



Kimberley Land Council

NEWSLETTER



APRIL 2018

• GETTING BACK COUNTRY • CARING FOR COUNTRY • SECURING THE FUTURE

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KIMBERLEY LAND COUNCIL CELEBRATES 40 YEARS



Photo: Michael Gallagher

WALKING THE LONG ROAD TO JUSTICE

This year we celebrate 40 years since the Kimberley Land Council was formed. In our fortieth year we are as strong as ever. Kimberley Aboriginal people still stand together as one mob, with one voice.

Since 1978 there have been challenges and triumphs. From the pivotal days of Noonkanbah to the present we have been walking the long road to justice.

It is this drive to improve the lives of the Kimberley mob and fight for what is rightfully ours that makes the KLC what it is today. Read more on page 13.

Looking back on the KLC



DICKY SKINNER ADDRESSES TOM LYON

PHOTOS: MICHAEL GALLAGHER

► 1978 - 40 years ago

The locked gates of Noonkanbah

Unpublished letter to the editor of the West Australian Newspaper from Yungngora Community, Noonkanbah Station

The government said we will benefit from this mining. How can we if our people's lives are in danger from our people and spirits? The white man does not believe our story, or tribal law. But we know it is the right way to live. Our young people are proud and happy on our land.

You say we are breaking the white man's law, but you, the government, break your own law and ask to break our law, which you don't know or care about. How can our people live strong life if you take our sacred land away?

You say you need money from mining. We give you land elsewhere for mining.

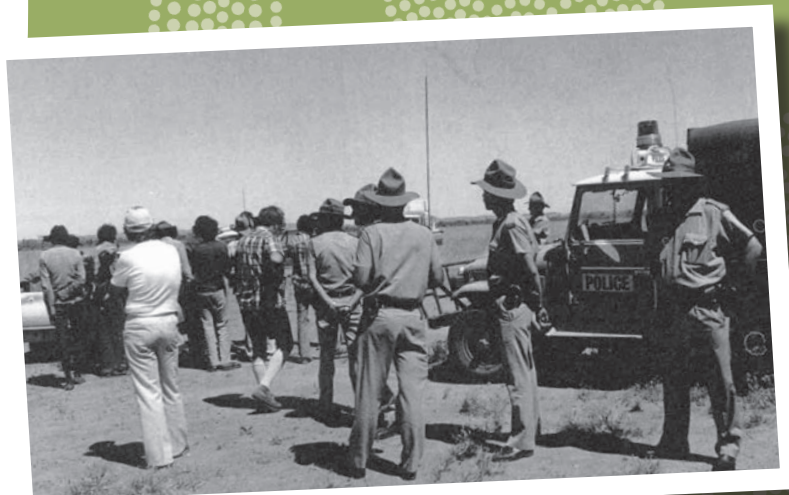
You say you must have a sacred area for mining.

Why?

► 1998 - 20 years ago

Heritage under threat

The Federal Government has introduced a Bill into Parliament outlining the changes to the Aboriginal and Torres Strait Islander Heritage Protection Act. If the changes go through it will mean that Aboriginal people will depend on state laws to protect culture and heritage. It will be very hard to get protection from the Federal Government, such as the protection given in 1994 to a special Yawuru place under threat from a proposed crocodile farm.



Message from the Chairman



Hello and welcome to the first KLC newsletter of the year.

It's great to be back and providing an update on what's been happening over the past three months. As you know it has been a pretty incredible wet season. While we love the rain, we also know it has been a tough time for many of our communities who have been cut off from supplies and services.

Despite the challenges, KLC staff have already gained great momentum, holding a number of meetings across the region and making a start on annual work plans. The Bindunbur native title determination has been a big priority, with a number of workshops with the different Traditional Owner groups being held.

We also had our first on country consent determination for the year, celebrating the Yi-Martuwarra Ngurrara native claim. Many people travelled to Ngurtuwarda Community for the special event, including myself. It was a privilege to be there to see the Traditional Owners finally recognised as the native title holders of their country. Unfortunately the day was tarnished by the State Government changing the terms of the determination at the eleventh hour. More information about this issue can be found on page 10 of this newsletter.

