



KIMBERLEY LAND COUNCIL ANNUAL REPORT 2006





Kimberley Land Council

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22 September 2006

The Hon. Mal Brough
Minister for Indigenous Affairs
Parliament House
CANBERRA ACT 2006

Dear Minister

I am pleased to present to you the Kimberley Land Council's Annual Report covering the period 1 July 2005 to 30 June 2006.

The report complies with section 203DC of the Native Title Act 1993 and includes our report on our operations and audited consolidated financial statements for the reporting period.

Yours faithfully

WAYNE BERGMANN
Executive Director

GLOSSARY

ACAA	Aboriginal Councils and Associations Act, 1976
ADJR	Administrative Decisions (Judicial Review) Act 1977 (Cth)
ALT	Aboriginal Lands Trust
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIS	Aboriginal and Torres Strait Islander Services
CALM	Department of Conservation and Land Management (WA)
COAG	Council of Australian Governments
CPA	Certified Practising Accountant
DIA	Department of Indigenous Affairs (WA)
HPA	Heritage Protection Agreement
HPWG	Heritage Protection Working Group
ILUA	Indigenous Land Use Agreement
KALACC	Kimberley Aboriginal Law and Culture Centre
KLC	Kimberley Land Council
KLRC	Kimberley Language Resource Centre
MG	Miriuwung Gajerrong
MoU	Memorandum of Understanding
NAILSMA	Northern Australian Indigenous Land and Sea Management Alliance
NNTC	National Native Title Council
NNTT	National Native Title Tribunal
NTA	Native Title Act 1993 (Cth)
NTRB	Native Title Representative Body
NTSU	Native Title Services Unit
OHS	Occupational Health and Safety
OIPC	Office of Indigenous Policy Coordination
ONT	Office of Native Title (WA)
ORAC	Office of the Registrar of Aboriginal Corporations
PBC	Prescribed Body Corporate
PLO	Principal Legal Officer
RHA	Regional Heritage Agreement
TO	Traditional Owner

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1. CHAIRMAN'S REPORT

The Kimberley Land Council has continued to be a strong and positive Native Title Representative Body representing Aboriginal people in the Kimberley.



I call on the State and Commonwealth Governments to recognise and acknowledge the strength of Native Title in the Kimberley, and Kimberley Aboriginal people's deep and ongoing connection to their country. This connection can be clearly traced to the time of European settlement, and beyond. It underpins the culture of Kimberley Aboriginal people, and also underpins the settlement of Native Title in the region.

The period covered in this report has seen two further determinations by the Federal Court of Native Title in the Kimberley. This follows the six other determinations made in previous years, and brings the area where Native Title is recognised to more than 30% of the Kimberley. These determinations all have clear implications for a number of closely related claims presently lodged with the Federal Court, and the KLC remains very confident that findings of Native Title will be made in each of those claims.

It is time for Governments to become serious about negotiating consent determinations in Kimberley Native Title claims. It is the stated policy of both the Commonwealth and the Western Australian governments that they are committed to settle Native Title by agreement over litigation. The KLC also values this approach highly. The opportunity now exists to deliver a number of consent agreements across the Kimberley. This will provide certainty for the region, reduce costs to all parties, open the way for improved economic and social opportunities for Kimberley Aboriginal people, and foster goodwill, reconciliation, and a shared future for all Australians.

This is a unique opportunity to turn the current adversarial approach around, and to work co-operatively to speed up the Native Title process in the Kimberley. Nothing need be lost through this approach, and there is clear evidence of how much can be gained.

This evidence can be seen in the significant resource agreements made by Kimberley Aboriginal people with the private sector and the State. The Ord Final Agreement signed in this reporting period clears the way for significant economic development in the east Kimberley, and secures a stake in that development for Indigenous Australians. Similarly, the Koolan Island mining agreement made with Aztec Resources will lead to real engagement of Aboriginal people in the mainstream economy.

Native title has started to deliver benefits to Kimberley Aboriginal people, and these benefits are much more than merely symbolic. We are starting to see Aboriginal people regain control of their lives. Although there is still a long way to go, the path forward is becoming clear.

The Kimberley Land Council is proud to be at the forefront of securing the future for Aboriginal people. We have continued to provide services to Traditional Owners that deliver a balance of formal determinations of Native Title and agreements that bring economic opportunity.

