

BOARD DECISION PAPER
BOARD MEETING NO 292 – 22 JULY 2022

AGENDA ITEM: 2.2.1
TITLE: NCIE LTD WIND UP CONTINGENCY
PREPARED BY: MR M SALMON, CHIEF OPERATING OFFICER

1. PURPOSE

To provide the Board with an update on the divestment of 160 George St, Redfern (**Property**) and the transition of the ILSC subsidiary, the National Centre of Indigenous Excellence Limited (**NCIE**) to New South Wales Aboriginal Land Council (**NSWALC**).

RECOMMENDATION:

That the ILSC Board:

- 1. Note the contents of the paper; and**
- 2. Resolve to confirm the ongoing support of the ILSC to its subsidiary National Centre of Indigenous Excellence Limited (NCIE Ltd) to enable it to confirm it will meet all debts as and when they fall due.**
- 3. Resolve to support NCIE in the proposed Members Voluntary liquidation of that entity.**

2. BACKGROUND

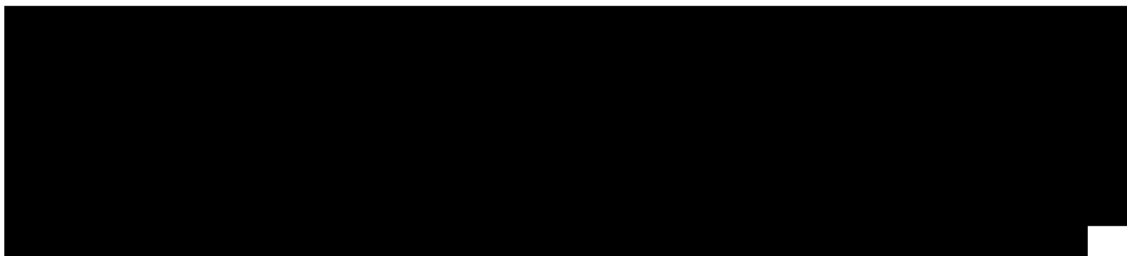
The issue of the completion of the ILSC's interest in the property at 160 George Street, Redfern has been a project with two main components: (1) the divestment of the Property and its assets; and (2) the transfer of NCIE Ltd and its programs and services.

On 9 December 2020, the ILSC Board approved the divestment of the Property to the NSWALC. Following that decision, the ILSC and NSWALC entered negotiations and ultimately, a conditional Deed of Grant for the divestment of the Property on 15 May 2021. Since entering the Grant Deed, the ILSC and NSWALC have been working together to complete the divestment of the Property, including agreeing the proposed date of transfer as 30 June 2022.

So far as the activities being undertaken by NCIE are concerned, and following receipt of the NCIE Current State Analysis, the ILSC Board at its meeting in June 2021, approved the preferred future state option for the NCIE and that of its services and programs. This included the determination that the ILSC would not be involved, either directly or indirectly in activities on the Property following its divestment to NSWALC.

Following a robust process, the *NCIE Ltd Transition Plan* was developed to guide the implementation of the ILSC Board's decision, with priority given to preserving NCIE staff employment where possible and ensuring continuity of service delivery for the local Indigenous community.

As identified in the Transition Plan, four of NCIE's then current program/services were identified to be transitioned or wound up relatively quickly, with the remainder to be considered for possible transition to a third-party operator. This was to be undertaken in consultation with NSWALC, noting their interest in the Property post 30 June 2022.



At an 'Out of Session' ILSC Board meeting on 5 May 2022, the ILSC Board and NSWALC Council separately resolved to approve the following proposal to effect both the divestment of the property and the transfer of NCIE Ltd:

1. *To vary the terms of the Deed of Grant dated on or about 15 May 2021 with New South Wales Aboriginal Land Council (NSWALC) to fix the transfer date of the property at 160 George Street Redfern (the Property), the subject of the Deed of Grant as 30 June 2022;*
2. *To approve the change in control of National Centre of Indigenous Excellence Limited (NCIE) from the ILSC to NSWALC and to authorise the ILSC Group Chief Executive Officer to undertake all steps and execute all documents as required to facilitate the change of control;*
3. *Subject to the completion of matters referred to in Resolutions 1 and 2, to approve the granting of moneys to NCIE under s191E of the Aboriginal and Torres Strait Islander Act 2005 (Cwth) to assist in meeting the costs of NCIE operating the Fitness and Aquatic activities from the Property for a period of 3 years commencing on 1 July 2022, capped at no more than \$2 million for each 12 month period, upon such terms as the ILSC Group Chief Executive Officer shall approve and to enter into a Deed of Grant otherwise on the ILSC's standard terms and conditions of grant;*