The land council is also continuing to undertake preparations for the National Native Title Conference which is being held in Broome. The KLC is working closely with AIATSIS and Yawuru to ensure this is a successful event that highlights the strong Aboriginal law, culture and connection here in the Kimberley.

Preparations for the KLC 40th anniversary celebrations in September are also well under way and I look forward to providing more

details about this event in newsletters to come. Don't miss page 13 of this newsletter which features memorable images of the first KLC meeting.

In February this year we said a temporary goodbye to KLC CEO Nolan Hunter who is undertaking a Jawun secondment with Westpac Bank for 10 months. During this time KLC Deputy CEO Tyronne Garstone will take on the role of Acting CEO. Tyronne has filled this role a number of times already and has spent a large amount of time on country and in communities at various meetings engaging with Traditional Owners. I will be working with Tyronne throughout the year and know that he will bring fresh momentum to the organisation.

It will be another big year of holding the State and Commonwealth Governments to account. There are a number of issues that we will be working on, including the Fitzroy River Declaration, Aboriginal heritage, changes to the Native Title Act and more. KLC members can be assured that we will continue to engage on these matters and stand up for the interests of our people.

It will be an active year for our Board and I am looking forward to seeing everyone again at the first board meeting of the year in Halls Creek.

Finally I would like to acknowledge the loss of loved ones and senior elders, including KLC Directors, in recent times. We extend our condolences to their families, friends and communities.

Anthony Watson
Chairman



SIGN LOCATED ON THE GREAT NORTHERN HIGHWAY BETWEEN DERBY AND BROOME.

Traditional Owners triumph in landmark court case

The Kimberley Land Council has welcomed a “landmark decision” by the Full Federal Court of Australia upholding the appeal of the Mount Jowlaenga Traditional Owners against mineral sands company Sheffield Resources Limited and the West Australian Government.

The appeal centered on the application of the good faith obligation in relation to negotiations under the Native Title Act.

The decision acknowledges for the first time in the history of the Native Title Act that native title parties are protected by the good faith obligation at all stages of the negotiation, even after an application is made to the Native Title Tribunal for a decision on a matter.

The Full Court’s decision is fundamental to native title parties’ ability to give genuine consent to agreements for resource development on their lands.

Kimberley Land Council Chief Executive Officer at the time, Nolan Hunter, said the KLC had been steadfast in its support of the Mount Jowlaenga Traditional Owners, who have been represented by Arma Legal throughout the Federal Court appeals.

“The Kimberley Land Council will always support and stand up for the native title rights of Traditional Owners in the Kimberley,” Mr Hunter said.

“Today’s decision makes it clear that companies that want to operate on Aboriginal lands must negotiate in good faith at all times.

“The right to negotiate is a bedrock of the Native Title Act and is crucial in redressing the disparity between the strength of a mining company as opposed to a native title party.

“This is a landmark decision that is fundamental to the ability of Traditional Owners to give their genuine consent to agreements regarding use of their traditional lands.”

In October 2017, the Traditional Owners of the Mount Jowlaenga area lodged an appeal with the Full Federal Court following an earlier decision of a single Judge of the Federal Court.

In that decision the Judge found that Sheffield Resources had not been obliged to conduct itself in good faith at a time it engaged in negotiation tactics that the Judge found “flew in the face” of agreed protocols.

The case has now been referred back to the National Native Title Tribunal as the tribunal must now remake its decision on good faith, properly applying the law.

The Kimberley Land Council and Sheffield will be exchanging evidence and arguments in March and April, with a decision from the Tribunal to follow sometime after that.



KLC ACTING CEO TYRONNE GARSTONE AND ACTING DEPUTY CEO SARAH PARRIMAN.

Welcoming our new leadership team

The Kimberley Land Council executive leadership has undergone some changes in recent months following the temporary departure of long-serving Chief Executive Officer Nolan Hunter.

For the remainder of 2018 Tyronne Garstone will take up the role of Acting CEO. Mr Garstone has been with the KLC for over two years in the position of Deputy CEO. Filling Mr Garstone's shoes will be KLC staff member of over 10 years Sarah Parriman.

The changes will remain in place until the end of the year when Nolan returns from a secondment at Westpac Bank.

Mr Garstone said he felt excited and privileged to fill the CEO position.

