of the Recipient's observance and performance of this Deed, and the results of that review for the period of time concerned;
 - 40.2.3 address any schemes (see clauses 38 and 65) entered into by the Recipient relevant to any of the Assets or the governance, management, regulation or decision-making functions of the Recipient;
 - 40.2.4 the activities undertaken with benefit of the Assets since the last such report;
 - 40.2.5 the benefits achieved for Aboriginal persons and Torres Strait Islanders through ownership, use and exploitation of the Assets since the last such report;
 - 40.2.6 also address any other matters the parties last agreed should be reported.
- 40.3 ILSC may require that any report be certified as correct by a director or senior executive of the Recipient.
- 40.4 If the Recipient fails to give with time a report this clause 40 requires, then in addition to its other rights and remedies ILSC may make such assumptions of fact, opinion or law as ILSC thinks appropriate, including assumptions adverse to the Recipient.

41. AD HOC INFORMATION

If at any time during or after the Term ILSC reasonably requires, within 10 Business Days the Recipient must give freely to ILSC complete and accurate information about the past or future performance by the Recipient of this Deed.

42. ILSC MAY MAKE DIRECT ENQUIRIES

The Recipient irrevocably authorises and directs a Relevant Person to at any time disclose and discuss with ILSC or ILSC's auditors any and all information about the past performance by the Recipient of this Deed.

For this purpose, a **Relevant Person** means at any time any past or present:

- (a) director, secretary, auditor, employee or volunteer of the Recipient;

- (b) consultant or contractor of the Recipient, including, without limitation, a lawyer acting or having acted for the Recipient.

43. ACCESS RIGHTS

At any reasonable time, with written agreement of the Recipient, ILSC and its contractors may:

- 43.1 enter upon and inspect the Land;
- 43.2 enter upon any other area upon which Goods are believed to be located, and inspect those Goods;

44. INVESTIGATIVE ACCOUNTANT

44.1 If ILSC acting reasonably believes the Recipient is insolvent, or is at real risk of becoming insolvent in the proximate future, ILSC may appoint accountants (**Investigative Accountants**) to investigate the financial position and prospects of the Recipient.

44.2 The Recipient irrevocably:

44.2.1 authorises the Investigative Accountants (without however, conferring a power of management in respect of the Recipient's enterprise on the Investigative Accountants) to take all actions which may be reasonably necessary for the investigation;

44.2.2 undertakes to give the Investigative Accountants all reasonable assistance and access to financial records for that purpose, but if the Recipient so requires conditional upon the Investigative Accountants first providing such confidentiality undertaking as the Recipient may reasonably require, while permitting the Investigative Accountants to report their findings under clause 44.2.3;

44.2.3 authorises the Investigative Accountants to disclose to ILSC and ILSC's legal and other professional advisers all information and documents obtained or generated in the investigation.

44.3 If the Investigative Accountants give written opinion the Recipient is insolvent, or that the Recipient's financial records are insufficient for the Investigative Accountants to form an opinion one way or the other, then:

44.3.1 ILSC must give promptly a copy of that opinion to the Recipient; and

44.3.2 the Recipient is taken to be insolvent for the purposes of this Deed.

44.4 ILSC bears the costs of the Investigative Accountants.

45. INFORMATION REGARDING THE RECIPIENT

Within 5 Business Days, the Recipient must notify ILSC if:

45.1 any of the Recipient's legal or trading name, ABN, contact details or Contract Manager changes;

45.2 a Trigger Event comes to exist against the Recipient.

PART F - GOODWILL

46. CONTRACT ADMINISTRATION

- 46.1 At all times after this Deed is executed each party must have appointed (and notified to the other party) the name, phone number and email address of an individual within its enterprise (**Contract Manager**).
- 46.2 ILSC's Contract Manager has authority to manage this Deed for ILSC, but does not in that role have authority to agree to amend or give a consent under this Deed.
- 46.3 The Recipient's Contract Manager has authority to form opinions for, and generally act for and on behalf of, the Recipient under this Deed.
- 46.4 A party knows a matter known to its Contract Manager; a notice to a Contract Manager is effective notice to his or her appointor.

47. PUBLICITY

The Recipient must not make public comment (including on social media) about this Deed or its performance except as required by law or with ILSC's consent.

48. CONFIDENTIALITY

A party must not at any time make improper use or disclosure of any information about the other party obtained in investigations leading to, the negotiations for or performance of, this Deed and not then in the public domain (other than by prior breach of this clause).

49. BREACH OF DEED

- 49.1 If ILSC:
- 49.1.1 acting reasonably believes the Recipient is in breach of this Deed (whether or not capable of remedy); and
 - 49.1.2 has not yet taken a step in enforcement of its charge under clause 12 nor operated a transfer back of any Assets under clause 52; and
 - 49.1.3 believes the Recipient remains able to perform substantially this Deed to the economic, environmental, social or cultural benefit of Aboriginal persons or Torres Strait Islanders,
- then ILSC may (but is not obliged to) give notice to the Recipient:
- 49.1.4 of the alleged breach (with reasonable details);
 - 49.1.5 inviting the Recipient to a meeting of the parties' respective agents at some mutually convenient location in the next 10 Business Days.
- 49.2 If ILSC gives notice as above, each party must send to the meeting an agent with authority to bargain, and at the meeting make a good faith attempt to agree steps the Recipient will take (and a timetable) to, without admission of liability:
- 49.2.1 investigate the underlying causes of the alleged breach;
 - 49.2.2 report to ILSC as to the underlying causes and proposed remedial action;
 - 49.2.3 take action to rectify the underlying causes;

49.2.4 report to ILSC on the status of the rectification efforts;

49.2.5 ensure the alleged breach does not (re)occur.

49.3 This clause 49 does not prejudice the right of ILSC to seek injunctive relief to prevent immediate and irreparable harm, nor a right of either party to request the matter be referred to mediation.

50. DEFAULT RIGHTS AND REMEDIES

Subject to clause 49, if a Trigger Event exists, ILSC may:

- 50.1 operate clause 52 as regards all or some only of the Assets remaining;
- 50.2 by notice to the Recipient suspend or terminate payment of the Transaction Cost Contribution unpaid;
- 50.3 in relation to its charge under clause 12 (and any collateral security) exercise all or any of its rights, powers and remedies under common law, principles of equity or legislation.

51. DISPUTE RESOLUTION

- 51.1 Subject to clause 51.3, any dispute in connection with this Deed must not be the subject of litigation pending the party raising the dispute (**Party 1**):
 - 51.1.1 notifying the other party (**Party 2**) as to the nature of the dispute (with reasonable details), and what action Party 1 thinks will resolve the dispute;
 - 51.1.2 by the same notice, inviting Party 2 to a meeting of the parties' respective agents at some mutually convenient location in the next 10 Business Days with a view to resolving the dispute.
- 51.2 If a Party 1 gives notice of a meeting as above, each party must send to the meeting an agent with authority to resolve the dispute, and at the meeting make a good faith attempt to resolve the dispute.
- 51.3 This clause does not prejudice the right of a party to seek injunctive relief to prevent immediate and irreparable harm, nor the right of ILSC to take a step under clause 50 where the existence of a Trigger Event is not in dispute.

PART G - FORFEITURE OF ASSETS

52. FORFEITURE UPON A TRIGGER EVENT

- 52.1 If the Recipient suffers the appointment of a provisional liquidator, suffers the appointment of a controller over any of its assets or becomes a Chapter 5 body corporate (all within the meaning of the *Corporations Act 2001* (Cwth) whether or not the Recipient is registered under that legislation), by force of this Deed the Recipient transfers all or any of the Assets remaining to ILSC (or nominee) and in accordance with any written directions later given by ILSC.
- 52.2 If a Trigger Event exists against the Recipient and clause 52.1 does not apply, ILSC may by notice to the Recipient require the Recipient within 20 Business Days transfer all or any of the Assets remaining to ILSC (or nominee) and in accordance with any written directions given by ILSC.

52.3 The Recipient bears any stamp duty, government registration fee or other cost of giving effect to this clause 52 and the transfer back to ILSC (or nominee) of the Asset concerned.

Notes: Section 193R is that a disposal by the Recipient to ILSC of an interest in land or a water-related right (as was acquired under the grant) is exempt from stamp duty.

53. FORFEITURE COSTS

If:

53.1 an Asset is transferred back under clause 52; and

53.2 ILSC (or nominee) incurs any Forfeiture Costs,

then ILSC may recover those Forfeiture Costs from the Recipient as debt.

For this purpose, **Forfeiture Costs** mean any money ILSC (or nominee) was required to pay in relation to the Asset transferred back to:

- (a) obtain custody of any Goods so transferred back (including transport costs);
- (b) register the transfer on any public or private register (including conveyancer's fees, stamp duty, registration fee);
- (c) obtain from the Recipient ownership free of any Security Interest to which ILSC had not previously consented;
- (d) obtain vacant possession of the Land free of any lease or licence to occupy to which ILSC had not previously consented;
- (e) put the thing so transferred back in that state and condition this Deed required of the Recipient immediately before the transfer back (and in case of Goods replace any components or parts missing).

54. MONETARY CLAIM

If a liquidator of the Recipient acting under Division 7A of Part 5.6 of Chapter 5 of the *Corporations Act 2001* (Cwth) (or, if the Recipient is registered under other legislation, the equivalent provisions of that other legislation):

54.1 disclaims this Deed or disclaims any particular Asset;

54.2 by reason of that disclaimer or for any other reason does not transfer the Assets or that particular Asset (as the case may be) to ILSC (or nominee) as clause 52 would require,

then ILSC may recover the Current Value of the Assets or of that particular Asset (as the case may be) from the Recipient as a debt (including prove for that Current Value in the liquidation).

For this purpose, **Current Value** means in relation to an Asset the greater of:

- (a) its Agreed Value CPI Indexed to the date ILSC is paid the Current Value;
- (b) its *in situ* market value as agreed between the liquidator and ILSC or, if they cannot so agree within 10 Business Days, as conclusively determined in writing by a valuer (acting as an expert and not as an arbitrator) at the instigation of either of them appointed by the person at the time holding or acting in the office of President of the

Australian Property Institute Limited (or successor organisation), and with ILSC and the Recipient each liable to pay one half respectively of the valuer's fees and expenses.

PART H - REGULATORY MATTERS

55. ATSI ACT

Despite any other provision in this Deed, if a provision of this Deed is or becomes inconsistent with the ATSI Act, that provision must be read down or failing that severed from this Deed to the extent of the inconsistency.

56. PRIVACY

Each party must comply with the *Privacy Act 1988* (Cwth) and the *Australian Privacy Principles* as applicable to personal information or credit information obtained by that party in investigations leading to, the negotiations for or performance of, this Deed and not then in the public domain (other than by prior breach of this clause).

57. FREEDOM OF INFORMATION

ILSC offers no assurance this Deed, or any written communication exchanged in negotiations for or in performance of this Deed, would be exempt from disclosure under the *Freedom of Information Act 1982* (Cwth).

58. PUBLIC LAW GOVERNANCE

58.1 This Deed must be read subject to any binding instrument made by the Finance Minister under section 105C of the *Public Governance, Performance and Accountability Act 2013* (Cwth) and applicable to this Deed or any transaction this Deed contemplates.

58.2 Nothing in this Deed prevents ILSC performing its obligations to inform and give information to the Finance Minister under section 19 of the *Public Governance, Performance and Accountability Act 2013* (Cwth).

58.3 If ILSC has obligations by mandatory operation of law ILSC cannot fulfil without the Recipient providing information in connection with this Deed or the Assets, the Recipient must provide promptly and freely that information to ILSC to the extent the Recipient is reasonably able.

58.4 Nothing in this Deed derogates from the powers of the Auditor-General for Australia under the *Auditor-General Act 1997* (Cwth).

PART I - MONEY MATTERS

59. TRANSACTION COSTS CONTRIBUTION

Effective on the Transfer Date, ILSC acting under section 191D(1)(c) or section 191E (1)(d) agrees to grant the Transaction Cost Contribution to the Recipient.

60. COSTS GENERALLY

Subject to clause 59, a party bears its own costs of negotiations for, the preparation of and the observance and performance of this Deed.

61. RECOVERY COSTS

ILSC may recover from the Recipient as a debt any reasonable costs (including legal costs on an indemnity basis) incurred in the recovery or attempted recovery of moneys owing by the Recipient under this Deed or in otherwise enforcing ILSC's rights or remedies under this Deed.

62. GST

- 62.1 If a party (**Party 1**) becomes liable to pay GST in respect of a taxable supply it makes to the other party (**Party 2**) under this Deed, then (unless this Deed expressly states that the consideration includes GST) the consideration payable by Party 2 to Party 1 for that taxable supply must be increased by an amount equal to the amount of the GST imposed in respect of that taxable supply, and such additional amount paid at the same time as when the consideration for the relevant taxable supply is required to be paid by Party 2.
- 62.2 If Party 1 incurs an expense or cost (a **Taxed Outgoing**) to be reimbursed (wholly or in part) by Party 2, the cost to Party 1 of the Taxed Outgoing is taken to be the result of:
- 62.2.1 the amount in fact paid or payable by Party 1 for the Taxed Outgoing;
 - 62.2.2 minus any input tax credit allowed or allowable to Party 1 for that supply;
 - 62.2.3 plus an amount equal to any GST Party 1 is liable to pay in respect of that Taxed Outgoing as a taxable supply by Party 1 to Party 2.
- 62.3 If an adjustment event occurs in respect of a taxable supply made by a Party 1 to Party 2 under this Agreement, any party aware of that adjustment event must notify the other party as soon as practicable, and the parties must take whatever steps are necessary (including to issue an adjustment note) and make whatever adjustments are required to ensure that any GST or additional GST on that taxable supply is accounted for between these parties.
- 62.4 If so indicated in **Item 10** and the Recipient is registered or required to be registered under the GST Act, the parties agree ILSC may issue recipient created tax invoices and recipient created adjustment notes for the Recipient in connection with the performance of this Deed.

PART J - OTHER**63. THE RECIPIENT'S CONSTITUTION**

Except with ILSC's consent, after the execution of this Deed the Recipient must not vary or repeal its Constitution or other constituent document in so far as relates to the objects or membership of the Recipient.

64. THE RECIPIENT AS A TRUSTEE

If the Recipient enters into this Deed as trustee of a trust or settlement (in either case, a **Trust**), the Recipient warrants and represents:

- 64.1 the Recipient is the only trustee of the Trust;
- 64.2 any instrument given by the Recipient to ILSC as the instrument (**Trust Deed**) that constitutes or evidences the Trust is a true and up-to-date copy of the instrument that constitutes or evidences the trust;

- 64.3 the Recipient enters into this Deed and the transactions contemplated in or referred to in this Deed as part of the proper administration of the Trust;
- 64.4 the Recipient's rights of indemnity against the assets of the Trust will be on the Transfer Date unlimited;
- 64.5 except with ILSC's prior written consent, the Recipient will not:
- 64.5.1 amend or revoke the Trust Deed;
- 64.5.2 allow any profits or corpus of the Trust to be distributed to any person who is not either:
- (a) an Aboriginal person; or
 - (b) a Torres Strait Islander; or
 - (c) an Aboriginal or Torres Strait Islander Corporation; or
 - (d) a trust, charity or benevolent institution established and maintained wholly or principally for the benefit of Aboriginal persons, Torres Strait Islanders or one or more Aboriginal or Torres Strait Islander Corporations;
- 64.5.3 exercise or permit to be exercised any power of appointment under the Trust;
- 64.6 the Recipient would cause any new trustee of the Trust to execute any documents ILSC requires to ensure this Deed and the transactions contemplated in or referred to in this Deed binds that new trustee in law and in equity.