We have also been active in the broader Native Title policy area, through submissions to Ministers, reviews and other enquiries, and through our involvement in the establishment and growth of the National Native Title Council. Through these forums, we have communicated our concerns about proposed amendments to the Native Title Act, and will continue to cautiously watch developments in this area. Whilst we need certainty in order to operate efficiently, the KLC is always ready to work with governments to develop and refine Native Title processes for the mutual benefit of all parties. We continue to expect to be part of discussions around these matters.

The results of the past year have been achieved through the dedication, commitment, and hard work of the KLC's Executive board, and I give them my congratulations and thanks. I am also proud of the high professional standards maintained by our staff, and thank them for the significant contribution they have made to our organisation and its members.

The KLC remains a strong organisation, driven and managed by its members, the Traditional Owners of the Kimberley. We continue to do more than just look for a better future; we are helping to build that future for ourselves. Building that future will proceed at a much quicker pace when consent agreements resolve the remaining Native Title claims in the Kimberley. I look forward to another outstanding year for the Kimberley Land Council and for Kimberley Aboriginal people.



TOM BIRCH
Chairman

2 EXECUTIVE DIRECTOR'S REPORT

Summary of significant issues and developments



The Kimberley Land Council has continued to deliver a high standard of services to our members over the past year. We have built upon previous successes to deliver significant outcomes in both recognition of Native Title, and use of Native Title to secure real and practical benefits for Kimberley Aboriginal people. These benefits will deliver improvements in the everyday lives of our people, in both the short and long terms.

This strong performance has been achieved under the leadership and direction of an active and engaged Executive Committee, representing the members of the KLC, and within ongoing resource constraints. Financial management, governance, and accountability procedures were maintained to high standards, and the KLC continued to operate to its financial budget.

In the reporting period, the Federal Court recognised Native Title in two Kimberley claims. Two Indigenous Land Use Agreements were finalised and executed in the reporting period, and one was registered. A number of standard-setting resource sector agreements were negotiated on behalf of Traditional Owners, and the KLC continued to represent their interests in relation to activities on traditional lands.

These achievements will have significant and ongoing impacts on the lives of present and future Kimberley Aboriginal generations, maintaining their cultural connections to country whilst providing opportunity for engagement in the mainstream economy.

Overview of performance and financial results

The significant outcomes achieved by the KLC during the 2005-2006 reporting period occurred in the areas of Native Title and agreement-making.

Native Title

Continuing the trend of successful Native Title outcomes achieved by the KLC, this period saw the Federal Court formally recognise both the Bardi Jawi (30 November 2005) and the Rubibi (28 April 2006) peoples as owners of their respective traditional lands. These determinations followed many years of commitment and effort from Traditional Owners and the KLC.

These outcomes form part of the strategic approach adopted by the KLC in

managing Native Title claims across the Kimberley. Activities are prioritised within the clear process adopted by the KLC, and in line with available resources. The KLC acts in accordance with its Strategic Plan, progressing claims on its prioritised list whilst maintaining an overview of all claims in the region. Activities are prioritised within the bigger picture of resolving all Kimberley Native Title claims, with value placed on the ability of successful claims to influence the progression of claims not on the priority list.

The KLC undertook work to assist the establishment of Prescribed Bodies Corporate for resolved claims, together with other claim work to finalise these matters. Significant progress was made in formulating connection materials for provision to the State in a number of unresolved claims.

The Ord Final Agreement Indigenous Land Use Agreement (ILUA) was finalised, executed, and registered during the reporting period. The Nykina Mangala – Shire of Derby West Kimberley ILUA was finalised and executed, and is expected to be registered in the next reporting period.

One new Native Title application – Lumugal – was filed in the Federal Court. Other Native Title claims were progressed to varying degrees, through claimant meetings, anthropological reports and other research.

Agreements

The period saw the signing of the historic Ord Final Agreement between the State of Western Australia, private sector interests, and the Miriuwung and Gajerrong peoples. The agreement resolves past and future Native Title and heritage issues through the recognition of Miriuwung and Gajerrong people as the Native Title holders of the area. It provides them with a real stake in the future economic development and wealth of their region, helping to build a strong economically and socially viable community for future generations.