"I am extremely proud to be leading the KLC in its fortieth year," Mr Garstone said.

"Our organisation is built on the strength of its membership and I look forward to working closely with Traditional Owners all across or the Kimberley to continue our mission of getting back country, looking after country and getting control of our future."

Ms Parriman is excited to take on a greater leadership role as Acting Deputy CEO.

"Since taking up the role I have found it both challenging and rewarding," Ms Parriman said. "I will do my best to ensure the KLC remains highly functional and focussed on delivering the desired outcomes to

our members. I want to thank all who have supported and helped me transition into this role.

"I also want to thank all our staff, and encourage everyone to keep up the hard work. We work in a challenging environment, but the rewards at the end of the day are something to be proud of."

KLC Chairman Anthony Watson and the KLC Board will continue to provide strategic direction to the executive management team. The KLC Board will hold its first meeting of the year this April.

(Below) Nolan Hunter at a farewell BBQ in February, 2018.





Yi-Martuwarra Ngurrara native title determined

The Ngurrara people have been recognised as the native title holders of approximately 20,000 square kilometres of land and water in the central Kimberley.

The consent determination held at Ngurtuwarta Community outside of Fitzroy Crossing applies to part of the Yi-Martuwarra Ngurrara claim which was first lodged in 2012.

The determination was handed down by Justice Bromberg of the Federal Court of Australia, and recognises both exclusive and non-exclusive native title rights and interests.

The determination covers part or all of a number of pastoral stations, including Christmas Creek, Yougawalla, Larawa, Bulka, Beefwood Park, Cherrabun, Gogo, Jubilee Downs, Quanbun and Millijidee, as well as significant areas of unallocated Crown land which adjoins the already determined Ngurrara native title areas, where native title was recognised by the Federal Court in 2007 and 2012.

Traditional Owner and Named Applicant for the Yi-Martuwarra Ngurrara claim Harry Yungabun said he felt relieved to finally see native title recognised on his country.

“Native title is really important for recognition for our old people but especially our young people, the future generation, so they can understand the land, the country, the people and the culture,” Mr Yungabun said.

“I feel relieved that after all this time we’ve finally done it, we’ve gotten native title.”

Kimberley Land Council Acting Chief Executive Officer Tyrone Garstone congratulated the Ngurrara people on the significant occasion.

“Getting native title is one of the most arduous processes Aboriginal people can go through, but today the Ngurrara people have seen the outcome of their patience and hard work,” Mr Garstone said.

“The determination recognises the ongoing and unbroken connection that the Ngurrara people have to their country, giving them rights and a real say as to what happens to and on their land.

“The sense of pride that people receive from this recognition of their rights is profound. I congratulate and honour the Ngurrara people on this meaningful day.”

(Right) Harry Yungabun, Traditional Owner and Named Applicant for the Yi-Martuwarra Ngurrara claim











State Government disappoints with YMN backflip

Despite the joy of the Yi-Martuwarra Ngurrara consent determination, Acting CEO Tyrone Garstone said the occasion was tarnished by a last minute State Government backflip changing the terms of the native title determination.

“At the eleventh hour the McGowan Government decided not to honour parts of the consent determination that were agreed to in November 2017,” Mr Garstone said.

“The decision has resulted in areas of country that had been agreed to be recognised by all parties as exclusive possession native title being changed unilaterally by the State to non-exclusive possession, significantly reducing the rights of Traditional Owners.

“This means only part of the claim has been determined and the remaining areas will go through yet another court process – a waste of time, money and resources.

“This is an incredible move by the McGowan Government given the fiscal difficulties faced by the state of Western Australia and will only serve to further draw out native title claims in the future.”

Mr Garstone said most frustrating is the fact that the State acknowledges that further court processes will only get all parties back to the point that had already been agreed – that the areas not included in the determination will ultimately be recognised as exclusive possession native title.

“The decision comes at a significant cost to Traditional Owners who have already spent years negotiating the terms of the determination, only to see it changed and disrespected at the last moment,” he said.

The Kimberley Land Council is the legal representative for the Yi-Martuwarra Ngurrara claim and will continue to work with the group to progress the remaining portion of the claim.