65. DE FACTO CONTROL OF THE RECIPIENT

The Recipient must not, without ILSC's consent, enter into or give effect to any scheme by which by the control of the Recipient by Aboriginal persons or Torres Strait Islanders is in practice diminished in favour of persons not meeting either description.

For this purpose:

- (a) **control** includes the capacity or power to govern, manage, regulate or oversee decisions within the Recipient or the capacity to dominate decision-making, directly or indirectly;
- (b) **scheme** means any agreement, arrangement, understanding, promise or undertaking, or any scheme, plan, proposal, course of action or course of conduct, whether express or implied and whether legally enforceable or not, and whether done alone or in association with others.

66. CORPORATE GOVERNANCE

If before or within 12 months of the Transfer Date ILSC offers the Recipient corporate governance training at a convenient location and at least 40 Business Days in advance, the Recipient must cause all its directors (or if not a company, all its managing committee members) and executives to attend and participate in such training.

67. INJUNCTION

In the event of a breach or threatened breach of this Deed by the Recipient, then without limiting its other rights or remedies ILSC may obtain an injunction restraining the Recipient from committing or continuing a breach of this Deed without proving any actual damage sustained by ILSC. The Recipient irrevocably agrees its breach of this Deed may cause injury for which damages may not be an adequate remedy.

68. CIRCUMSTANCES NOT PROVIDED FOR

68.1 In any circumstances in which this Deed is silent, incapable of taking effect or being implemented according to its strict provisions, the Indigenous Land and Sea Corporation Board may determine what action may be taken to ensure the effective administration of this Deed consistent with ILSC's role under the ATSI Act.

68.2 The Recipient may make an application to the Administrative Appeals Tribunal for review of any decision so made, and ILSC would submit to the jurisdiction of the Tribunal in that matter.

69. CONSENTS BY ILSC

Except to any extent otherwise stated in this Deed, a consent of ILSC:

69.1 need not be considered by ILSC unless and until the Recipient makes request in writing to ILSC;

69.2 may be conditional;

69.3 means prior written consent signed by either:

69.3.1 the Indigenous Land and Sea Corporation Chief Executive Officer (or acting Indigenous Land and Sea Corporation Chief Executive Officer) for the time being;

69.3.2 another member of ILSC's staff at the time holding sufficient delegated authority for that purpose under section 193T.

70. LEGAL RELATIONSHIP

This Deed constitutes the parties as independent contractors and not as partners, joint venturers, (except under clause 71) principal and agent, or trustee and beneficiary for any purpose.

71. POWER OF ATTORNEY

71.1 The Recipient irrevocably appoints ILSC and each Indigenous Land and Sea Corporation Chief Executive Officer or acting Indigenous Land and Sea Corporation Chief Executive Officer for the time being severally to be the attorneys of the Recipient to (in the name of the Recipient, or in the names of the Recipient and ILSC) do anything on the Recipient's behalf that the Recipient can lawfully do by an attorney in connection with this Deed including, without limitation, any transfer back to ILSC (or nominee) of an Asset under clause 52.

71.2 The Recipient must if so requested, ratify the exercise of any power by an attorney.

71.3 An attorney may benefit itself, act despite a conflict of interest, exercise a power of and perform an obligation of the Recipient in any capacity.

71.4 An attorney may not exercise any right or power under this clause 71 unless:

71.4.1 the Recipient is in breach of this Deed; and

71.4.2 ILSC gave notice of that breach to the Recipient; and

71.4.3 the Recipient has failed to remedy the breach within 5 Business Days or such longer period as stated in the notice.

72. NO ASSIGNMENT

Except with ILSC's consent, the Recipient may not assign (in law or equity) or declare a trust of any of its rights (includes right to a payment) under this Deed.

73. FORCE MAJEURE

A party is not liable for failure to observe or perform this Agreement to the extent and for so long as its performance is prevented or delayed because of circumstances (a **force majeure**) outside the party's direct control and without fault or negligence by that party, but only if that party:

73.1 within 5 Business Days notifies the other party, giving reasonable details;

73.2 does everything reasonable to remedy the cause quickly.

74. TIME

Time is of the essence as regards any date or period of time under this Deed.

75. NOTICES

To be effective, notice under this Deed must be in writing, signed by or for the party giving it (**Party 1**), and given to the other party (**Party 2**) either:

75.1 by hand delivery to a director or other senior executive of Party 2 or to Party 2's Contract Manager;

75.2 by registered post to Party 2's last known principal place of business (marked to attention of Party 2's Contract Manager), and is given at the time at which the letter would be delivered in the ordinary course of post;

75.3 by a means allowed by the *Electronic Transactions Act 1999* (Cwth) (marked to attention of Party 2's Contract Manager) (includes by email to Party 2's Contract Manager's last known email address for that purpose), and is given when that legislation specifies;

75.4 as permitted by legislation applicable to Party 2 (marked to attention of Party 2's Contract Manager).

If the Recipient is Party 2, service of a notice to its contact details last known to ILSC is effective even if not received by the Recipient.

76. ENTIRE AGREEMENT

This Deed is the whole contract between the parties about its subject.

77. AMENDMENT

This Deed may be amended only by agreement in writing signed by or for the parties.

78. NO WAIVER

A party waives a right under this Deed only by written notice signed by or for that party that it waives that right.

79. GOVERNING LAW AND JURISDICTION

79.1 The laws in force in South Australia govern this Deed and the transactions this Deed contemplates.

79.2 The courts of South Australia or the Federal Court of Australia (Adelaide Registry) have exclusive jurisdiction in connection with this Deed and the transactions this Deed contemplates. The parties irrevocably submit to the jurisdiction of those courts, and any courts that have jurisdiction to hear appeals from those courts.

80. COUNTERPART EXECUTION

80.1 This Deed may be executed by the parties in separate counterparts, but if executed in counterparts is not effective until each party has executed at least one counterpart and those counterparts have been exchanged or delivered to the other party.

80.2 An executed counterpart may be delivered by any means this Deed allows for the giving of notices.

80.3 Each counterpart constitutes an original of this Deed, but the counterparts together constitute one and the same instrument.

81. SPECIAL CONDITIONS

Any special conditions in **Item 11** form part of this Deed and prevail over other terms of this Deed to the extent of any inconsistency.

SCHEDULE

ITEM 1	Date:
ITEM 2	Recipient: Legal name: NEW SOUTH WALES ABORIGINAL LAND COUNCIL ACN or ABN: 82 726 507 500 Trading Name: N/A Mailing address: PO Box 1125, Parramatta, New South Wales 2124 Ph: (02) 9689 4422 Email: nick.redman@alc.org.au
ITEM 3	Land: 1. Freehold of the land in Lots 1 and 2 DP 817283, Lot 1 DP 1154860 and Lot 100 DP 1155453 being 160 – 202 George Street, Redfern New South Wales 2016 and known as “The National Centre of Indigenous Excellence”.

	2. The Agreed Value of the Land is \$32,450,000 (before GST).
ITEM 4	Goods: See Special Condition 6.
ITEM 5	Other Property: See Special Condition 6.
ITEM 6	Permitted Use/s: 1. Land: The development of the Land into an Indigenous Hub, developed for the best use of the Land to benefit Aboriginal persons in accordance with the Recipient's statutory obligations and the ILSC's mandate to deliver economic, environmental, social or cultural benefits to Aboriginal persons. 2. Goods: N/A 3. Other Property: N/A
ITEM 7	Additional Insurance: Nil.
ITEM 8	Conditions Precedent: In this Item: Leases means those leases of the Land or part of the Land listed in Annexure B . 1. The Recipient will use its reasonable endeavours to complete those matters identified as "Pre-Transfer Milestones" in Annexure A within the timeframe as set out in the Annexure, 12 months from the date of this Deed (Milestone). 2. ILSC and the Recipient acknowledge that the achievement of a number of Milestones listed in Annexure A is dependent on the Recipient receiving approvals, agreements or other work from external parties which is outside of the Recipient's control or the completion of an earlier Milestone within the time specified. In such a case, the Recipient must give notice under clause 8.3 of the Deed. The parties agree that following receipt of any notice, they shall in good faith discuss and (if possible) agree a variation to the timeframe (including a waiver of the Milestone) and to defer the right of either party to give notice under clause 8.5 of the Deed for a period of 10 Business Days or such later time as they shall agree. 3. Following the execution of this Deed, the ILSC will grant the Recipient access to the Land, via a Licence Agreement, for the purposes of establishing an office on site and to allow the Recipient to conduct its business operations and where necessary, coordinate and manage any work required to achieve the Milestones. 4. Not less than 30 Business Days before the Transfer Date, ILSC shall provide a draft deed of assignment for the Leases assigning the lessors rights and duties under the Leases to the Recipient from the Transfer Date. The Recipient and ILSC must within 20 Business Days of receipt of the draft deed by the Recipient endeavour to reach agreement of the terms of the deed and execute the completed version of the deed of assignment. 5. Within a reasonable time following the execution of this Deed, and in any event

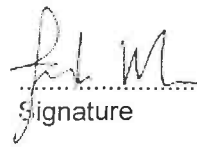
	<p>not less than 30 Business Days before the Transfer Date, the ILSC and the Recipient will agree to the area within the Land (if any) that the ILSC subsidiary, the National Centre of Indigenous Excellence Limited (NCIE Ltd) will occupy to deliver its activities and the terms of that occupancy. ILSC will cause NCIE Ltd to enter into any agreement prepared by the Recipient that reasonably reflects those agreed terms within 10 Business Days of reaching said agreement. ILSC will not enter into additional leases with any other parties prior to the Transfer Date without the Recipient's consent.</p>
ITEM 9	<p>Transaction Cost Contribution:</p> <p>See Special Condition 7.</p>
ITEM 10	<p>Recipient Created Tax Invoices:</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
ITEM 11	<p>Special Conditions:</p> <ol style="list-style-type: none"> 1. The Recipient will use its reasonable endeavours to complete those matters identified as "Post-Transfer Milestones" in Annexure A within the timeframes allocated against each item. 2. ILSC acknowledges that the Recipient's ability to achieve the Permitted Use in Item 6 contains stages of work to be undertaken to develop the Land (and adjacent land that may be owned by the Recipient). ILSC notes that as part of that future development, the Recipient may wish to undertake activities that require ILSC's consent under either the ATSI Act, this Deed or both. To provide certainty to the Recipient, ILSC and the Recipient agree that while the Recipient is the holder of the Land and is undertaking matters to deliver the Permitted Use: <ol style="list-style-type: none"> a) Any variations to a Post-Transfer Milestone are dealt with in accordance with the obligations under Item 8.2; b) ILSC shall if reasonably satisfied that the proposed disposal of an interest in the Land (or part of the Land) whether by transfer, lease, licence, encumbrance mortgage or otherwise does not adversely affect the Recipient's ability to ensure the Land is used to provide no lesser benefits to Indigenous persons (either directly or indirectly), not withhold its consent to such disposal; c) ILSC shall not unreasonably withhold consent to any sub-division of the Land; and d) ILSC shall not unreasonably withhold any other consents as required by the Recipient in accordance with the ATSI Act, this Deed or both. 3. At the next Scheduled meeting of the ILSC Board following the Date of the Deed, the ILSC ratifies the execution of the Deed by the Chief Executive Officer of ILSC. 4. While the Land is held by the Recipient, the following clauses of this Deed are excluded and do not apply: Clause 12 (Charge); Clause 13 (PPSA); Clause 14 (Caveat); Clause 15 (Perfection of the Charge); Clause 16 (Third Party Mortgages / Charges); Clause 26 (Leasehold Estate); Clause 29 (Primary Production Land); Clause 30 (Possession); Clause 34 (Substitutions); Clause 35

(Disposals); Clause 37 (Occupational Authorisation From Government); Clause 38 (De Facto Control of Assets); Clause 40 (Annual And Half-Yearly Reports); Clause 41 (Ad Hoc Information); Clause 42 (ILSC May Make Direct Enquiries); Clause 44 (Investigative Accountant); Clause 63 (Constitution); Clause 65 (De Facto Control of the Recipient); Clause 66 (Corporate Governance); Clause 71 (Power of Attorney).

5. The Recipient agrees to provide information in its possession after the Transfer Date as may reasonably be requested by ILSC for ILSC to meet its obligations to disclose Indigenous Benefits provided by or from the Land to enable ILSC to meet its obligations under the ATSI Act or as a Commonwealth Statutory Corporation.
6. ILSC and the Recipient agree that at the date of this Deed they are not able to identify the particulars to be included as "Goods" in Item 4 or "Other Property" in Item 5. The parties acknowledge the final details of both may not be known until post the Transfer Date and the determination of what activities (if any) ILSC and/or NCIE may continue to provide from the Land. The parties will, in good faith, following the date of this Deed determine the items to be included and once an itemised list for one or both is agreed, that list shall be deemed to be the information for Item 4 or 5 as the case may be and form a part of this Deed.
7. ILSC and the Recipient agree that at the date of this Deed they have not agreed on any amount the ILSC may contribute as costs identified as "Transaction Cost Contributions" in Item 9. This may include a contribution to the repairs and renovation of certain buildings on the Land. The parties will, in good faith, following the date of this Deed, negotiate and agree the amount of any contribution and once agreed, that amount shall be deemed to be included as the amount in Item 9.
8. While the Land is held by the Recipient, the Recipient will deliver Indigenous Benefits from the Land to an equal or greater standard than the Indigenous Benefits delivered from the Land prior to the Transfer Date. The indexation, measurement, or assessment of the standard of Indigenous Benefits delivered from the Land will be determined in accordance with the ILSC's standard framework. ILSC and the Recipient acknowledge that this framework may not be developed as at the date of this Deed and both parties will, in good faith, following the date of this Deed, negotiate and agree to the framework. For the purposes of this Special Condition, Indigenous Benefits means the delivery of social, cultural, economic or environmental outcomes to Indigenous Australians.
9. The Recipient acknowledges that a portion of the Land is currently used to provide the delivery of sport, recreational, health or youth services either directly or indirectly by ILSC or NCIE Ltd. The Recipient agrees to undertake reasonable endeavours to either provide or engage third parties to provide these or similar services between the Transfer Date and the commencement of Stage 1 as referred to in Annexure A, conditional on the agreement of Transaction Cost Contributions in Item 9 for the provision of these services.