A second major resource agreement was negotiated on behalf of the Dambimangarri people in relation to the re-opening of the Koolan Island iron ore mine. As part of this agreement with Aztec Resources, Traditional Owners will have access to significant employment and training opportunities, business opportunities, and community development initiatives. Significantly, this agreement provides more than just Indigenous employment targets. It clearly defines a process and implementation strategy for assisting Aboriginal people to develop skills that will lead directly to employment in the mine.

The agreement sets new standards, providing a template for other agreements across the Kimberley. This agreement particularly demonstrates the mutually respectful and beneficial relationships that can be developed between Traditional Owners and developers.

Negotiations continued in relation to other resource development proposals in the region, including mining and oil and gas projects. Of particular note are discussions conducted with Sally Malay Ltd who, despite having no legal requirement under the Native Title Act, have shown exceptional goodwill to negotiate with Traditional Owners for a Native Title agreement. This is further evidence of the maturing nature of the private sector's relationship with Aboriginal people.

The Kimberley Land Council continued to negotiate with the State of Western Australia in relation to a regional heritage protection agreement for the Kimberley. However, the National Native Title Tribunal has terminated these negotiations as the NNTT believed negotiations were at a stalemate. KLC also continued to negotiate on specific issues relating to lands held by the Aboriginal Lands Trust.

Other

During the reporting period, the KLC implemented its 2004-2007 Strategic Plan and its 2005-2006 Operational Plan, whilst undertaking the development of its 2006-2007 Operational Plan.

The KLC continued to facilitate exchange of information between Traditional Owners and other parties in relation to Native Title issues. We remain engaged in the Native Title policy debate through involvement in the National Native Title Council and submissions to various reviews and enquiries.

Financial results

The KLC has maintained high standards of financial management during the reporting period. Expenditure was generally contained within budget predictions and in accordance with the Operational Plan. The KLC efficiently delivered a professional level of services to its members in terms of the financial resources available, and followed transparent procedures to ensure funding was correctly applied to KLC activities and operations.

During the reporting period KLC only undertook work funded under its operational plan, or through funding provided directly by proponents. Demands and expectations placed on the KLC by both its members and external parties continued to exceed available financial resources.

Outlook for 2006-2007

The KLC will continue to pursue resolution of Native Title through negotiation ahead of litigation. The significant work undertaken on consent determinations in the Balanggarra, Uunguu, Dambimangarri, and Nykina Mangala claims will be further progressed towards resolution of those claims.

During the next reporting period, the KLC will be required to undertake further significant work in relation to appeals in both the Rubibi and Bardi Jawi claims. The outcomes of these appeals will inform activities in other bordering claims.

Significant work will also be needed to pursue negotiations with the State of Western Australia in relation to land use issues in the Rubibi claim.

Amendments to the Native Title Act may have a significant impact on our ability to carry out our functions under the Act. A major issue of lack of resources was not addressed by the review. We will continue to make the government aware of our concerns.

The achievement of practical outcomes for Aboriginal people through resource sector agreements will continue to be a focus of the KLC. A number of major and minor development activities are proposed in the region. These activities will ride on the back of successful agreements made to date, utilising the well developed skills, respected reputation, and sound relationships built up by the KLC in this area over a number of years.

The significant rise in fuel and other costs in regional and remote Australia has had a marked impact, and without increased resources is likely to mean a reduction in the services delivered by the KLC in the next reporting period.

Recruitment and retention of staff within budget constraints remains difficult in what is a very competitive labor market environment. KLC can not match private or public sector conditions, and both personal and office accommodation remains difficult to secure in remote regions.

I wish to acknowledge the support of the KLC Executive and staff over the past twelve months, and congratulate them on their contribution to the KLC.

The outlook of the KLC remains extremely positive, and we look forward to continuing achievements in securing both Native Title and economic security for Kimberley Traditional Owners.

The Kimberley Land Council remains an important component of a strong and enduring Kimberley Indigenous culture. As the Native Title Representative Body for Kimberley Traditional Owners, we will continue to pursue real outcomes for our members. The opportunity to bring about positive changes in the lives of Kimberley Aboriginal people is right before us. We see a new period of opportunity for governments and the private sector to work in partnership with the Kimberley Land Council.