Aboriginal Heritage Act review announced

Minister for Aboriginal Affairs Ben Wyatt has announced a review of the Aboriginal Heritage Act 1972 (the Act).

According to the WA Government, the review will include three consultation phases. Consultation Phase One involves the release of a consultation paper which can be found at: <https://www.daa.wa.gov.au/heritage/review-of-the-aboriginal-heritage-act-1972/>

The consultation paper includes targeted questions on key aspects of the Act to help identify the main issues, any gaps in the legislation, and ideas on what modernised legislation should set out to do and how it should operate in the interests of all stakeholders.

Consultation Phase Two will include the release of a Discussion Paper. Feedback will be sought on a series of proposals on what new legislation should do, as well as some discussion points. The government says this information will help with the drafting of an Exposure Draft Bill (Green Bill).

This process will be followed by Consultation Phase Three, which will see a Green Bill published for public consultation.

According to the Government, an amended Aboriginal Heritage Act is planned to be passed by

both houses of Parliament by the end of 2020.

Protection of heritage is extremely important to Aboriginal people. The Kimberley Land Council will continue to provide information to our members about the review and will work hard to ensure any changes to the Act meet the needs and expectations of Aboriginal people.

The government is planning to hold a series of workshops about the review throughout May.

Workshop dates:

1 May 2018 – Derby
2 May 2018 – Looma
3 May 2018 – Fitzroy Crossing
7 May 2018 – Broome
8 May 2018 – Bidadanga
9 May 2018 – Ardyaloon
14 May 2018 – Halls Creek
15 May 2018 – Warmun
17 May 2018 – Kununurra

Please note that the dates of the workshops are subject to change.



Fitzroy River Declaration meeting

A lot of people are talking about the future of the Fitzroy River.

On March 9 2018, the Western Australian Government held a meeting in Fitzroy Crossing to discuss the future of economic development along the Fitzroy River, including a proposed Fitzroy River National Park, water allocation planning and other future land uses along the river.

The Government Ministers at the meeting indicated that the State Government is committed to establishing a Management Plan for the Fitzroy River that will provide for sustainable development as well as the National Park. Both these actions by the State Government are expected to be progressed over the next one to two years.

Following consultation with PBCs over the last few months, the Kimberley Land Council will be hosting a

meeting on May 15 and 16 to discuss how the Fitzroy River Declaration made by native title holders in 2016 can be meaningfully implemented as part of the State Government's plans.

Discussions will include best practice models for Indigenous led conservation in national parks, funding and support for Traditional Owner management of the Fitzroy River and the National Heritage values of the river (including water allocation).

For more information contact Karla McKeon on 9194 0100 or Bill Kruse 0417 533 016.



The KLC turns 40

Where it all started...



Photos: Kim Akerman

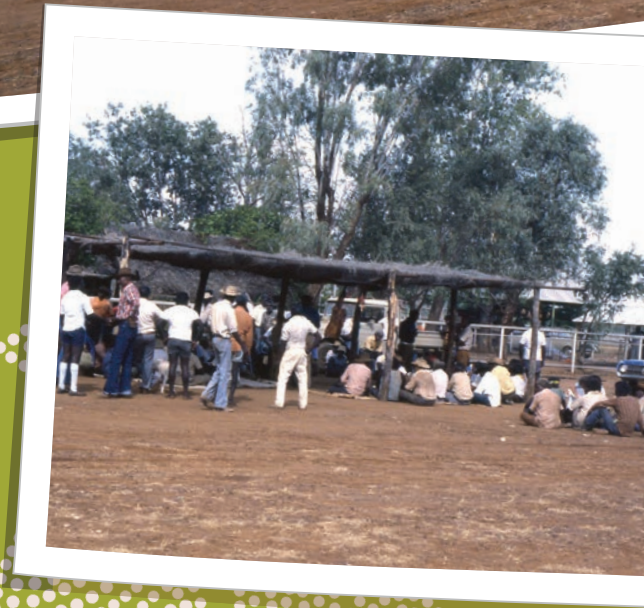
The first meeting of the KLC was held at Noonkanbah in 1978. At the meeting all the representatives of the different communities (more than 30) talked about their own situations and experiences, and about the benefits they would get from joining together, making their voices one.