EXECUTED

SIGNED for and on behalf of **INDIGENOUS LAND AND SEA CORPORATION** by its Chief Executive Officer acting under delegation made under section 193T of the *Aboriginal and Torres Strait Islander Act 2005* and in the presence of:



Signature

Joseph Henry Morrison
Name of Signatory (PRINT)



Witness Signature

Annette Katrine Brown
Name of Witness (PRINT)

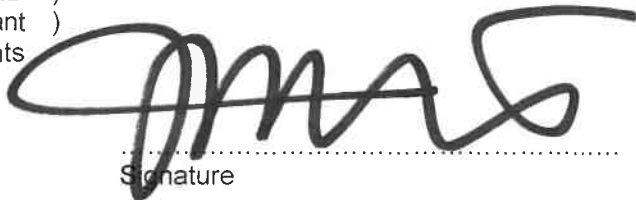
SIGNED for and on behalf of the **NEW SOUTH WALES ABORIGINAL LAND COUNCIL** by its authorised officer pursuant to section 245 of the Aboriginal Land Rights Act 1983:



Witness Signature

Kerry Taylor
Name (PRINT)

33 Avoyte St, Parramatta
Address (PRINT)



Signature

James Christian, PSM
Office held (PRINT) Chief Executive Officer

Name (PRINT)

ANNEXURE A

TO DEED OF GRANT OF ASSET/S

NSWALC DEVELOPMENT MILESTONES FOR 160 GEORGE STREET, REDFERN

PRE-TRANSFER MILESTONES

1. The following Pre-Transfer Milestones will be completed within twelve (12) months following the execution of the Deed of Grant of Asset/s.
 - a) NSWALC will complete further Aboriginal community consultation with relevant Aboriginal community groups and stakeholders in the Redfern and Sydney area. NSWALC will provide the ILSC with the results of the community consultation. NSWALC will be required to demonstrate that there is broad community support for NSWALC's Proposal.
 - b) NSWALC will engage a Project Manager to help manage the development of the Land in accordance with its Proposal.
 - c) NSWALC and / or the ILSC will complete necessary site due diligence for the Land, including but not limited to R&M, Heritage and Environmental Reports.
 - d) NSWALC will prepare a planning proposal for the Land which will be lodged with the City of Sydney Council. The planning proposal will be in line with the future development requirements for the Land in accordance with NSWALC's Proposal.
 - e) NSWALC will determine if acquisition of the Salvation Army site, being Lot 2 DP 571125, is necessary to deliver the Proposal.
 - f) NSWALC will secure 50% lease pre-commits from Stage 1 tenants (conditional on Land transfer).
 - g) NSWALC will provide the ILSC with a proposed structure which demonstrates a financial and operational capability to deliver the Proposal.
 - h) NSWALC will provide the ILSC with the forecast Indigenous Benefits to be delivered through the Proposal in line with the ILSC's Benefits and Outcomes Performance Framework.
2. Once NSWALC completes the Pre-Transfer Milestones, the ILSC will transfer the Land to NSWALC in accordance with the terms and conditions set out in the Deed of Grant of Asset/s.

POST-TRANSFER MILESTONES

3. NSWALC will complete the following Post-Transfer Milestones in the specified time frames.
 - a) Within twelve (12) months from the Transfer Date, NSWALC will engage a development partner to help develop the Land in accordance with NSWALC's Proposal.
 - b) NSWALC will lodge the planning proposal identified in Pre-Transfer Milestone 1(d) with the City of Sydney Council, and the planning proposal is to be approved by the relevant authority within thirty-six (36) months.
 - c) Within eighteen (18) months of receiving approval for the planning proposal, NSWALC must have lodged a development application (DA) to develop Stage 1 of the development and must have received approval from the relevant authority for this DA.
 - d) Within six (6) months of receiving approval for the Stage 1 DA, NSWALC must commence construction / development of Stage 1 of the development in accordance with the Proposal.

ANNEXURE B

TO DEED OF GRANT OF ASSET/S

Existing Lease / Licence Agreements for 160 George Street, Redfern

Landlord	Tenant	Agreement Type	Tenure
Indigenous Land and Sea Corporation	Australian Indigenous Mentoring Experience Indigenous Corporation	Lease Agreement (Level 1 & 2 Gadigal House, 181 George St, Redfern NSW)	5 years – expired 1 July 2020 (in holding over) Monthly periodic tenancy.
Indigenous Land and Sea Corporation	National Aboriginal Sporting Chance Academy (Aboriginal Corporation)	Deed of Extension and Variation of Lease (portion of Gadigal House, 181 George St, Redfern NSW)	5 years – expiring 21 July 2025 + 1 option of a further 5 years
Indigenous Land and Sea Corporation	National Aboriginal Sporting Chance Academy (Aboriginal Corporation)	Car Park Licence Agreement	5 years – expiring 21 July 2025 + 1 option of a further 5 years



BOARD DECISION PAPER
BOARD MEETING NO 275 – 16 JUNE 2021

AGENDA ITEM: 4.2

TITLE: NCIE LTD REVIEW

PREPARED BY: MR T LARKIN, EXECUTIVE DIRECTOR PROGRAM DELIVERY

RESOLUTIONS:

That the ILSC Board resolve to:

1. **Note the contents of this brief.**
2. **Note the independent consultants' recommendations on the future operations of NCIE Ltd.**
3. **Approve the recommended Future State Option, specifically:**
 - a) **supporting and transitioning identified viable NCIE Ltd community services/programs to other Indigenous service providers; and**
 - b) **the orderly wind-up of remaining NCIE Ltd services and corporate functions.**
4. **Note that a Transition Plan, to achieve the recommended Future State Option, will be brought to the August ILSC Board meeting for approval.**

1. EXECUTIVE SUMMARY

At its December 2020 meeting, the ILSC Board endorsed the engagement of a third-party consultant to complete an independent review of National Centre of Indigenous Excellence Ltd (NCIE Ltd) to identify options for its future operations.

In April 2021, the ILSC completed a select tender process for the appointment inviting Tier 1 consultant organisations PwC, KPMG and Deloitte to submit proposals.

KPMG were recommended based on a superior proposal for reasons including: a demonstrated understanding of the ToR; greater detail on project governance; a multi-disciplinary team resourcing the technical workstreams of the engagement; and a demonstrated knowledge of the project sensitivities associated with a community asset such as NCIE. The Terms of Reference are available at [Annexure A](#).

The review project methodology focused on developing an in-depth and robust current state analysis of NCIE Ltd and its operations, to then inform future options and the subsequent Transition Plan. The current state analysis phase was conducted by three KPMG sub-teams focused on: Tax; Law, Governance and Industrial Relations; and Finance, Communications, Operations and Risk.

A significant component of the current state analysis was an assessment of the viability of NCIE Ltd's existing programs and services, and in particular, their capacity to be transferred to other local Indigenous service providers.

KPMG identified that four of NCIE's six programs were considered 'transferrable' to other Indigenous service providers, with some being assessed as transferable immediately and others requiring some ILSC inputs prior to transfer. KPMG found that two existing programs as not considered financially viable or transferrable and should be wound up.

With this in mind KPMG's review recommends an approach whereby the majority NCIE Ltd's current services and activities are transferred to other Indigenous service providers, with the residual elements to be wound up. Given the corporate functions of NCIE Ltd are not tied to specific programs, KPMG recommends a gradual winding down of NCIE Ltd's corporate functions by the end of the transition period.

A detailed presentation on KPMG's current state analysis and future state options will be presented to the Board at its meeting.

2. BACKGROUND

Throughout the ILSC's divestment due diligence the Board has been apprised of the fact that the New South Wales Aboriginal Land Council (**NSWALC**) did not seek to operate programs and services from the property itself, and as such the ILSC would not be divesting NCIE Ltd (the operations) to NSWALC.

In light of this, the ILSC's assessment of NSWALC's proposed management model (best described as a tenancy management model) has been rigorous to ensure it is viable, sustainable and will not reduce the Indigenous services and programs footprint or benefits.

Subsequently, the ILSC Board also resolved that it has no appetite to retain a subsidiary company to deliver social programs and enterprises, noting that subsidiaries are established by the ILSC to manage and operate properties until a time they are divested. The ILSC Board's February decision to cease being an owner operator further supported a decision that the ILSC would not seek to retain NCIE Ltd.

With a view to exploring options for the transition of NCIE Ltd's operations (services, programs and enterprises) KPMG has completed an in-depth review which has considered two options:

Option 1: An immediate and orderly windup of NCIE Ltd, including all of its services, programs and enterprises.

Option 2: An approach to transfer financially viable and sustainable services, programs and enterprises to alternative Indigenous operators, only winding up the residual elements of NCIE Ltd.

Both options have been explored through analysis of NCIE Ltd's operations and finances to identify:

- Those programs, services and enterprises that are financially viable and could potentially be transferred to another Indigenous operator; and
- Those programs, services and enterprises that are not viable without ongoing ILSC subsidy and therefore cannot be transferred to an alternative Indigenous operator.

3. KEY MATTERS

3.2.2 Current State Analysis

The current state analysis of NCIE Ltd's (6) programs and services (refer Table 1), as well as its corporate support services, was reviewed through a commercial lens applying financial viability thresholds and investment principles to support the recommendations.

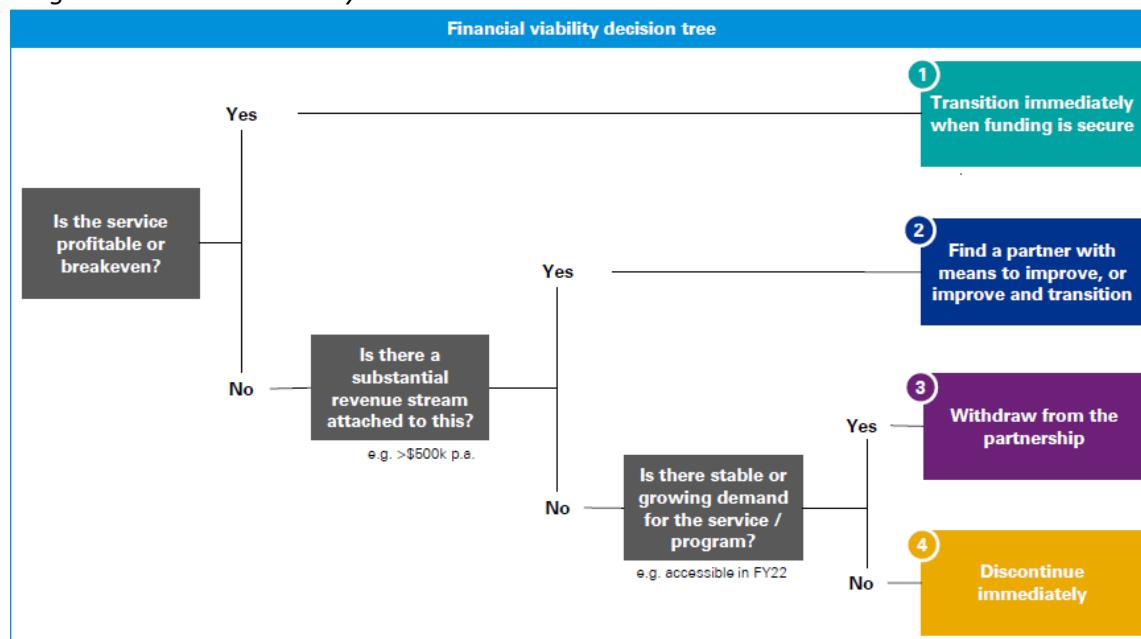
The Review assessed the financial viability of each of the programs and services against:

- Is the service profitable or breakeven?
- Is there substantial revenue stream attached to this?
- Is there stable or growing demand for the service/ program?

As per the Decision Tree at *Diagram 1* below, each NCIE Ltd program/service was assessed to fall within one of four categories:

1. Transition the program or service immediately;
2. Find a partner with the means to improve, or improve via ILSC inputs, and transition;
3. Withdraw from partnership; or
4. Discontinue.

Diagram 1: Financial Viability Decision Tree



The analysis found that four of NCIE Ltd's current programs/services are potentially transferrable either immediately; or in the short term with further ILSC (or partner organisation) inputs; with two services being assessed as not transferrable and requiring withdrawal or discontinuation (refer Table 1).

Table1: Assessment Outcome

Services	Transition immediately	Transition to operator with means to improve; or improve and transition	Withdraw from Partnership	Discontinue
TATU	Y			
Job Ready	Y			
Fitness and Aquatics		Y		
Hospitality (Catering/Conferences)		Y		
Blak Impact			Y	
Accommodation				Y

As per the above assessment process, KPMG has confirmed that a majority of NCIE Ltd’s current programs and services could feasibly be transitioned to other local Indigenous service providers. In addition, it was recommended that the corporate services of NCIE Ltd remain in place only for the duration of the staged transition, although a significant reduction of overheads is suggested with a reduction in staff numbers estimated at 30%, and a renewed corporate focus on transition.

For the two programs recommended for continued investment towards growth and transition (Hospitality and Fitness and Aquatics) indicative timelines have been provided with the Hospitality (catering and conference) program estimated to be in a position to transition with 12 months; and the ‘shop-front’ service of the Fitness and Aquatics estimated to require up to a three year plan, subject to rent and other variables. This will need to be explored with NSWALC who will have taken ownership of the asset by this stage.

3.2.3 Recommended Future State Option

KPMG’s recommendation that a majority if NCIE Ltd’s services can be transitioned to other Indigenous operators is a positive outcome in that the ILSC has an opportunity to not only secure the continued delivery of these services to the local Indigenous community, but provides the potential to maintain the employment of NCIE Ltd staff that deliver those programs (subject to their interest in transitioning to a new employer).

Noting that **Option 1** does not afford the ILSC with this opportunity, and presents significant reputational risks, it therefore recommended that the ILSC Board endorse **Option 2** being:

- an approach to transfer financially viable and sustainable services, programs and enterprises to alternative Indigenous operators, only winding up the residual elements of NCIE Ltd.

As noted previously, a presentation of KPMG’s detailed assessment and recommendations will be provided at the Board meeting to inform the Boards decision.

4. NEXT STEPS

Once a Transition Plan for NCIE Ltd has been developed and endorsed by the ILSC Board in August, it is expected to take at least until June 2022 for it to be implemented. With a transfer

to NSWALC not contingent on the transition process, the ILSC has committed to a considered process, prioritising the needs of community stakeholders and the impact on our NCIE Ltd staff.

Whilst implementing the Transition Plan, the ILSC will focus on the continued delivery of community programs/services and maintaining access to the site for exiting clients and service providers. This, in consultation with NSWALC, includes repair and maintenance works ensuring the site is operational and maintained to a standard ready for divestment.

Similarly, the ILSC Board can be confident that the ILSC continues to work closely with the NCIE Ltd Board and Executive. It continues to hold regular working group meetings of the ILSC and NCIE executives.

To ensure open, transparent and regular communications with NCIE staff and stakeholders, the future state option being approved, and subject to the Transition Plan, will be communicated to NCIE staff through a series of staff communications and workshops.

5. RECOMMENDATION

That the ILSC Board note and approve the abovementioned resolutions.