WAYNE BERGMANN

Executive Director

3 NTRB OVERVIEW

a) Description of the Kimberley Land Council

The Kimberley Land Council was established in 1978 at a meeting of Kimberley Aboriginal people following a dispute between Kimberley Traditional Owners, the Western Australian Government and a large mining company at Noonkanbah. The KLC was set up as a peak regional community organisation, to secure Kimberley Aboriginal Traditional Owners' rights and interests in their lands and waters, and to protect their significant places.

In May 2000, the Federal Minister for Aboriginal and Torres Strait Islander Affairs recognised the Kimberley Land Council, under s 203AD of the *Native Title Act 1993 (Cth)* (NTA), as the Native Title Representative Body (NTRB) for the Kimberley region in Western Australia.

As a Native Title Representative Body, the KLC's operations were primarily funded during the reporting year by the Office of Indigenous Policy Coordination (OIPC) under a Program Funding Agreement.

b) Role and functions

i Legislation

The KLC is an incorporated association under the *Aboriginal Councils and Associations Act, 1976*. In accordance with the rules of operation prescribed by that Act, the KLC has adopted certain objectives to advance the aspirations of Kimberley Aboriginal people.

ii Legislative Functions

As a Native Title Representative Body, the KLC has specific functions under Part 11, Division 3 of the NTA. These functions are:

- Facilitation and assistance (s203BB);
- Certification (s203BE);
- Dispute resolution (s203BF);
- Notification (s203BG);
- Agreement-making (s203BH);
- Internal review (s203BI); and
- Other functions referred to in s203BJ and such other functions as are conferred on representative bodies by the NTA.

iii Corporate Governance Policies

The Corporate Governance of the KLC is dictated primarily by the legislative framework, the organisation's Constitution and the statutory requirements of the *Aboriginal Councils and Associations Act 1976* (ACAA) and the Finance Ministers Order's under which the KLC operates. Governance matters are also considered within the framework of the KLC's Native Title Representative Body functions governed by the NTA, along with the program funding agreement with the Commonwealth Government, through the Office of Indigenous Policy and Coordination.

Within these statutory functions and obligations, the Executive of the KLC makes decisions in relation to its governance policies. These decisions are documented in the KLC Policy and Procedure Manual, and are applied to the governance activities of the KLC, including the conduct of all the Executive members and staff, management activities, and development of the Strategic priorities and the Operational Plans.

The KLC Executive is diligent in ensuring that the organisation complies with all regulatory and funding requirements and that the KLC's governance reflects and implements KLC's regulatory obligations, vision, values and policies in an open and transparent way.

NTRB Functions

In accordance with the KLC's statutory functions, the KLC assists Kimberley Traditional Owners to obtain recognition of, and fully enjoy, their Native Title rights and interests. The vision, values, policies and priorities of the KLC reflect KLC's statutory and regulatory obligations.

Vision Statement

"The Kimberley Land Council is a community organisation working for, and with, Traditional Owners of the Kimberley to get back country, to look after country and to get control of our future."

The KLC Strategic Plan and the annual Operational Plan establish and implement the Vision Statement and proprieties set by the KLC Executive.

Values

The KLC as a peak Kimberley Aboriginal organisation is dedicated to the development of a modern, sophisticated and innovative service to our community.

The KLC is conscious of the dynamic pressures in contemporary Aboriginal society and emphasises the role of communities in managing those pressures.

The KLC is a practicality-driven organisation, charged with responsibility to protect, enhance and give formal legal, social and political status to the customs, laws and traditions of Kimberley Traditional Owners, in accordance with our values of:

- Respect for our law and culture
- Respect for our Elders and stakeholders
- Fair and transparent decision-making
- Effective and open communication
- Working in partnership
- Trust and loyalty
- Justice and equality for Indigenous peoples
- Cultural diversity.

Policies and procedures

The work and activities of the KLC management and staff are in accordance with the documented KLC policies and procedures, which reflect the KLC's obligations as an NTRB and which are consistent with the Strategic and Operational Plans.

Setting priorities

Each reporting year it is necessary for the KLC to set priorities for its operations that address, to the extent possible within available resources, the needs and aspirations of the Traditional Owners it represents. The priorities must address the statutory and financial framework, and other constraints, within which the KLC as a representative body under the Native Title Act operates. The KLC has an established procedure for setting priorities which is documented in the Policy and Procedure Manual. Priorities are determined by the Executive annually and can only be varied with Executive direction and approval.