4. *To authorise the affixing of the ILSC Common Seal to the Deed of Grant referred to in Resolution 3 in accordance with ILSC Board Decision 615.*

This was communicated to NSWALC. While agreeing in principle to the terms, NSWALC Council affixed two additional conditions (subsequently agreed by the ILSC) to its approval being:

- a) *The ILSC sufficiently excludes NSWALC from any pre-existing liabilities associated with NCIE Ltd including, but not limited to, any employment entitlements (existing leave and accumulated redundancy etc.), and any public liability issues; and*
- b) *The ILSC will work with NSWALC to assess and finalise the most appropriate corporate structure for acquiring the Property and, separately, NCIE Ltd – noting this may deviate from Condition 2 in the proposal above.*

As a result of this, it was understood NSWALC would “take over” NCIE and its remaining activities pending any further post transfer decisions concerning the future ownership of NCIE activities. Subsequently, NSWALC has undertaken a process to assess the suitability of the remaining corporate services and Fitness and Aquatics functions post 30 June. As such, staffing profiles were settled in a revised corporate services structure that retained seven of the existing eleven NCIE corporate staff, excluding the CEO who has since departed.

Following that, based on NSWALC’s review, all 36 Fitness & Aquatics staff (FTE and casual) were offered contracts and ongoing permanent or casual employment. The decisions as to staff retention at NCIE were very much driven by NSWALC. ILSC Management has been working with NCIE Management to deal with the impact of this on any affected NCIE staff. As with the staff who will be ceasing employment at or before 30 June, career transition support options for fixed term/casual staff have been developed and implemented.

3. RECENT DEVELOPMENTS

On the 24 June 2022 NSWALC wrote to the ILSC advising the following:

- *The transfer of 160 George Steet is (dependent on third party dependencies) remains scheduled for transfer on June 30, 2022; and*
- *Delays to the transfer of NCIE and a request for additional time (31 July 2022) to allow for further work related to insurance and financial due diligence.*

Property Transfer

On the 28 June, 2022 the ILSC and NSWALC agreed the terms of the variation and the ILSC executed a Deed of Variation and Deed of Assignment of the current leases to third parties at the Property. These documents give effect to the property transfer which subsequently occurred on 30 June as planned.

NCIE Transfer

As outlined NSWALC, advised they were not able to complete the ‘takeover’ of control of NCIE Ltd on 1 July as previously agreed. Based on that, they requested an extension of 2 weeks for their ‘due diligence’ to be completed.

In summary the following reasons were cited for the delay:

- (a) Outstanding insurance matters;
- (b) The need to finalise assessment of operational risks including WHS;
- (c) The completion of limited financial due diligence matters including tax compliance;
- (d) Finalisation of advice on Human resources and transitioning of business systems and operations; and
- (e) The management of the transition, including business continuity.

The limited due diligence item was of particular concern. NSWALC Management advised that depending on the outcome of this work, which is focused on a more detailed exploration of revenue and expenditure rates, that a request for additional funding support may be forthcoming. It was also possible that if the NSWALC Council might not be satisfied with the outcomes of the work outlined above, they may withhold agreement to the NCIE transfer.

Even presuming that NSWALC finished this work within two weeks, ILSC Management noted that there would be further time needed to complete all steps required to complete the transfer. Based on estimates at the time, it was the view of ILSC Management that this would take a further 2 weeks.