6. ASSESSMENT

(a) Risk Analysis

Enterprise Risk Management Pillar [Our overall risk appetite is moderate, which aligns to our strategic vision of being able to engage with risk to pursue opportunity when engaging with our partners. However, our risk appetite is low in relation to the health, safety and wellbeing of our employees; of the unauthorised disclosure of official information; and fraudulent conduct]	Risk Explain the risk/s of the proposal to this Pillar – e.g. meets, tests, exceeds appetite	Opportunity Outline or highlight how the proposal pursues or extends operational/strategic objectives (include here if additional funding, resources etc could achieve the objective earlier or mitigate against realising a risk)
1. Meet our statutory obligations, including ATSI / PGPA Act	Divestment of this asset is a fundamental obligation of the ILSC under the ATSI Act.	Divestment allows the ILSC to meet its mandate to divestment land and water related assets and will reduce the financial subsidy currently provided by the ILSC to its subsidiary NCIE Ltd. Divestment of property and transition of NCIE Ltd will result in an additional \$2.5m pa to the ILSC's core acquisition and management mandate.
2. Attract, develop and maintain a safe, healthy and engaged workforce and workplace	N/A	N/A
3. Be a valued and trusted partner to the Indigenous Estate	Reputational Risk if the ILSC is not seen to divest assets within a	Opportunity to divest this asset to the largest Aboriginal member-based organisation in

	reasonable timeframe, particularly when operated by an ILSC subsidiary.	Australia, ensuring an asset of national significance is owned by the NSW Aboriginal community.
4. Maintain data integrity and cyber security	N/A	N/A

(b) Strategic Realisation

Divestment of the NCIE asset not only allows the ILSC to transfer ownership of this significant asset into the Indigenous Estate but, will free up significant capital for the ILSC to support additional acquisition and management projects, that will benefit Indigenous corporations and people around Australia.

(c) Financial Implications

Budget Position	Assessment
Is spend budgeted?	Yes
Impact on current approved budget	No
Impact on forecast budget	No

7. PRIOR BOARD RESOLUTIONS

Title	Decision No.	Meeting Date
NCIE Divestment Deed	N/A	14 April 2021
NCIE Review	691	17 Feb 2021
NCIE Divestment Strategy	677	9 Dec 2020
NCIE Divestment Plan Progress Update	665	21 Oct 2020
NCIE Divestment	Noted	20 Feb 2019
NCIE Divestment Progress	Noted	11 Dec 2019

8. ENDORSEMENT

In making this recommendation, I confirm there are no conflicts of interests:

- Prepared: Tim Larkin, Executive Director Program Delivery
- Reviewed: Tricia Stroud, Deputy Chief Executive Officer
- Endorsed: Joe Morrison, Chief Executive Officer

ANNEXURE:

A: NCIE Ltd Review Terms of Reference



Australian Government
Indigenous Land and Sea Corporation



The **ILSC GROUP**

Commercial in Confidence
BOARD RESOLUTION

Board Resolution No

BOARD MEETING NO: 275
MEETING DATE: 16 June 2021
FOR: **NCIE LTD REVIEW**

THE BOARD OF DIRECTORS OF THE INDIGENOUS LAND AND SEA CORPORATION

The ILSC Board resolve to:

1. **Note the contents of this brief.**
2. **Note the independent consultants’ recommendations on the future operations of NCIE Ltd.**
3. **Approve the recommended Future State Option, specifically:**
 - a) **supporting and transitioning identified viable NCIE Ltd community services/programs to other Indigenous service providers; and**
 - b) **the orderly wind-up of remaining NCIE Ltd services and corporate functions.**
4. **Note that a Transition Plan, to achieve the recommended Future State Option, will be brought to the August ILSC Board meeting for approval.**

SIGNED, Mr Edward Fry, Chair: Date: 16 June 2021

ILSC BOARD MEETING NO 275

Held in the ILSC Brisbane Office, 100 Queen Street, Brisbane

Wednesday, 16 June, 2021 at 08:15 am ACST

MINUTES

ATTENDANCE:

Mr Edward Fry	Chair
Ms Patricia Crossin	Director (via Teams)
Mr Roy Ah-See	Director
Dr Donna Odegaard, AM	Director

NON APPROVED LEAVE OF ABSENCE:

Mr Bruce Martin	Director
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The following attended all or part of the meeting:

Mr Joe Morrison	ILSC Group Chief Executive Officer
Ms Tricia Stroud	ILSC Chief Operating Officer
Mr Trevor Edmond	ILSC Group General Counsel
Mr David Silcock	ILSC Executive Director Corporate
Ms Claire Pell	Manager, Finance
Mr Tim Larkin	ILSC Executive Director, Program Delivery
Ms Karen Prentis	ILSC ARC Chair
Ms Angela Keane	ILSC Board Secretariat (via Teams)

A copy of the agenda is attached.

The Chair (**Chair**), Mr E Fry welcomed Directors and declared the meeting open at 08:45 am ACST having noted a quorum of Directors was present. The Chair acknowledged the various peoples being the Traditional Custodians of the lands upon where we all met, and paid respect to Traditional Owners, past, present and emerging.

1. STANDING AGENDA ITEMS

1.1 Apologies/Approved Leave of Absence

There were no apologies or approved leave of absence.

The Chair advised of Director Martin's absence from today's meeting, noting that neither he, Directors nor Secretariat had received any advice as to his inability to attend. Mr Fry advised Directors that the Minister for Indigenous Australians (**MIA**) had been notified of Director Martin's past absences and his breach of the provisions of the ATSI Act. The MIA has since replied requesting copies of previous Minutes. Following discussion, the Board agreed that Director Martin's absence be noted as non-approved leave of absence.

Director Crossin requested it be noted that owing to COVID-19 restrictions in place in greater Melbourne, she was unable to travel to Brisbane to attend this meeting in person.

The Chair acknowledged the attendance of Ms K Prentis, the Chair of the ILSC's Audit and Risk Committee (**ARC**) and welcomed her to the meeting.

1.2 Declaration of Conflicts of Interest

Director D Odegaard advised she has been appointed to The University of Newcastle's Advisory Alumni Committee.

The Chair, Mr Fry advised he has been appointed Chair, Todd River Resources Ltd.

The Register of Interests to be amended accordingly to reflect these changes.

All other Conflicts of Interest are otherwise noted under the specific Agenda item.

1.3 Minutes of Previous Meetings

1.3.1 Minutes of Meeting No. 272 held 14 April 2021 were approved as a true and correct record.

1.3.2 Minutes of Meeting No. 273 held 30 April 2021 were approved as a true and correct record.

1.3.3 Minutes of Meeting No. 274 held 24 May 2021 were approved as a true and correct record.

1.4 Actions Arising Status Report

The Chair presented the Actions Arising Status Report and asked for Director input.

Director Crossin requested that Timber Creek and Carbon items remain on the Actions Arising until the Board is satisfied that each item has been fully discussed and resolved.

The Board noted the information contained in the report.

1.5 Chair's Report

The Chair spoke to the contents of his report having taken the report as read. Following, the Chair invited comment from Directors.

Director Crossin asked the Chair to elaborate on his meeting with the Vice-Chancellor, University of South Australia, Mr D Lloyd. The Chair advised his meeting concentrated on alternative pathways to university for Indigenous students and opportunities therein.

Director Crossin requested the Chair's correspondence be uploaded to the Resource Centre in Diligent. Board Secretariat to instigate.

Director Crossin informed the Chair she was yet to meet Ms C Doyle, newly appointed Independent Member on the ILSC's Remuneration and Nomination Committee (**RANC**). The Chair advised he would arrange a meeting at the first opportunity.

Director Crossin expressed concern that if and when the Minister for Indigenous Australians (**MIA**) or other dignitaries visit the ILSC offices, it would be preferential for all Directors to be advised, noting that while she would not have been able to attend the meeting referred to in the Chair's report, it would have been desirable to have known about it at the time.

The Board noted the information contained in the report.

1.6 Group CEO's Report

The Group Chief Executive Officer (**GCEO**), Mr J Morrison took the paper as read and provided an update on a number of existing matters. Of note:

- COVID-19 - 'lessons learned' ongoing (see item 3.7);
- Future of Work Arrangements - A draft Flexibility Policy has been developed and when and as required, ILSC personnel will meet with the CPSU;
- Home Valley Station – A two-year Management Agreement has been signed and operations at Home Valley had been taken over by Balanggarra Ventures (**BV**), a wholly owned subsidiary of Balanggarra Aboriginal Corporation. Mr Morrison outlined that the Agreement has been supported by Native Title Representative bodies which have provided a firm foundation for divestment going forward;
- National Native Title Conference - PBC Panel discussed PBC Policy during conference. Working with Northern Territory Councils (**NTC**) and important matter for the ILSC Board going forward (see separate item 3.2);
- PBS targets - short in two target area (4 of 7 met); based on current forecasts, these would be met this financial year;
- Negotiations with Roebuck Station – Chief Operating Officer (**COO**), Ms T Stroud will be heading negotiations and continue discussions with Yawuru to divest operations in the new year. Budget pack has resources posed for financial year;
- Primary Partners Pty Ltd – Successful recent Board meeting. Exit strategies in place with Merepah Station (first divestment of the eight businesses) to be divested;
- WU Deed - Offer made on 17 May. Met with WU representatives on 2 June. Ongoing matter with further briefs to come. Executive team working on plans for ARR (see separate item 4.1);
- Prescribed Body Corporate (**PBC**) - By order of the Federal Court, the ILSC attended the mediation of the Native Title Determination, Falls Creek (Mr T Larkin attended in person). With a number of presented challenges, the ILSC must determine how to deal with these. Meetings are to be scheduled early July.
- NCIE divestment – New NCIE CEO, Mr D Hammond is progressing well in his position. Level of comfort with staff. ILSC Directors Ah-See and Odegaard continue as Director and Chair respectively on the Board of NCIE. The Head Chef

passed away recently with support being offered to his family during this tragic and sad time.

- Restructure of the ILSC Office of the CEO and ILSC Executive Team – Ms T Stroud has been appointed Chief Operating Officer (**COO**); and Executive Director, Mr Larkin appointed to the Executive Team. An Executive Officer's position is currently being advertised.
- ILSC staff – A seminar series is being delivered across the ILSC. The first of the series was presented by Professor Peter Yu, Chair for the Indigenous Reference Group (*Land and Native Title Rights, Mabo and the ILSC*) and Mr Michael O'Donnell, Deputy Principal Legal Officer, First Nations Legal & Research Services Ltd (*Native Title and Compensation*), followed by Professor Sue Jackson, Australian Rivers Institute, Griffith University (*Freshwater Rights in Australia*). The series to date has been well received.

Director questions followed.

Director Crossin commented on the exceptional numbers surrounding LTIFR generally, and in particular at Voyages. The Chair, on behalf of the Board, requested that WHS personnel (Ms R Roberts and Mr K Nesbitt) be congratulated on the continuous work achieved in keeping accident/injury numbers to a minimum.

Director Ah-See asked if the ILSC could report on the number of indigenous suppliers the ILSC utilise.

Actions:

1. COO/EDC – provide (in financial reports) procurement and supply numbers of Indigenous employed.

The Board noted the information contained in the CEO report.

2. FINANCE, RISK AND COMPLIANCE

2.1 ILSC Group Financial Performance Report

The Executive Director Corporate (**EDC**), Mr D Silcock spoke to the contents of his paper providing a full YTD performance update. Mr Silcock stated that solvency continues to remain a key financial risk with management continuing to monitor. He asked Directors to note the contents of the tabled presentation which reflected Voyages revised draft budget (as at 10 June). On 28 May, the ILSC received Round 2 funding of \$23 million from NIAA. Mr Silcock further advised that the April 2021 Review Event contained within the ANZ/ NAIF financing arrangements had not been triggered (formal confirmation has now been received from ANZ and NAIF).

Director questions followed.

The Board noted the information contained in the report.

The meeting broke at 10:21 am ACST

The meeting resumed at 10:34 am ACST

Finance Manager, Ms C Pell joined the meeting at 10:34 am ACST

2.2 FY 22 ILSC Group Budget

The EDC having taken the paper as read was seeking Board approval on the FY22 ILSC Group Budget, which included Core Administration (corporate support to NCIE and PPPL); subsidies to three subsidiaries; program investment (delivering legislated purpose); and strategic projects. Mr Silcock emphasised that protecting the solvency of the ILSC Group, delivering on the Group's core mandate; maintaining basic operations of the subsidiaries and constant improvement are the FY22 priorities. He further outlined the financial metrics within the ILSC Group. Discussion ensued on the agreement that Voyages and the ILSC have in place regarding the repayment of \$23m, with the ILSC not confident that Voyages intend to continue to honour their commitment. Further questions followed on the NIAA Agreement.

Following discussion, the Chair noted that the Board could not make a decision in the normal circumstance noting that a number of Directors had a potential conflict being Directors of both the ILSC and a subsidiary. ILSC Group General Counsel (GGC) Mr T Edmond advised that while certain Directors would have to be excluded from voting on aspects of the resolution and should leave the meeting, under the provisions of the ATSI Act, they were still included in the count of Directors for the purposes of determining a quorum. Having noted the advice, the Board proceeded to vote on the amended resolutions as follows:

Resolved:

ILSC Board resolved to:

1. **Note the contents of this paper and its attachments.**
2. **Note the recommendation of the ILSC Group Chief Executive Officer (GCEO) and Executive Director Corporate (EDC) that the retention by ILSC of a \$25 million cash reserve is prudent in the continuing uncertain economic environment with a review in mid-October.**
3. **Approve the proposed FY22 ILSC Group Budget as presented subject to changes herein 3.2 changes to 3.(see high level ILSC Sources & Uses and Group Profit/ Loss at Tables 1 and 3), including:**
 - i. **A commitment to provide support to subsidiaries;**
 - ii. **The intercompany loan repayments by Voyages to ILSC of (i) ~\$7m of COVID-related funding, as well as, and contrary to Voyages' proposal, (ii) ~\$2m per quarter from 30 June 2021 in relation to ILSC's \$23m prepayment to the Commonwealth in January 2020 (refer resolution 7 below).**
 - iii. **Voyages' capital expenditure of up to \$26m (as proposed by Voyages) is permitted only where ILSC approval is obtained for project commitments in line with the delegation at resolution 8 below. In this respect, Voyages must provide a summary of commitments (opex and capex) in a form to be advised by ILSC management and to be included in Voyages' monthly reporting.**

Directors Ah-See and Crossin left the room at 12:04 am ACST citing a conflict of interest with respect to their Directorships on Primary Partners Pty Ltd. Directors Fry and Odegaard voted and approved Resolution No. 4.

4. **Approve \$4.5m subsidy to PPPL (for agribusiness operations), noting the exit assumptions for Merepah and Roebuck;**

Director Odegaard left the meeting at 12:05 pm ACST citing a conflict of interest with respect to her Directorship on NCIE.

Director Crossin returned at 12:05 pm ACST and both Directors Crossin and Fry voted and approved Resolution No. 5.

5. **Approve \$2.2m subsidy to NCIE, noting the assumption of continued business-as-usual operations during FY22;**

Directors Ah-See and Odegaard returned at 12:06 pm ACST.

6. **Approve \$2.3m subsidy to Voyages including:**
 - i. \$0.5m cash funding for Real Jobs Program being 9 FTE positions.
 - ii. \$1.8m of funding for NITA, provided as a non-cash reduction in the intercompany loan.
7. **Note the March 2020 approval of a holiday on quarterly intercompany loan repayments by Voyages to ILSC of ~\$2m ended in March 2021 (link to Resolution No. 2).**
8. **Approve the delegation of authority conditions which take into consideration ARR and NCIE Divestment and agribusiness operation exit activities, as follows:**
 - (i) PPPL:**
 - i. Financial expenditure commitments greater than or equal to \$100,000 require ILSC approval.
 - (ii) NCIE:**
 - i. Financial expenditure commitments greater than or equal to \$25,000 require ILSC approval;
 - (iii) Voyages:**
 - i. Financial expenditure commitments (opex or capex, based on total (multi-year) commitment before external funding) greater than or equal to \$1,000,000 require ILSC approval.