KLC Regional Planning and Prioritising Process

In accordance with the provisions of the NTA the KLC Executive Committee and staff are involved in an annual process of selecting and giving priority to all matters arising from its statutory functions. KLC also meets with the National Native Title Tribunal and the Western Australian Office of Native Title to agree to prioritisation of work programs currently before the Federal Court of Australia. Staff and financial resources are allocated and claims are progressed in the reporting period in accordance with the priority assigned. It should be noted that the requests placed on the KLC for assistance to progress Native Title activities from our members far exceed the resources available.

c) Organisational structure

Membership

The membership of the KLC is open to any adult Aboriginal person who is a Traditional Owner of country in the Kimberley region.

Executive Committee

The KLC is governed by an Executive Committee elected for two year terms. The Executive Committee is responsible for carrying out the KLC's objects on behalf of its members. It provides leadership and direction to the organisation; determines the KLC's priorities in all policy and operational matters; oversees the implementation of the KLC Strategic Plan; monitors the progress of Native Title applications and other land-related matters; and oversees the conduct of the KLC's affairs through the position of the Executive Director.

The Executive Committee is made up of two representatives from each Native Title claimant group in the Kimberley. Every two years each claimant group nominates representatives and proxies for appointment to the Executive Committee. If required, elections take place at the Annual General Meeting (AGM) from the nominations received to fill the vacant positions. The general membership also appoints Special Advisers and a Special Executive Member (all of whom are Kimberley Traditional Owners) on the basis of their special knowledge and whom the members deem appropriate because of their experience and contribution to the objects of the organisation. Members of the Executive Committee give their time voluntarily.

The Executive Director, who must be a member of the KLC, is also a member of the Executive Committee and is appointed by the Executive Committee to manage the daily affairs of the organisation. The Executive Director is also a member of the Executive Committee and is in a paid position.

The Executive Committee members for this reporting period, and meetings they attended, are listed in Section 5 (B) of the Report, in Tables 6 and 8 respectively.

Executive Sub-Committees

The Executive Committee elects a Chair and Deputy Chair from among its membership, and also appoints members to an Executive Sub-Committee. Members are elected for a two year period, with terms commencing and expiring at every second AGM. The next elections will take place at the 2006 AGM. The Sub-Committee is a smaller group with powers and responsibilities delegated from the full Executive Committee.

The Sub-Committee membership is listed in Table 7 together with the attendance record for the meetings in Table 8.

Other specific Sub-Committees of the Executive Committee are:

- i The Native Title Representative Body Grants Committee;
- ii The Native Title Representative Body Review Committee; and
- iii The Native Title Representative Body Audit Committee.

The Grants Committee assesses new applications for assistance as to whether those Native Title applications have demonstrated legal merit. Decisions not to provide assistance may be reviewed, on application, by the Review Committee. If the applicants for assistance are still not satisfied, they have the right to have the decision reviewed under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR). The process by which this occurs is described in more detail under the section: Report on Performance; Output Group 6—Internal Review.

Annual General Meetings

The KLC's Annual General Meetings are attended by the KLC membership and constituency. In the interests of cost efficiencies these meetings are usually held 'on country' in conjunction with meetings of the Kimberley Aboriginal Law and Culture Centre (KALACC) and the Kimberley Language Resource Centre (KLRC). This results in a very high attendance of Kimberly Traditional Owners and ensures a high degree of representation and participation in the KLC's decision and policy-making processes, and ensures a high level of accountability and transparency of the KLC's operations.

In this reporting period the AGM was held in conjunction with the Majarrka Cultural Festival held at Ngumpan community east of Fitzroy Crossing, which included meetings of the Kimberley Language Resource Centre and the Kimberley Aboriginal Law and Culture Centre.

Staffing

Overall authority for daily operational and administrative decisions is delegated by the Executive Committee to the Executive Director. The Executive Director is assisted in discharging his responsibilities by KLC managers and staff through a delegations framework.

The work associated with the KLC's NTRB functions is undertaken by multi-disciplinary teams. Members of claim teams work closely together and are responsible for specific claim applications. Claim teams work with claimant groups on matters relating to the Native Title applications, including future acts, and obtain instructions from claimant groups and Native Title holders.

Legal officers have the carriage of specific claims as well as providing advice on future acts, agreements, negotiations and all other matters relating to the core functions of the KLC.