In the months that followed the newly formed organisation would face one of its biggest fights in its 40 year history, taking on the West Australian Government and an international mining company called AMAX who wanted to drill on sacred land.

Our mob came from everywhere – they jumped in the back of utes or hitched a ride across the Kimberley to make it to Noonkanbah to protest for Aboriginal land rights.

Today, more 40 years later, Kimberley Aboriginal people still stand together as one mob, with one voice. The Kimberley Land Council was formed by Aboriginal people for Aboriginal people, and our voice remains strong.

“On the first day of the meeting all the representatives of the different communities (more than 30) talked about their own situations and experiences and about the benefits they would get from joining together and sharing their common experience and making their voices one voice, and they decided yes, they would set up a Land Council. And so the KLC arrived.”
– KLC Newsletter 1978





2018 National Native Title Conference

In 2018 the National Native Title Conference will be convened by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and the Kimberley Land Council, hosted by the Yawuru people on their traditional lands in Broome.

The conference will be held at Cable Beach amphitheatre from Tuesday 5 to Thursday 7 June 2018.

The 2018 conference, titled Many Laws, One Land: legal and political co-existence, acknowledges that at any one place in Australia, different systems of law exist. The theme marks 25 years since the passing of the Native Title Act 1993 and represents the confluence of these laws as they relate to title of land and waters.

Many Laws, One Land invites discussion on Aboriginal and Torres Strait Islander land owner experiences of navigating intersecting systems of law, while promoting new ideas for how native title holders, practitioners and the broader Australian public can work together to further leverage native title rights.

The conference seeks to highlight the challenges and

opportunities of native title in the broader context of Aboriginal and Torres Strait Islander aspirations for their lands, waters and communities.

The conference aims to promote public debate, and foster knowledge acquisition and sharing between native title holders and other parties. It is the leading annual event for professional development for native title representative bodies and staff, government organisations, native title practitioners and academics.

The Kimberley Land Council is very proud to be co-convening this event in its 40th year. It is the first time the conference will be held in a regional area like the Kimberley.



**MANY LAWS,
ONE LAND**
Legal and political co-existence
NATIONAL NATIVE TITLE CONFERENCE 2018



North Kimberley rangers take to the seas

Balanggarra and Unguu Rangers joined forces in Wyndham for maritime/coxswain training in February.

The key goal of the training was to deliver practical experience to kick-start a longer term training journey (including accredited training and industry qualification) of maritime study and practice.

Rangers participated in exercises encompassing the scope of a coxswain's operator. The focus was on practical competency and included experiences based on the Balanggarra Vessel Safety Management System (SMS), which comprises all the relevant procedures for the safe operation and maintenance of the vessel and on-the-water operations.

Rangers successfully completed a number of practical exercises on vessels, including vessel maneuvering, tying off securely, ropes and knots, safety equipment, engine checks/maintenance, vessel launching and retrieval, collision avoidance, entering harbours, buoyage systems and emergency procedures.

Congratulations to all involved and we look forward to a number of our rangers continuing their studies by undertaking a Certificate I in Maritime Operations.





ACTING KLC CEO TYRONNE GARSTONE, MINISTER FOR EMERGENCY SERVICES FRANCIS LOGAN AND KLC CHAIRMAN ANTHONY WATSON.

KLC achieves international fire safety standards

The Kimberley Land Council has become the first non-government agency in the state to have its fire management policies and procedures endorsed by the Office of Bushfire Risk Management as meeting international safety standards.

Announced at the Kimberley Regional Fire Forum, the achievement recognises the Kimberley Land Council as a leader in fire management safety.

Acting KLC CEO Tyrone Garstone said the KLC's compliance was recognition of its ongoing commitment to safety practices and continual improvement in relation to managing fire related risk.

"This achievement highlights the significant work the KLC has undertaken over the years to ensure

that we operate at the highest of standards," Mr Garstone said.

"While this process is something we decided to undertake voluntarily, we see it as being very valuable to assess and report back on our fire management policies, procedures and practices.

"We are really pleased to be the first non-government organisation to comply with the international standards."