Action:

1. EDC to return to the Board outlining reserve amount for October period.

Mr Silcock and Ms Pell left the meeting at 12:15 pm ACST

The meeting adjourned for lunch at 12:15 pm ACST

The meeting resumed at 12:38 pm ACST

2.3 Risk Appetite Statement and Risk Impact Matrix

The GGC introduced the Risk Appetite Statement (**RAS**) paper. Mr Edmond advised that both the Executive and Audit and Risk Committees (**ARC**) have endorsed the paper and he was now seeking Board approval on the RAS. He identified the RAS articulates the businesses approach to risk inclusive of risk appetite and risk tolerances. He emphasised that risk appetite strategies are directly related to the achievement of businesses objectives, whilst risk tolerance enables the business to control its appetite for risk, in line with organisational and strategic objectives.

Additionally, the Chair, ARC, Ms K Prentis spoke to the statement outlining the incorporation of assessed risks across multiple projects within the Group. She advised the Statement will assist the Group to determine the level of risk; at what level risk becomes acceptable; how risk is mapped; and what plans are in place if requiring rectification.

Director discussion followed.

Resolved:

ILSC Board resolved to:

Approve the ILSC Risk Appetite Statement.

2.4 Risk Management Update

The GGC provided the Board with an update on the Enterprise Risk Management (**ERM**) Roadmap and explained how it defines the Group's processes for managing risk (including the implementation, monitoring, reviewing and improvement of controls of risk management). Mr Edmond further outlined that a Risk culture survey had been provided to Executives and would be circulated to staff; results of which will be presented at the next ARC meeting and thereafter the October ILSC Board meeting.

Ms Prentis continued and described the lines of protection when considering effective risk management and control, outlining that a systematic, disciplined approach is achieved by continuously evaluating and improving the effectiveness of the Group's risk management and internal control processes.

Director discussion ensued.

The Board noted the information contained in the report.

Action:

1. Enterprise Risk Roadmap (incl in ARC Chair's report) standing item in ARC report until targets are achieved.

3. STRATEGY, POLICY, LEGISLATION, STAKEHOLDERS

3.1 Yamanah Investments Pty Ltd (Yamanah) – Update on Deregistration

The GGC spoke to the item providing the Board on progress on the deregistration of Yamanah. He advised that lodgement of the form necessary to deregister the company was made with ASIC (having completed all outstanding matters) on or about 14 May 2021. Following ASIC's regulatory processes, and if no objections are found, ASIC will proceed to deregister Yamanah on 14 July 2021 (two months post initial lodgement).

The Board noted the information contained in the report.

3.2 ILSC Default PBC Role and Position

The CEO introduced the paper providing an update on the assumption that the ILSC may be nominated/appointed as a default agent Prescribed Body Corporate (**PBC**) noting there are several matters currently before the Federal Court. Mr Morrison noted the attached draft Policy position incorporates a level of obligation and fiduciary duty for the ILSC. He acknowledged that the ILSC must be cognisant of internal policies and functions, noting that being a PBC is new to the ILSC.

Mr Morrison was seeking the Board's confidence and assurance to know that management have processes in place, in order to deliver on its core functions as a PBC if and when appointed. He advised that it is likely that the ILSC will need to engage additional advisors of reputation, particularly in the field of anthropology and legal expertise on Native Title. Mr Morrison outlined that the ILSC is not adequately resourced to fulfil some of the required functions and sought the adoption to outsource the day-to-day functions of a PBC. He explained that funding remains an inherent issue, with NIAA to provide a funding base, and if necessary, would engage with the MIA on this issue.

Mr Morrison noted that on the practical perspective he would be attending and engaging with Native Title groups in Halls Creeks over the coming weeks. He anticipated the ILSC is about to receive its first appointment (claims around Halls Creek and Broome) and emphasised it is not a PBC in fullness. Mr Morrison advised that a team will be formed within the ILSC with advice being sought to determine what can be outsourced and what cannot.

Resolved:

ILSC Board resolved to:

- 1. Note the content of this Briefing.**
- 2. Endorse the new ILSC Default PBC Policy Position.**
- 3. Endorse the adoption of an outsourcing model, and specifically notes those functions that the ILSC cannot outsource.**
- 4. Delegate its PBC functions to the Group CEO.**
- 5. Note that it will in August receive a full briefing on the ILSC's measures to stand-up as a default PBC.**

6. Note that it will in August to commence its induction and preparation process.

Actions:

1. Establish Risk matrix for PBC protocol actors who work for the ILSC in order to mitigate the ILSC's chance of being sued.
2. Report back to the ILSC Board with structure at the August Board meeting.

3.3 ILSC Reconciliation Action Plan

The COO provided an historic summary on the development of the Reconciliation Action Plan (**RAP**) and how a timescale of events has impacted earlier decisions. It was proposed, and owing to current situations concerning Voyages and NCIE, the ILSC has nominated to separate from Voyages' RAP. Following today's Board decision, the CEO will advise Voyages accordingly. Ms Stroud emphasised that 'going it alone' will ensure the ILSC to lift performance measures as an innovated RAP. Board approval was sought also to endorse the new CEO as RAP Champion for a three-year period.

Director questions followed.

Resolved:

ILSC Board resolved to:

1. Note the content of this paper.
2. Approve the development of an ILSC (core only) Reconciliation Action Plan 2021-2024.
3. Note that Voyages will revert to its own Reconciliation Action Plan.
4. Authorise the GCEO as the RAP Champion.
5. Authorise the GCEO to finalise the RAP, in negotiation with Reconciliation Australia and bring back to the ILSC Board for approval.

Action:

1. CEO to advise Voyages that the ILSC has nominated to separate from Voyages' RAP.

3.4 NILSS Refresh 2021/22

The COO took the paper as read outlining the process on a refreshed National Indigenous Land and Sea Strategy (**NILSS**). Ms Stroud reminded Directors that the NILSS refresh was approved by the Board in February 2021, and that the revision would incorporate a number of additional steps in the overall process. She reminded Directors the new NILSS was not required for submission to the MIA until 2023. Ms Stroud sought Board approval to endorse the updated content and authorise the CEO and/or Executive to sign off on the final print prior to submission to the MIA.

Director questions followed.

Resolved:

ILSC Board resolved to:

1. Endorse the content of the draft (refreshed) National Indigenous Land and Sea Strategy (NILSS) at Annexure A.
2. Note the consultation report at Annexure B.
3. Note that a more comprehensive engagement process will be undertaken in the lead up to a full revision of the NILSS in 2022.
4. Delegate to the ILSC Group CEO and/or Executive the authority to sign off on the final print-ready version for presentation to the Minister within 30 days of their endorsement of the attached draft.

3.5 Draft Corporate Plan 2021/22

The COO presented the draft 2021/22 Corporate Plan outlining how the Plan reflects a light update and further aligns to the ILSC's Strategic and Performance Framework. Ms Stroud was now seeking Board endorsement on areas of improvement and further development. She advised that on finalisation it will be delegated to the CEO to sign off prior to presentation, the Audit and Risk Committee and thereafter NIAA (by 30 June). Following advice from NIAA that the Corporate Plan has been reviewed by the MIA, the Plan will be forwarded to the Minister for Finance and published on the ILSC's website by 31 August.

Director questions followed.

Resolved:

ILSC Board resolved to:

1. Endorse for further development the content of the draft ILSC Corporate Plan 2021/22 at Annexure A.
2. Note key matters relating to greater alignment with the ILSC's Strategic and Performance Framework; and preparation of this Corporate Plan including compliance matters.
3. Note the finalisation, compliance review and presentation sequencing set out.
4. Delegate to the ILSC Group CEO the authority to sign off on the final print-ready version for publication on or before August 31, following review and recommendation by both the ILSC's Audit and Risk Committee (ARC) and National Indigenous Australians Agency (NIAA).

Meeting adjourned at 2:55 pm ACST

Meeting resumed at 3:05 pm ACST

3.6 Performance Framework

The COO assured the Board on the progress and development of the final suite of the ILSC's Performance Framework. Ms Stroud clarified the Framework incorporates both internal and external documents from the Corporate Plan, APS, PBS and combines the tools of supporting, monitoring and evaluating internal

processes in order that the ILSC delivers on its statutory requirements and is achieving its purpose. Ms Stroud described how the Performance Framework has been strengthened by the ILSC's Theory of Change and the employment of Value for Money methodology. She further presented Directors with an opportunity to provide feedback (in the order of a survey) on the ongoing assessment of Sensei IQ reporting capability in meeting Board and Director needs. Ms Stroud concluded that by developing improvement strategies, the ILSC will continue to align its position against the Australian Government's Indigenous Evaluation Strategy.

The Board noted the information contained in the paper.

3.7 COVID-19 Lessons Learned

The CEO spoke to the paper outlining the '*lessons learned*' from the commencement of the COVID-19 pandemic through to the present, and how such ongoing learnings have been incorporated across the entire ILSC Group in the form of governance, WHS controls and remote working arrangements.

After discussion, the Chair on behalf of the Board, thanked all staff for their ongoing support in being able to adapt in such changing circumstances.

The Board noted the information contained in the report.

Mr T Larkin, Executive Director, Program Delivery (EDPD) joined the meeting at 3:28 pm ACST

4. MANDATE AND INVESTMENTS

4.1 Project Aurora Update

The EDPD presented the paper updating the Board on the progress since that last meeting. He noted that the Board at its meeting in April authorised the CEO to request an extension to the offer date (17 May 2021) or alternatively make the formal offer if the extension was not acceptable. Following a number of meetings between WU representatives and the ILSC, the ILSC on 3 May formally requested extending the offer to 30 June 2022, in order that the ILSC required additional time to complete community consultation. WU replied with a counteroffer on 14 May requesting to extend the lapse of the ILSC's offer of 7 % share capital from 17 November 2021 until 31 December 2022. Following, WU proposed the extension would also be subject to varying a number of clauses within the WU Deed. The ILSC on 17 May provided a response to WU outlining that they were not in a position to negotiate the terms of the letter and the formal offer was outlined under the Deed. On 2 June, ILSC Management met with WU representatives confirming the ILSC was not in a position to accept the terms of WU's offer, however a number of issues were presented for both the ILSC's and Voyages' consideration. Mr Larkin advised the ILCS would be attending Voyages Board meeting.

Furthermore, Ms Stroud advised that the Central Land Council (**CLC**) and the ILSC continue to engage re the divestment of the Ayers Rock Resort and the anthropological work with an agreement put in place late June. Additionally, she

advised that work continues on the completion of the land separation and financial due diligence.

Director discussion followed.

The Board noted the information contained in the report.

4.2 NCIE Ltd Review

The EDPD provided a presentation advising the Board, that since its last meeting, KPMG have been selected as the preferred third-party independent consultant contracted to undertake an extensive review on the future operations of National Centre for Indigenous Excellence Ltd (**NCIE Ltd**). Mr Larkin advised that the review methodology had been focussed on developing an in-depth and current state analysis of NCIE and its operations, and thereafter, identify what future options might be viable for the transition plan. He advised that KPMG's analysis of assessing existing programs and services found the majority of services would be transferred to other Indigenous operators, whilst corporate functions would be wound down. Mr Larkin provided an analysis on two future option plans, recommending that the Board accept Option 2 which would enable continuity on the delivery of services and maintain the employment of current staff.

Mr Larkin advised that recommendations of the Transition Plan will be presented to the ILSC Board at their August meeting.

Resolved:

That the ILSC Board resolve to:

1. **Note the contents of this brief.**
2. **Note the independent consultants' recommendations on the future operations of NCIE Ltd.**
3. **Approve the recommended Future State Option, specifically:**
 - a) **supporting and transitioning identified viable NCIE Ltd community services/programs to other Indigenous service providers; and**
 - b) **the orderly wind-up of remaining NCIE Ltd services and corporate functions.**
4. **Note that a Transition Plan, to achieve the recommended Future State Option, will be brought to the August ILSC Board meeting for approval.**

Mr Larkin left the meeting at 4:21 pm ACST

4.3 Project Plutus Expert Advisory Panel

The CEO introduced the paper outlining that at the ILSC Board meeting of 14 April, 2021 approval was sought in pursuing discussions with the Northern Land Council (**NLC**), Central Land Council (**CLC**), Tiwi Land Council and Anindilyakwa Land Council in seeking legislative change to the Aboriginal Benefits Account (**ABA**). However, to date, the ILSC is yet to secure a meeting with the Land Councils. Notwithstanding, preliminary work has commenced within the ILSC with an established Terms of Reference (**ToR**). Mr Morrison advised that the ILSC has committed \$1m (post

August) subject to FY22 budget approval in line with fiscal and government arrangements and Regulatory and Land Rights Acts. He advised that the ToR provides the establishment of an Expert Advisory Panel, with names of potential candidates being submitted to the Board at a future meeting. Mr Morrison expressed and recapped the ABA has grown significantly to more than \$1.2 billion presently with little or no control over. He continued and explained the nuances on the benefits on how the ILSC can assist in the driving of economic reform for NT Indigenous communities, subject to consent from all four NT Land Councils.

Director discussion followed.

Resolved:

ILSC Board resolved to:

1. **Note the content of this paper, specifically the need for legal advice pertaining to the ILSC's statutory capacity to fund the project.**
2. **Approve in principle the Project Plutus Expert Advisory Panel Terms of Reference (Annexure A).**
3. **Agree that the FY22 Budget approval; and the receipt of formal confirmation from all four Northern Territory Land Councils are necessary requirements for the establishment of the Expert Advisory Panel.**
4. **Authorise the GCEO to bring back a list of potential Expert Advisory Panel members to the August meeting.**
5. **Formally approve the establishment of an Expert Advisory Panel, at its August meeting, subject to Resolutions 3 and 4 above.**

5. GOVERNANCE AND ADMINISTRATION

5.1 Audit and Risk Committee

Ms Prentis provided a synopsis of significant events from the ARC held on 12 May, 2021 which are otherwise outlined in the attached ARC Minutes at Item 5.1.1.

5.1.1 ARC Minutes of Meeting held 12 May 2021

Ms Prentis provided the draft ARC Minutes of Meeting for Director perusal.

5.1.2 ARC Charter

Ms Prentis presented her report advising Directors that at the recent ARC meeting the Committee endorsed the revised ARC Charter, and was presenting same for ILSC Board approval.

Mr Edmond continued, outlining that amendments now provide clarity around what the Committee is obliged to undertake and reflects the Committees governance framework of internal and external audit reporting and controls. Appropriate mechanisms and governance arrangements have now been formally established to ensure appropriate levels of direction are in place.

Resolved:

ILSC Board resolved to:

1. **Note the briefing paper.**
2. **Approve the revised Audit and Risk Committee (ARC) Charter.**

Action:

1. ARC Charter to be authorised by Chairs of ILSC and ARC and uploaded to Extranet.

5.2 Ratification of Prior Resolutions

The GGC spoke to the item requesting the Board ratify previous decisions passed by circular resolution. He noted that at the ILSC Board meeting of 14 April 2021, a revised ILSC Board Charter was adopted incorporating the use of circular resolutions. However, since that time a number of concerns had arisen and the Board had removed the option of circular resolutions from the Charter. This created an anomaly as to the possible validity of previously passed resolutions. To rectify this, Mr Edmond advised that the Board met at an *Out of Session* meeting and approved the revised ILSC Board Charter eliminating all reference to circular resolutions. For good governance, the following resolutions were ratified by the Board.