Due to continuing financial resource constraints no Native Title officers have been located in the Halls Creek, Fitzroy Crossing or Derby offices since May 2004. This continues to be a major concern in delivering a level of service to claims the KLC represents.

d) Outcome and output structure

Consistent with its statutory functions the KLC's primary activity objective continued to be the provision of professional services to Aboriginal people in pursuit of the recognition and protection of Native Title.

The KLC output structure is derived from NTRB functions, as set out in the NTA, and comprises:

- facilitation and assistance;
- certification;
- dispute resolution;
- agreement making;
- internal review; and
- other functions.

These functions underpin the development of the KLC Strategic Plan and the Operational Plan for each funding year. The KLC's Strategic Plan establishes the KLC Strategic Objectives by reference to its statutory functions. The Strategic Plan also establishes key performance indicators in relation to consultation, decision making and setting of priorities as required by S203D of the NTA.

The detailed 2005–2006 Operational Plan identified anticipated outcomes (results) by reference to prioritised activities.

e) Key Features of the Strategic Plan and Operational Plan Strategic Plan

The KLC's current Strategic Plan, covering the years 2004–2007, sets the direction for the organisation, and provides a broad outline of how the KLC will undertake its activities.

The Strategic Plan identifies KLC's vision, values, internal and external environments, and Native Title Representative Body purpose and functions. For each NTRB function, the Plan sets out KLC's strategic objectives, policies, strategies, and key performance indicators.

Operational Plan 2005 – 2006

The KLC's Operational Plan, covering the period of this Annual Report (2005–2006), was a detailed outline of what the KLC intended to do in the

short term. The Operational Plan followed on from the Strategic Plan and broke the ‘big picture’ down into identifiable activities. It was developed by reference to the KLC’s Policy and Procedure Manual, and our statutory requirements, in association with our conditions of funding.

The Operational Plan was therefore a tool for managing the KLC’s Native Title activities, by identifying the detail of planned work, timelines for completion, and the staff and financial resources to be allocated to that work.

The 2005–2006 Plan was arranged by activities, and identified project names, key results expected, start and end dates, and cost.

The activities outlined in the 2005–2006 Operational Plan reflected the environment in which the KLC operates, the objectives established, and the priorities identified by the Executive Committee in preparing the plan. There is a direct relationship between KLC’s Strategic Plan and the activities prioritised in the Operational Plan.

The 2005–2006 Operational Plan followed consistently from the previous Operational Plan. It showed clear and consistent progression of ongoing work and identified new work to be taken on. The identification of both ongoing and new work was undertaken in accordance with the KLC’s documented prioritisation process.

In formulating the Operational Plan, each activity was considered in terms of:

- The overall 2004–2007 Strategic Plan
- The objectives contained in the Strategic Plan (including the prioritisation objective identified in the *Priorities (203D)* section); specifically
 - a) finalisation of Native Title cases currently before the courts
 - b) advancement of Native Title applications in the mediation process by preparing connection reports
 - c) maintenance of other Native Title applications in the mediation stream by assisting claimant groups with negotiations and agreements pertaining to future act applications that effect Native Title rights and interests.
- The prioritisation process documented in the *KLC Guidelines for Assistance in Native Title Claims* and the prioritisation adopted by the KLC’s Executive Committee and documented in the Policy and Procedures manual

Each outcome in the 2005–2006 Operational Plan was also formulated in a Native Title environment characterised by the following key features:

- Cultural Strength of Indigenous Communities
- Federal Court Approach to Kimberley Native Title Applications

- Commonwealth Native Title Policy Framework
- State Native Title Policy Framework
- Demographics
- Resources
- Legal Environment

The financial and human resources available to the KLC are limited. The Operational Plan established a balance between demand and resources by identification of applications with a level of internal priority. The Operational Plan managed priorities by reference to budget and time.

4 REPORT OF PERFORMANCE

a) i Review of performance during the year in relation to strategic and operational plan, and by function

In accordance with the KLC's Strategic Plan for 2004–2007, the organisation's priorities in relation to the output structure in the reporting year were:

- the lodgment and finalisation of Native Title applications, including representation in litigation and progression of claims in mediation through preparation of connection material;
- responding to future act notices;
- the negotiation of agreements; and
- activity to ensure the protection and recognition of Native Title by representing Native Title claimants.