WUNGGURR SENIOR RANGER ROBIN DANN



The KLC has been working towards compliance through the Office of Bushfire and Risk Management since 2016. As part of this, the KLC's Fire Operations and Guidelines were assessed against 11 key criteria for managing risk detailed in the international 'ISO 31000 risk management standard'.

The Office of Bushfire Risk Management Executive Director Murray Carter commended the Kimberley Land Council for its dedication and collaborative approach to managing bushfire risk in the Kimberley.

"Preparing for and responding to bushfires is a shared responsibility across the Government, businesses, communities and individuals, and we all need to work together to give us the best chance of preventing catastrophic bushfires," Mr Carter said.

"The Kimberley Land Council is a fantastic role model for other non-government organisations to develop an integrated and forward-thinking approach to managing fire risk to their businesses and communities."

Mr Garstone said KLC facilitated fire management involves Indigenous rangers undertaking early season burning to reduce the impact of wildfire in the late dry season.

"This work involves aerial and on ground burning by highly skilled Indigenous rangers together with KLC fire experts," he said

"We work closely with a range of stakeholders in the Kimberley, including the Department of Fire and Emergency Services, pastoralists and other organisations to plan our early season burning work.

"We really value working with all of these different groups and see this multi-stakeholder approach as being key to reducing the risk of wildfire in our region."

It is expected to be another busy year for Indigenous rangers involved in early season fire management due to the significant volumes of rain recorded over the wet season, leading to high fuel loads.

The Kimberley Indigenous Saltwater Science Project

The Kimberley Indigenous Saltwater Science Project (KISSP) working group met late last year to discuss saltwater research and the challenges currently being experienced by both saltwater managers and scientists around research and monitoring activities in the Kimberley.

Representatives included Traditional Owners from the Balangarra, Wunambal Gaambera, Dambimangari, Bardi-Jawi, Nyul Nyul, Yawuru and Karajarri peoples.

Six visiting research scientists presented the results of research projects they worked on with Kimberley Indigenous groups over the last two years. The new knowledge created in each of these projects will support Kimberley Indigenous ranger groups in their management of dugong, turtle, marine ecology, human use and social values.

The KISSP's own research team presented their final products, designed to build the capacity of Indigenous and western scientists to undertake collaborative research in the Kimberley and fostering lasting, reciprocal relationships between Indigenous knowledge holders and scientists.

A major outcome of the meeting was the in-principle support of attending PBC Directors to develop an

Indigenous Kimberley saltwater advisory group. This idea will be put to each of the seven core PBCs early in 2018 and if supported seed funding will be put towards development of a business plan.

The group's first job would be to get the KISSP products used by stakeholders and to provide a saltwater technical working group service for Kimberley saltwater PBCs.





Ranger funding welcomed

Kimberley Indigenous rangers are set to benefit from funding announced by the State Government earlier this year.

Part of the government’s Aboriginal Ranger Program, the money is set to pay for new ranger positions and training opportunities across the state, including the Kimberley.

KLC Acting Chief Executive Officer Tyrone Garstone said the announcement comes following an uncertain 12 months for rangers due to government funding cuts.

“It’s a rollercoaster ride for people who live out in remote communities because the government makes decisions from Canberra without fully understanding the significant impacts it has on the ground,” Mr Garstone said.

“The State Government funding provides some security over the next few years which will mean people in remote locations will have meaningful employment that connects them back to country and aligns with their traditional values.”

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Kimberley funding recipients include:

- **Yanunijarra Aboriginal Corporation**, for the Karajarri-Ngurrara Desert Fire and Biodiversity Project - four rangers; two female.
- **Nyul Nyul and Bardi Jawi Women Rangers** hosted by Kimberley Land Council, for the Dampier Peninsula Women Rangers Monsoon Vine Thicket Recovery Project - two rangers (0.8 FTE) and five casual rangers (all female).
- **Nyamba Buru Yawuru Ltd**, for the Yawuru Women’s Ranger Project: protecting cultural and ecological values of monsoon vine thickets in the Minyirr Buru Conservation Park - three rangers; all female.
- **Bunuba Dawangarri Aboriginal Corporation**, for Building Capacity in the Bunuba Rangers to Better Protect Country and Culture - three rangers; all female.

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Kimberley Land Council



ICN: 21

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