Resolved:

ILSC Board resolved to approve:

NCIE Divestment Deed:

1. **Authorise the ILSC Group CEO to finalise negotiations and execute the Divestment Deed with the New South Wales Aboriginal Land Council (NSWALC) to support a future grant of 160-202 George Street, Redfern NSW to NSWALC (*passed by Circular Resolution 25 April 2021 BD 708*).**

Director Odegaard excluded herself while this matter was resolved

NCIE Chair Remuneration – Dr D Odegaard:

2. **Vary Board Decision No. 699 of ILSC Board Meeting No. 271 held 30 March 2021 and revoke Item 2 which determined that remuneration commensurate as to the same level of Chair, NCIE that is currently in place.**
3. **Approve remuneration for Dr D Odegaard as outlined in Board Decision No. 398 of 17 December 2014 of \$39,750 in recognition of Dr D Odegaard being a Director on both the NCIE and ILSC Boards (*passed by Circular Resolution 25 April 2021 BD 709*).**

Director Odegaard returned to the meeting

Reappointment of Mr G Hunt – Director, Voyages:

4. **To seek approval that Mr Grant Hunt be reappointed as a Director of Voyages Indigenous Tourism Australia Pty Ltd (Voyages) for a three-year period recommencing 23 May 2021 until 22 May 2024.**
5. **The ILSC Board, as the sole shareholder of Voyages, to ratify any decisions made by the Voyages Board of Directors from 1 July 2020 to the date of this resolution.**

6. The ILSC Board directs the Chair forward relevant letters of appointment to advise Voyages of the decision (*passed by Circular Resolution 17 May 2021 BD 711*).

6. SUPPLEMENTARY READING (*provided for information purposes*)

6.1 ILSC Subsidiaries Management Reports

- 6.1.1 Voyages Indigenous Tourism Australia Pty Ltd
- 6.1.2 National Centre of Indigenous Excellence Ltd
- 6.1.3 Primary Partners Pty Ltd

6.2 Reports for Information

- 6.2.1 Power of Attorney Register
- 6.2.2 Common Seal Register

7. OTHER BUSINESS

7.1 Appointment of additional Directors for PPPL Board

Adjourned for further discussion.

7.2 191G Agreements - GGC to return to PPPL Board with a formal response in early August.

The Chair asked for clarification. Mr Edmond provided an update that the s191G Agreements that were adopted by the Board had not been executed by any of the subsidiaries. Director Crossin asked that all subsidiary s191G Agreements be signed off by Directors.

Action:

- 1. Ensure all S191 Agreements signed for next meeting.
- 2. The Chair to write to subsidiary Chairs requiring execution and return of the s191G documents as soon as possible.

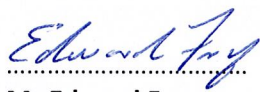
8. IN CAMERA

No 'In Camera' Session for Directors was required.

9. NEXT MEETING

Next meeting of the ILSC Board is to be held on Wednesday, 18 August, 2021.

With no further items of business, the meeting closed at 4:49 pm ACST.



Mr Edward Fry

Chair



Board-in-Confidence

ILSC BOARD MEETING No 275

Wednesday, 16 June 2021 commencing at 08:30 am ACST
To be held via Microsoft Teams

Board Members:

Edward Fry (Chair)
Patricia Crossin
Bruce Martin
Donna Odegaard, AM
Roy Ah-See

AGENDA

		<i>Discussion Leader</i>
1.	STANDING AGENDA ITEMS	
	1.1 Apologies/Approved Leave of Absence	Chair
	1.2 Declarations of Conflict of Interests	Chair
	1.3 Minutes of Previous Meetings	Chair
*	1.3.1 Meeting No. 272 of 14 April 2021	
*	1.3.2 Meeting No. 273 of 30 April 2021	
*	1.3.3 Meeting No. 274 of 24 May 2021	
	1.4 Actions Arising Status Report	Chair
	1.5 Chair's Report	Chair
	1.6 CEO's Report	CEO
2.	FINANCE, RISK AND COMPLIANCE	
	2.1 ILSC Monthly Group Financial Performance Report (incl Annexures B-G)	EDC
	2.1.1 Annex A - ILSC EOM Finance	
*	2.2 FY22 ILSC Group Budget	EDC
	2.2.1 Annex A – Voyages FY22 Bottom-up Draft Budget Presentation	
*	2.3 Risk Appetite Statement and Risk Impact Matrix	GGC
	2.3.1 Annex A - Risk Appetite Statement and Risk Impact Matrix	
	2.4 Risk Management Update	GGC
	2.4.1 Annex A - Risk Management Update – ERM Update	
3.	STRATEGY, POLICY, LEGISLATION, STAKEHOLDERS	
	3.1 Yamanah Investments Pty Ltd – Update on Deregistration	GGC
*	3.2 ILSC Default PBC Role and Position	CEO
	3.2.1 Annex A – Draft PBC Model	
*	3.3 Reconciliation Action Plan	DCEO
*	3.4 NILSS	DCEO
	3.4.1 Annex A - Draft (refreshed) NILSS	
	3.4.2 Annex B - Consultation Report	
*	3.5 Draft Corporate Plan 2021/22	DCEO
	3.5.1 Annex A - ILSC Corporate Plan 2021/22	
	3.5.2 Annex B - Welcome from the Board	
	3.5.3 Annex C - Risk Management	
	3.6 Performance Framework	DCEO
	3.6.1 Annex A – Data Schematic	
	3.6.2 Annex B – Board Information Needs Survey	

3.7 COVID-19 Lessons Learned

GMP&C

4. MANDATE AND INVESTMENTS

4.1 Project Aurora Update

DCEO/EDPD

- 4.1.1 Annex A - ARR Divestment Work Plan
- 4.1.2 Annex B - ARR Divestment Objectives
- 4.1.3 Annex C - Deed of Agreement - Wana Ungkuntja Pty Ltd

* **4.2 NCIE Ltd Review**

EDPD

- 4.2.1 Annex A – NCIE ToR

* **4.3 Project Plutus Expert Advisory Panel (incl Annex A)**

CEO

5. GOVERNANCE AND ADMINISTRATION

5.1 Audit and Risk Committee (ARC)

ARC Chair

* 5.1.1 **ARC Minutes of Meeting held 12 May 2021**

* 5.1.2 **ARC Charter**

GGC

- 5.1.2.1 Annex A - ARC Charter

* **5.2 Ratification of Prior Resolutions**

GGC

6. SUPPLEMENTARY READING

6.1 ILSC Subsidiary Management Reports

- 6.1.1 Voyages Indigenous Tourism Australia Pty Ltd
- 6.1.2 National Centre of Indigenous Excellence Ltd
- 6.1.3 Primary Partners Pty Ltd

6.2 Reports for Information

- 6.2.1 Power of Attorney Register
- 6.2.2 Common Seal Register

7. OTHER BUSINESS

Chair

8. IN CAMERA

Chair

9. NEXT MEETING

Chair

*** Decision required**

CHAIR/RANC Chair - Chair, ILSC and RANC (Edward Fry)

CEO – Chief Executive Officer (Joe Morrison)

DCEO – Deputy Chief Executive Officer (Tricia Stroud)

ARC - Chair, Audit and Risk Committee (Karen Prentis)

GGC - Group General Counsel (Trevor Edmond)

EDC – Executive Director Corporate (David Silcock)

EDPD – Executive Director, Program Delivery (Tim Larkin)

GMP&C – General Manager, People & Culture

ILSC BOARD MEETING NO 275

Held in the ILSC Brisbane Office, 100 Queen Street, Brisbane

Wednesday, 16 June, 2021 at 08:15 am ACST

MINUTES

ATTENDANCE:

Mr Edward Fry	Chair
Ms Patricia Crossin	Director (via Teams)
Mr Roy Ah-See	Director
Dr Donna Odegaard, AM	Director

NON APPROVED LEAVE OF ABSENCE:

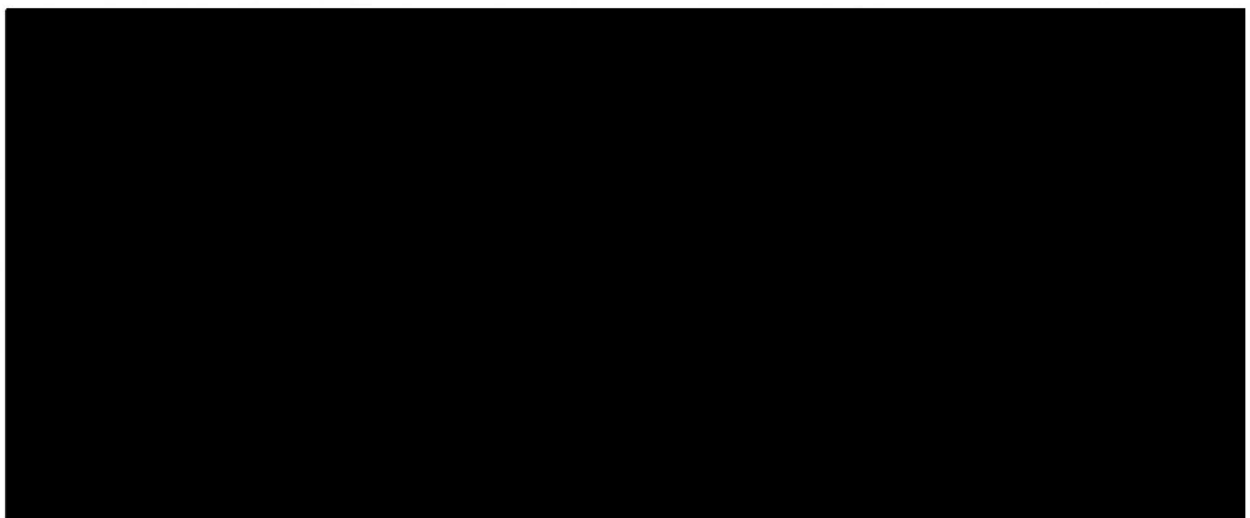
Mr Bruce Martin	Director
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The following attended all or part of the meeting:

Mr Joe Morrison	ILSC Group Chief Executive Officer
Ms Tricia Stroud	ILSC Chief Operating Officer
Mr Trevor Edmond	ILSC Group General Counsel
Mr David Silcock	ILSC Executive Director Corporate
Ms Claire Pell	Manager, Finance
Mr Tim Larkin	ILSC Executive Director, Program Delivery
Ms Karen Prentis	ILSC ARC Chair
Ms Angela Keane	ILSC Board Secretariat (via Teams)

A copy of the agenda is attached.

The Chair (**Chair**), Mr E Fry welcomed Directors and declared the meeting open at 08:45 am ACST having noted a quorum of Directors was present. The Chair acknowledged the various peoples being the Traditional Custodians of the lands upon where we all met, and paid respect to Traditional Owners, past, present and emerging.





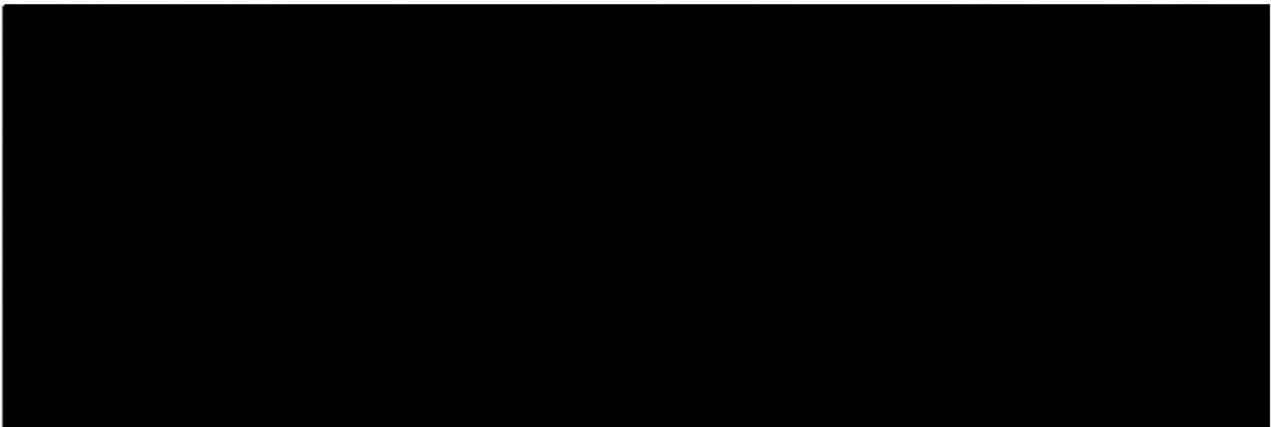
4.2 NCIE Ltd Review

The EDPD provided a presentation advising the Board, that since its last meeting, KPMG have been selected as the preferred third-party independent consultant contracted to undertake an extensive review on the future operations of National Centre for Indigenous Excellence Ltd (**NCIE Ltd**). Mr Larkin advised that the review methodology had been focussed on developing an in-depth and current state analysis of NCIE and its operations, and thereafter, identify what future options might be viable for the transition plan. He advised that KPMG's analysis of assessing existing programs and services found the majority of services would be transferred to other Indigenous operators, whilst corporate functions would be wound down. Mr Larkin provided an analysis on two future option plans, recommending that the Board accept Option 2 which would enable continuity on the delivery of services and maintain the employment of current staff.

Mr Larkin advised that recommendations of the Transition Plan will be presented to the ILSC Board at their August meeting.