On the 29 June, 2022 the ILSC Board met to consider options related to these developments and resolved as follows:

- (1) to accept the NSWALC request for a 2-week extension, plus an additional 2-week extension considered by ILSC management as necessary, extending ILSC “ownership” of NCIE to 29 July**

At the time of writing the following developments were relevant:

- Business as Usual transfer timelines related to payroll, IT and other critical functions are ready for transition within the 2-week extension window;

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. DISCUSSION

The ILSC has negotiated this matter in good faith for a period well beyond that originally countenanced. It is our assessment that there is no reasonable prospect of negotiating a timely, fiscally prudent, and defensible settlement in relation to this matter.

Consequences and Risk

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- It is possible that NSWALC Council may react adversely on other matters.
- Selection of this option will inevitably create reputational risks and likely adverse publicity. While that may be “shared risk” with NSWALC, it will invariably be noted that the decision to close operations and wind down NCIE was an ILSC decision.

Consideration has been previously given to winding up of that entity and the legal issues related to that. See [Item 2.2.2](#) legal advice as to the steps required to facilitate this.

5. 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	There are significant risks, including reputational and financial risks to the ILSC should the transfer of the Property transfer not	While not fully removing the risks as identified, a fully understood and agreed strategy to manage the risks may allow for a significant mitigation of them.

	proceed, or not proceed on the terms set put above. Should NSWALC refuse to complete the acquisition, the Property will remain with ILSC and it is anticipated that the ability to divest the Property in accordance with the ILSC's statutory mandate may be more complex and difficult.	
2. Be a valued and trusted partner to the Indigenous Estate	The issue surrounding the holding off and delays in the divestment of the Property have been caused significant issues within the indigenous community around Redfern. The continued uncertainty of the divestment of the Property would only increase those issues	While it is noted there is and will continue to be some parts of the community that will have an issue with the Property being transferred to NSWALC. When the transfer is completed, it is expected they will reduce.

(b) Strategic Realisation

The ILSC strives to deliver its mandate with the highest level of cultural integrity and in a responsive and flexible manner with maximum impact on the Indigenous Estate. While the ILSC has a very low appetite for risks that could adversely impact our strategic outcomes, ILSC management have managed the issues as they have arisen. With the minimum fulfilment of transferring the property, the strategy has been satisfied.

(c) Financial Implications

Budget Position	Assessment
Is spend budgeted?	No
Impact on current approved budget	Not applicable
Impact on forecast budget	Not applicable

6. PRIOR BOARD RESOLUTIONS

Title	Decision No.	Meeting Date
NCIE Divestment	758	5 May 2022
NCIE Ltd – Transition Plan	731	18 Aug 2021
NCIE Ltd Review	719	16 Jun 2021
NCIE Divestment Deed	708 – CR	25 Apr 2021
NCIE Review	688	17 Feb 2021

NCIE Divestment Strategy	677	09 Dec 2020
NCIE – Divestment Plan Progress Update	665	21 Oct 2020
NCIE Funding	623	27 May 2020
Common Seal	615	26 Mar 2020

7. ENDORSEMENT

In making this recommendation, I confirm there are no, and I am not aware of any, conflicts of interest:

- Prepared: Matt Salmon, Chief Operating Officer
- Endorsed: David Silcock, Executive Director Corporate
- Endorsed: Trevor Edmond, General Counsel
- Endorsed: Joe Morrison, ILSC Group Chief Executive Officer

ANNEXURES:

- A. Letter from NSWALC re Final Offer Response, 18 July 2022
- B. Letter from ILSC re NSWALC re Final Offer Response, 20 July 2022



Australian Government
Indigenous Land and Sea Corporation



The ILSC GROUP

Commercial in Confidence
BOARD RESOLUTION

Board Resolution No

BOARD MEETING NO: 292
MEETING DATE: 22 July 2022

FOR: NCIE LTD WIND UP CONTINGENCY

THE BOARD OF DIRECTORS OF THE INDIGENOUS LAND AND SEA CORPORATION

It is recommended that the ILSC Board resolve the following:

1. Note the contents of the paper; and
2. Resolve to confirm the ongoing support of the ILSC to its subsidiary National Centre of Indigenous Excellence Limited (NCIE Ltd) to enable it to confirm it will meet all debts as and when they fall due.
3. Resolve to support NCIE in the proposed Members Voluntary liquidation of that entity.

SIGNED, Ian Hamm, Chair:

Date: 22 July 2022