Resolved:

That the ILSC Board resolve to:

1. **Note the contents of this brief.**
 2. **Note the independent consultants' recommendations on the future operations of NCIE Ltd.**
 3. **Approve the recommended Future State Option, specifically:**
 - a) **supporting and transitioning identified viable NCIE Ltd community services/programs to other Indigenous service providers; and**
 - b) **the orderly wind-up of remaining NCIE Ltd services and corporate functions.**
 4. **Note that a Transition Plan, to achieve the recommended Future State Option, will be brought to the August ILSC Board meeting for approval.**
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	■ [REDACTED]	
4.	MANDATE AND INVESTMENTS	
	■ [REDACTED]	■ [REDACTED]
	■ [REDACTED]	
	■ [REDACTED]	
*	4.2 NCIE Ltd Review	EDPD
	4.2.1 Annex A – NCIE ToR	
*	■ [REDACTED]	■ [REDACTED]
5.	GOVERNANCE AND ADMINISTRATION	
	■ [REDACTED]	■ [REDACTED]
	■ [REDACTED]	
■	■ [REDACTED]	■ [REDACTED]
	■ [REDACTED]	
■	■ [REDACTED]	■ [REDACTED]
6.	SUPPLEMENTARY READING	
	■ [REDACTED]	
	■ [REDACTED]	
	■ [REDACTED]	
	■ [REDACTED]	
	■ [REDACTED]	
	■ [REDACTED]	
	■ [REDACTED]	
7.	OTHER BUSINESS	Chair
8.	IN CAMERA	Chair
9.	NEXT MEETING	Chair

*** Decision required**

CHAIR/RANC Chair - Chair, ILSC and RANC (Edward Fry)
CEO – Chief Executive Officer (Joe Morrison)
DCEO – Deputy Chief Executive Officer (Tricia Stroud)
ARC - Chair, Audit and Risk Committee (Karen Prentis)

GGC - Group General Counsel (Trevor Edmond)
EDC – Executive Director Corporate (David Silcock)
EDPD – Executive Director, Program Delivery (Tim Larkin)
GMP&C – General Manager, People & Culture



Australian Government

Indigenous Land and Sea Corporation



The ILSC GROUP

BOARD DECISION PAPER

BOARD MEETING NO 279 – 18 AUGUST 2021

AGENDA ITEM: 4.1

TITLE: TRANSITION OF NCIE LTD

PREPARED BY: MR T LARKIN, EXECUTIVE DIRECTOR PROGRAM DELIVERY

RESOLUTIONS:

That the Board resolve to:

1. Note the contents of this paper.
2. Approve the *NCIE Ltd Transition Plan (Annexure A)* and specifically the:
 - a. Transitioning of viable community services/programs of NCIE Ltd to other Indigenous service providers.
 - b. The orderly wind-up or transition of remaining NCIE Ltd services and corporate functions.
3. Note the above transition and wind-up recommendations are consistent with those resolved by the Board at its June meeting.
4. Delegate authority to the NCIE Ltd Board and ILSC Group CEO to implement the *NCIE Ltd Transition Plan* in line with the Governance and Delegation Authority Schedule provided in this paper.
5. Note that it approved a transition budget of \$475k in its FY22 ILSC Group Budget, and that a detailed transition project budget will now be developed and approved by the ILSC Group CEO to support the implementation of the *NCIE Ltd Transition Plan*.

1. EXECUTIVE SUMMARY

At its 16 June 2021 meeting, following receipt of KPMG's NCIE Current State Analysis, the ILSC Board approved its preferred future state option for the National Centre of Indigenous Excellence Ltd (**NCIE Ltd**) and that of its services and programs.

Specifically, this included (a) transitioning the four identified viable NCIE Ltd community services/programs to alternate Indigenous service providers; and (b) the orderly wind-up of the remaining two NCIE Ltd services and corporate functions.

Following a robust development process the *NCIE Ltd Transition Plan* (see **Annexure A**) has been developed to guide the implementation of the Board's June 2021 decision, with priority given to

preserving NCIE Ltd staff employment where possible and ensuring continuity of service delivery for the local Indigenous community.

KPMG has engaged with the NCIE Ltd and ILSC Executive (and NCIE Ltd Chair) to deliver a Transition Plan that incorporates multiple workstreams, project sensitivities and dependencies. Key elements of the Plan include:

- Transition Action Plans for each of NCIE Ltd's six services/programs outlining the necessary activities required to achieve the approved transition or windup outcome.
- A market scan identifying potential Indigenous service providers to target for the transition of services/programs.
- Selection criteria, and a transparent and defensible process, to select the future recipients of NCIE Ltd programs/services.
- Consideration and activities to address complexities and risks associated with the future divestment of the NCIE property to the New South Wales Aboriginal Land Council (**NSWALC**).
- A Project Risk Register and Mitigation Log in line with the ILSC Group's Enterprise Risk Management Policy and Framework.
- Recommendations on the optimal project governance structure including a Delegations Matrix to inform decision making across the ILSC and NCIE Ltd Boards.
- A Communications Plan to ensure internal and external stakeholders are engaged and communicated with appropriately.
- Incorporated findings from the NCIE Ltd Current State Analysis relating to legal, tax, industrial relations and legislative requirements that must be adhered to through the transition.

From a timing perspective, the Transition Plan demonstrates that four of NCIE Ltd's programs/services will be transferred by March 2022, with no residual cost to the ILSC or NCIE Ltd post transfer. These include:

1. The immediate windup of Blak Impact and the Accommodation Service by October 2021; and
2. The transitioning of the TATU and Job Ready programs to alternate Indigenous service providers by March 2022.

KPMG's Current State Analysis found that the remaining two services - the Catering and Hospitality and Fitness and Aquatics services, both require further inputs to achieve a transferable state (ie breakeven). The Board will recall the June Board Paper identified that both these services could be transitioned early to an entity with the capital to invest in the businesses; or transitioned following additional investment from the ILSC/NCIE Ltd once they reach breakeven.

Whilst the Transition Plan suggests approaches to reduce overheads and generate additional revenue, the Board should note that it is unlikely either of these two services will reach breakeven in the short term (within 12 months). KPMG therefore recommends the ILSC and NCIE Ltd consider expediting the transition of these two services through an alternative 'continued investment' model. This includes identifying delivery partners with additional capability (and potentially capital backing) who may take on these activities if the ILSC underwrites losses for an agreed period.

The ILSC (as the backer of NCIE Ltd) would need to consider such an opportunity on a commercial cost/benefit basis. However, such an approach may provide the best opportunity to secure the

continued delivery of these services, and thus the continued employment of existing staff. Any such arrangement would also need to align with NSWALC's future plans for the property.

As such, the Transition Plan recommends that NSWALC be offered the first right of refusal for each of these services before any approach to the market is made.

From a project management and resourcing perspective, implementation of the Transition Plan presents a significant undertaking for both the NCIE Ltd and ILSC Management teams. Whilst not dealt with in this paper, the Project Steering Committee is developing a budget to support the implementation of the Transition Plan. The Budget will fall within the FY22 Board approved budget (\$475k) and the delegation of the ILSC Group CEO.

The Board should also note that potential impacts of the current COVID-19 outbreak (and prolonged lockdown) in New South Wales have not been specifically called out, but have been factored into, the sequencing within the Transition Plan. The sequencing incorporates an assumption that face-to-face contact with potential recipients (Indigenous service providers) of NCIE Ltd service/programs, and effected NCIE Ltd staff, may not be possible until December 2021.

The financial impacts of the current lockdown on revenue generating activities such as the Hospitality and Catering and the Fitness and Aquatics services remain fluid and are being modelled by the NCIE Ltd Executive team. The impacts of both current and future government responses to the COVID-19 challenge will be factored into the transition of each NCIE Ltd service/program.

2. BACKGROUND

Throughout the ILSC's divestment due diligence, the Board has been apprised of the fact that NSWALC did not seek to operate programs and services from the NCIE property itself, and as such, the ILSC would not be divesting NCIE Ltd (the operations) to NSWALC.

Subsequently, the ILSC Board also resolved that it has no appetite to retain a subsidiary company to deliver social programs and enterprises, noting that subsidiaries are established by the ILSC to manage and operate properties until such time that they are divested. The ILSC Board's February 2021 decision to cease being an owner operator further supported a decision that the ILSC would not seek to retain NCIE Ltd.

With this in mind, in April 2021, the Board endorsed the engagement of KPMG to complete a two stage independent review of NCIE Ltd to identify options for its future operations: **Stage 1** being the development of a Current State Analysis; and **Stage 2** being the development of a Transition Plan to guide the ILSC's exit from NCIE Ltd.

The outcomes of KPMG's Current State Analysis (see **Annexure B**) were presented to the Board at its June 2021 meeting. The report provided detailed baseline information on key workstreams including the potential tax, legal, governance, industrial relations, stakeholder relations and risk implications of a transition. These have all been factored into the Transition Plan.

KPMG also assessed each of the programs/services currently delivered by NCIE Ltd. The assessment identified that 4 of NCIE Ltd's 6 programs (**TATU, Job Ready, Fitness/Aquatics and Hospitality/Catering**) were considered 'transferrable' to other Indigenous service providers, with some being assessed as transferable immediately, and others requiring ILSC inputs prior to transfer.

KPMG found that two existing programs, **Blak Impact** and the **Accommodation service**, were not financially viable, or providing significant community benefit, and should be wound up or discontinued immediately.

The Current State Analysis ultimately provided the Board with two options for its consideration:

- Option 1:** An immediate and orderly windup of NCIE Ltd, including all of its services, programs and enterprises; and
- Option 2:** An approach to transfer financially viable and sustainable services, programs and enterprises to alternative Indigenous operators, only winding up the residual elements of NCIE Ltd.

Based on the reputational risks associated with **Option 1**, and the opportunities afforded by **Option 2** to maximise the continuity of service delivery and employment of NCIE Ltd staff, both KPMG and ILSC Management recommended the endorsement of **Option 2**.

The Board endorsed **Option 2** at its June 2021 meeting and noted that a detailed NCIE Ltd Transition Plan to guide the ILSC’s exit from NCIE’s operations would be presented at its August 2021 meeting.

3. KEY MATTERS

The NCIE Ltd Transition Plan can be viewed at [Annexure A](#).

3.1 Guiding Principles

A structured process with the KPMG project team and ILSC and NCIE Ltd executives underpinned the development of the Transition Plan, guided by the following key principles:

<i>Smooth handovers:</i>	Where services are transitioning to recipient service providers: <ul style="list-style-type: none"> ○ Continue ongoing service delivery to customers and participants ○ Minimise disruption to “business as usual”: <ul style="list-style-type: none"> ● Retain and transfer critical employees ● Retain and transfer organisational knowledge and key service data ● Maintain partner relations ● Preserve ILSC and NCIE reputation
<i>Proactive change management and communication:</i>	<ul style="list-style-type: none"> ○ “One voice” and “one message” communication approach, clarifying positions ○ Formal consultation forums built in
<i>Rigorous cost control and change of culture:</i>	Focus spend on self-sustaining service delivery
<i>Fair and equitable treatment of:</i>	<ul style="list-style-type: none"> ○ Employees ○ Customers and participants affected ○ Potential service providers who may take over services
<i>Quick but considered decisions and action:</i>	Progressing the transition at speed to allow impacted staff to make decisions about their future, and also as a cost control measure.

3.2 Transition Action Plans

A detailed Transition Action Plan including key activities, milestones and dependencies has been developed to guide the transition requirements of each NCIE Ltd service/program (refer to Annexure B – page 79, Workstream Plans). This includes the four programs/services recommended for transition, the two recommended for immediate windup and the remaining NCIE Ltd corporate services.

KPMG, with the support of NCIE Ltd and ILSC staff, has completed a market scan (refer to page 53), identifying potential recipients for each program/service, as well as recommending the most appropriate mechanisms to go to market (ie select tender, open tender etc).

Selection criteria and an assessment process have also been designed to ensure each program/service is transitioned to the most appropriate recipient, with consideration also given to NSWALC's plans for the property as the future landowner.

3.3 Critical Workstreams

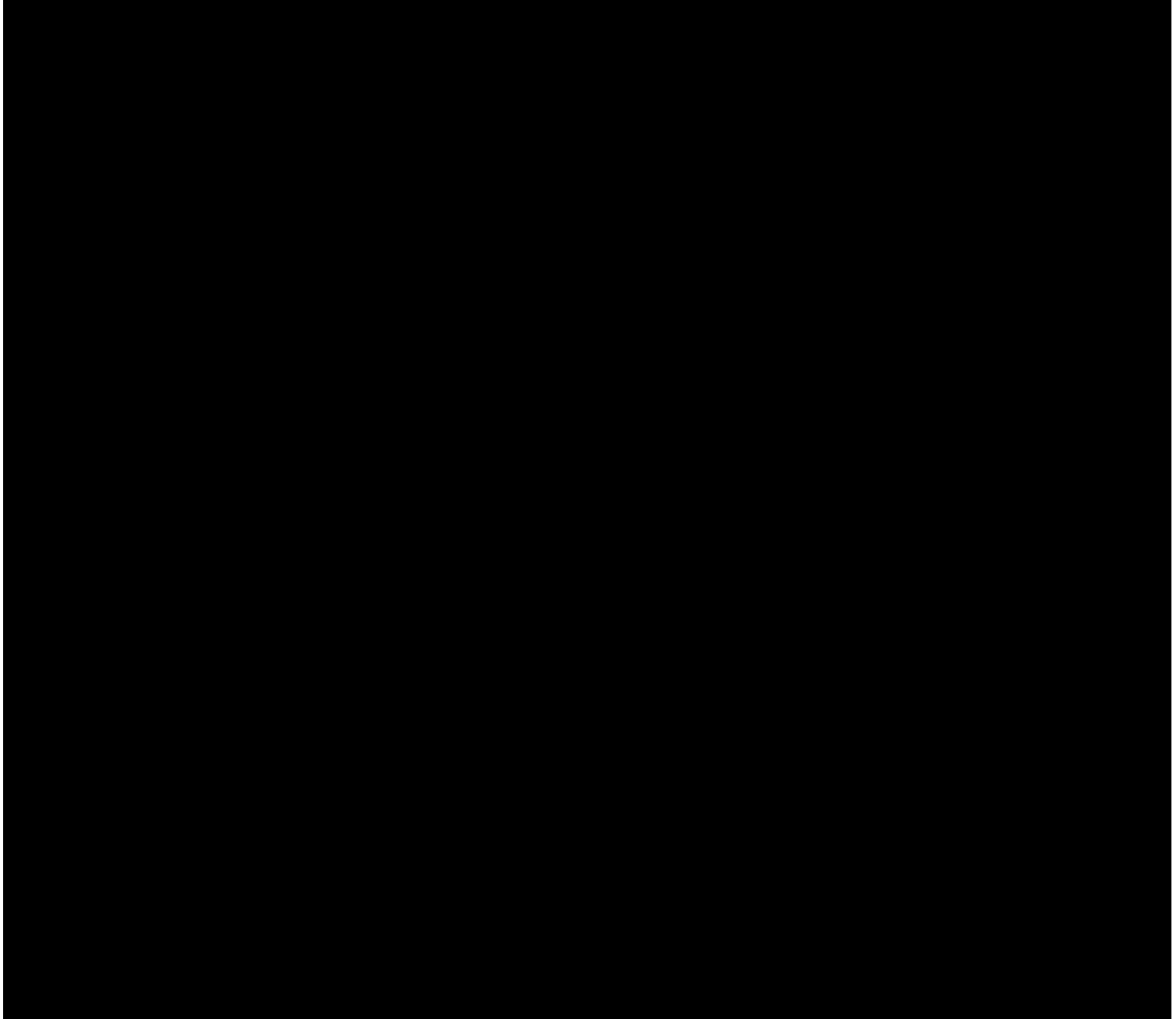
The Transition Plan also incorporates other critical workstreams that will underpin the successful transition of NCIE Ltd. These include:

- (a) **Risk Management** - transition risks and mitigation strategies have been captured in a Transition Plan Risk Register for each project workstream, including consideration of the ILSC Group's Enterprise Risk Management Policy and Framework (refer to Page 26 & Annexure B).
- (b) **Stakeholder Communication and Engagement** – a critical element of the Transition Plan will be addressing change management requirements, both internally and externally, and communicating them effectively. From an external perspective, a Community Engagement Committee with representatives from key Indigenous organisations and other local influential figures will be formed providing an avenue to promote key messages to the local community, and in turn, to provide a forum for community interests to raise concerns and questions.

A Stakeholder Engagement Plan (refer to page 44) has been developed to ensure appropriate engagement and messaging is in place throughout the transition. This will underpin open, transparent and regular communications with NCIE Ltd staff and stakeholders. The ILSC and NCIE Ltd will also consider the need for dedicated external change management expertise to support the Project Steering Committee and NCIE Ltd Executive in implementing the Transition Plan.

- (c) **Project Governance** - the Transition Plan encompasses a large number of internal and external stakeholders. To deliver a cohesive outcome for the ILSC and NCIE Ltd, clear and strong project governance objectives and structures are required (refer to page 32).

Of equal importance is the need for clear authority and lines of decision-making and accountability, whilst taking into consideration legal and regulatory compliance requirements of both the ILSC and NCIE Ltd. Given the volume of decisions to be considered, ratified and approved, a Delegation's Matrix (see *Figure 1* below) has been developed setting out decision making and accountability across the ILSC and NCIE Ltd Boards, NCIE CEO and the Project Steering Committee (chaired by the ILSC Group CEO).

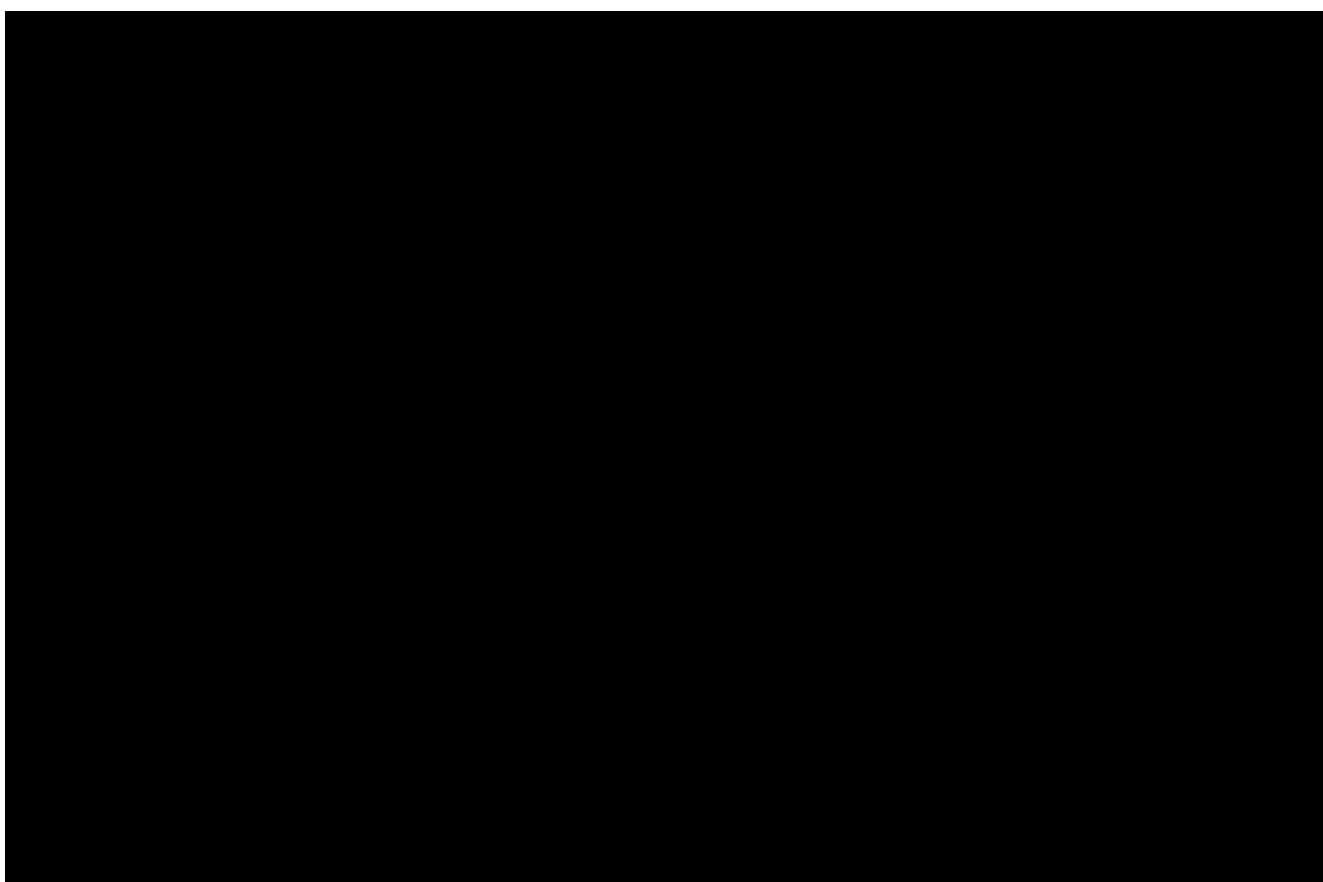


3.4 Transition Sequencing

As identified in the Transition Plan, four of NCIE Ltd's current program/services can be transition or wound up relatively quickly, with; the **Accommodation service** and **Blak Impact** to cease immediately; and **TATU** and **Job Ready** considered attractive to alternate operator, given their breakeven status.

The Plan on a Page at *Figure 2* below forecasts the wind up of the **Accommodation service** and **Blak Impact** to be completed by October 2021, and the transitioning of **TATU** and **Job Ready** to be completed by March 2022.

The Board should note that the potential impacts of the current COVID-19 outbreak (lockdown) in New South Wales have been factored into the transition sequencing below, including an assumption that face to face contact with potential recipients (Indigenous service providers) of NCIE Ltd service/programs, and effected NCIE Ltd staff, may not be possible until December 2021.



As outlined in the Current State Analysis, the **Hospitality and Catering** and **Fitness and Aquatics** service lines are currently underwritten by the ILSC and as such will require further inputs to achieve profitability. Both services have an indicative timeline of July 2022 for transition. The ILSC's subsidisation of these services is included in the current Board approved FY22 ILSC Group Budget.

Whilst there are immediate cost reduction and revenue boosting activities, NCIE Ltd will pursue for both service lines, a transition of Hospitality and Catering and Fitness and Aquatics will likely require the ILSC to incentivise a new operator with grant funding to

underwrite losses for an agreed period of time. Noting that the Board had considered the need for 'continued investment' to improve the profitability of these services, the approach to incentivise a new operator through time limited underwriting (with clear performance measures) is a reasonable alternative to support the same outcome.

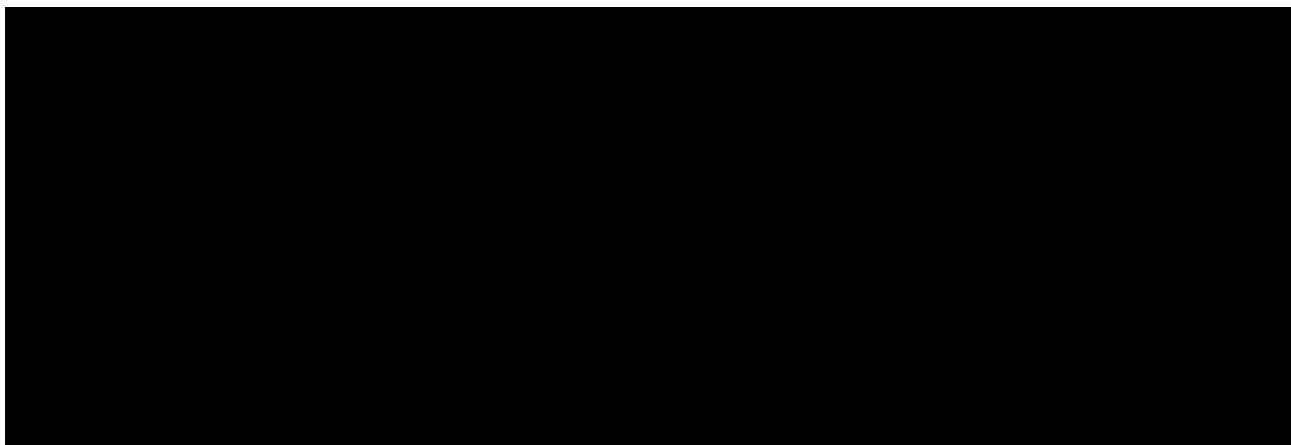
Any such decision will need to be supported by financial modeling and a cost/benefit analysis, and would need to be factored into the FY23 ILSC Group Budget process.

The ILSC and NCIE Ltd must also give regard to NSWALC's future plans for the asset post divestment. The Transition Plan recommends that NSWALC is therefore offered a first right of refusal for the Hospitality and Catering and Fitness and Aquatics services.

Whilst NSWALC has previously advised that it has no intention to become involved in service delivery (as per its landlord model), NSWALC is obliged under the ILSC Divestment Deed to ensure the continued delivery of community services and Indigenous benefits from the property. Thus, it is open to considering various models with the ILSC, NCIE Ltd and third-party operators to achieve this outcome. The ILSC is already in discussions with NSWALC regarding these opportunities.

The transition planning exercise has also identified a potential sequencing issue regarding NCIE Ltd's Public Benevolent Institution (**PBI**) status. As per *Figure 3* below, the transitioning of the **TATU** and **Job Ready** programs will likely result in a loss of PBI status during the transition.

Whilst this will not significantly impact NCIE Ltd from a revenue perspective, the Fringe Benefits Tax (FBT) implications will potentially impact NCIE Ltd staff's access to salary sacrifice arrangements. This is considered significant on account of the high number of staff that access FBT exemptions. The Project Steering Committee will take this issue into account to limit or mitigate any impact on staff.



4. RISK MANAGEMENT

All risks identified throughout the development of the Transition Plan have been captured in a detailed Risk Analysis (*refer to Annexure B – page 67*) for the project. The risk analysis is aligned to the ILSC Group's Enterprise Risk Management Policy and Framework as has been incorporated across the Transition Plan workstreams.

Risk management oversight for the project will be provided by the Project Steering Committee, which includes both the ILSC and NCIE Ltd CEO's, along with other relevant Executives. Both the ILSC and NCIE Ltd Boards will receive regular updates on project progress, including on issues of risk as they emerge.

5. NEXT STEPS

Subject to Board endorsement of the recommendations outlined in this paper, the Project Steering Committee will prioritise the following activities as next steps:

1. **Communications** - Present the Transition Plan to the NCIE Ltd Board and CEO and agree on communications to key internal and external stakeholders including NCIE staff.
2. **Project Governance** - formally establish the project teams required to implement workstreams identified in the Transition Plan.
3. **Project Resourcing** - identify external resources (and budget) required to support the ILSC and NCIE in the implementation of the Transition Plan:
 - Change management and Communications
 - Legal support
 - Project management support to the ILSC
 - Specific subject matter expertise
 - Executive Support Officer to assist the NCIE CEO
4. **Continued engagement with NSWALC** – as outlined in the paper the transition of services such as Hospitality and Catering and Fitness and Aquatics requires significant input from NSWALC. Noting that the majority a NCIE Ltd's staff are employed in these public facing business lines, it is imperative that agreement is reached quickly with NSWALC as to how the continued delivery of these services will be sustained on the property post divestment.

6. RECOMMENDATION

It is recommended that the Board, having endorsed the transition of four, and orderly windup of 2 programs/services at its June meeting, now consider the *NCIE Transition Plan* developed including the detailed plan to achieve these outcomes. In doing so the ILSC Board is asked to delegate authority to the Group CEO to implement the plan, including the development and approval of the budget in line with the FY22 Board approved budget.

7. ASSESSMENT

(a) Risk Analysis

Enterprise Risk Management Pillar	Risk	Opportunity
[Our overall risk appetite is moderate, which aligns to our strategic vision of being able to engage with risk to pursue opportunity when engaging with our partners. However, our risk appetite is low in relation to the health, safety and wellbeing of our employees; of the unauthorised disclosure of official information; and fraudulent conduct]	Explain the risk/s of the proposal to this Pillar – e.g. meets, tests, exceeds appetite	Outline or highlight how the proposal pursues or extends operational/strategic objectives (include here if additional funding, resources etc could achieve the objective earlier or mitigate against realising a risk)

1. Meet our statutory obligations, including ATSI / PGPA Act	Divestment of this asset is a fundamental obligation of the ILSC under the ATSI Act.	Divestment allows the ILSC to meet its mandate to divestment land and water related assets and will reduce the financial subsidy currently provided by the ILSC to its subsidiary NCIE Ltd. Divestment of property and transition of NCIE Ltd will result in an additional \$2.5m pa to the ILSC's core acquisition and management mandate.
2. Attract, develop and maintain a safe, healthy and engaged workforce and workplace	N/A	N/A
3. Be a valued and trusted partner to the Indigenous Estate	Reputational Risk if the ILSC is not seen to divest assets within a reasonable timeframe, particularly when operated by an ILSC subsidiary.	Opportunity to divest this asset to the largest Aboriginal member-based organisation in Australia, ensuring an asset of national significance is owned by the NSW Aboriginal community.
4. Maintain data integrity and cyber security	N/A	N/A

(b) Strategic Realisation

Divestment of the NCIE asset and operating entity will not only allow the ILSC to transfer ownership of this significant asset into the Indigenous Estate, but will free up significant capital for the ILSC to support additional acquisition and management projects, that will benefit Indigenous corporations and people around Australia.

(c) Financial Implications

Budget Position	Assessment
Is spend budgeted?	Yes
Impact on current approved budget	No
Impact on forecast budget	No

8. PRIOR BOARD RESOLUTIONS

Title	Decision No.	Meeting Date
NCIE Ltd Review	719	16 June 2021
NCIE Divestment Deed	N/A	14 April 2021
NCIE Review	691	17 Feb 2021
NCIE Divestment Strategy	677	9 Dec 2020
NCIE Divestment Plan Progress Update	665	21 Oct 2020
NCIE Divestment	Noted	20 Feb 2019
NCIE Divestment Progress	Noted	11 Dec 2019

9. ENDORSEMENT

In making this recommendation, I confirm there are no conflicts of interests:

- Prepared: Tim Larkin, Executive Director Program Delivery
- Reviewed: Tricia Stroud, Chief Operating Officer
- Endorsed: Joe Morrison, Group Chief Executive Officer

ANNEXURES:

- A. NCIE Ltd Transition Plan
- B. NCIE Ltd Current State Analysis



Australian Government
Indigenous Land and Sea Corporation



The ILSC GROUP

Commercial in Confidence
BOARD RESOLUTION

Board Resolution No

BOARD MEETING NO: 279
MEETING DATE: 18 AUGUST 2021
FOR: NCIE LTD TRANSITION

THE BOARD OF DIRECTORS OF THE INDIGENOUS LAND AND SEA CORPORATION

It is recommended that the ILSC Board resolve to:

1. Note the contents of this paper.
2. Approve the *NCIE Ltd Transition Plan (Annexure A)* and specifically the:
 - a. Transitioning of viable community services/programs of NCIE Ltd to other Indigenous service providers.
 - b. The orderly wind-up or transition of remaining NCIE Ltd services and corporate functions.
3. Note the above transition and wind-up recommendations are consistent with those resolved by the Board at its June meeting.
4. Delegate authority to the NCIE Ltd Board and ILSC Group CEO to implement the *NCIE Ltd Transition Plan* in line with the Governance and Delegation Authority Schedule provided in this paper.
5. Note that it approved a transition budget of \$475k in its FY22 ILSC Group Budget, and that a detailed transition project budget will now be developed and approved by the ILSC Group CEO to support the implementation of the *NCIE Ltd Transition Plan*.

SIGNED, Mr Edward Fry, Chair: Date: 18 August 2021