These areas continued to represent the major demands upon the KLC. They constituted the most significant expectations Kimberley Traditional Owners have of the KLC, and priorities within the KLC's statutory functions.

More specifically, the priorities in the reporting period were to:

- progress the hearings and conclusion of Native Title applications in the litigation stream;
- concurrently participate in the mediation of claims in the litigation stream;
- engage in consultation with the State Government Office of Native Title to facilitate the preparation of connection material and agreement on connection as a precondition to mediation of consent determinations;
- mediation of consent determinations;
- maintain other Native Title applications in the mediation stream by assisting claimant groups with negotiations and agreements relating to Native Title rights and interests;
- participate with the NNTT and the State Government Office of Native Title in a bi-annual regional planning process to set and review agreed priority claims for the Kimberley;
- negotiate land access agreements which provide substantial economic and social benefits to Traditional Owners;
- negotiate co-existence and compensation agreements for major future act development proposals; and

- maintain negotiations for a Kimberley Regional Heritage Protection Agreement with mining industry representatives.

Performance according to contribution to outcome, outputs and targets

The KLC's outputs and contribution to outputs were generally completed in accordance with performance targets established in the Operational Plan. In a number of areas outputs exceeded performance targets, particularly in relation to major agreement making.

In those areas where outputs were not completed in accordance with performance targets, a number of external factors outside KLC's control interceded, including responses by third parties in mediation, litigation and negotiation.

As in previous reporting periods, completion of performance outputs was significantly assisted when all parties adopted a position in favor of mediation and negotiation over litigation. A contrary approach was most often a factor in the KLC not meeting performance targets, which has led to higher spending in the litigation stream.

Output 1 – Facilitation and assistance

The major core function of the KLC continued to be the provision of facilitation and assistance to Native Title claimants, Native Title holders and registered Native Title bodies corporate in the preparation and progression of Native Title applications, including facilitating and providing representation in consultation, mediation and negotiation for agreements.

In the reporting period the majority of staff time and resources was devoted to the core facilitation and assistance function in relation to Native Title applications in the litigation stream and the mediation of these priority claims including mediation concurrent with litigation.

In the reporting period the KLC's major achievements in the litigation stream were:

- Bardi Jawi — determination
- Rubibi — determination
- Miriuwung Gajjerrong #1 — finalised with the nomination of the prescribed body corporate for the determination area to the Federal Court.

Output 1.1 — Claimant applications

There were 32 separate Native Title applications in the Kimberley during

the reporting period. Several of these applications are grouped together and managed as single Native Title claims. In terms of claims management, and as a result of the ‘grouping’ process, the Kimberley Land Council separately managed 26 Native Title claims in the Kimberley during the reporting period. The ‘grouped’ claims are:

- the Wanjina/Wunggurr Wilinggin claim, comprised of the Ngarinyin, Wanjina/Wunggurr-Wilinggin and Wanjina/Wunggurr Wilinggin #2 applications;
- the Balanggarra claim, comprised of the Balanggarra No. 3 and Balanggarra Combined applications;
- the Bardi Jawi claim, comprised of the Bardi Jawi and Bardi Jawi #2 (Brue Reef) applications;
- the Rubibi claim, comprised of the Rubibi and Rubibi No. 17 applications. (Rubibi #6 remains separate); and
- the Miriuwung Gajerrong claim, comprised of Miriuwung Gajerrong #1 and Miriuwung Gajerrong #4.

The Kimberley Land Council represented the applicants in 29 of the 32 Native Title applications, was a respondent to one (Noonkanbah), and had no involvement in two others (Djaberra Djaberra and Jiddngarri). Two of the Native Title claims represented by the KLC were in active litigation during the reporting year (Rubibi and Bardi Jawi). Three of the Native Title claims represented by the KLC (MG #1, Karajarri and Wanjina/Wunggurr Wilinggin) are in the post determination implementation phase, requiring the finalisation of outcomes from the determination of the Federal Court, as well as, in Karajarri, the conclusion of commitments made by the State of Western Australia in relation to the consent determination.

KLC is providing assistance to one of the applications (Noonkanbah), but does not represent the named applicants in that matter.

Table 1: Status of Native Title Applications in the Kimberley 2005–2006

NNTT	Application name		Status	Tribunal Reference	Federal Court Reference	Progress	KLC
1	Balanggarra #3	} These two applications are managed together as the Balanggarra claim	Active	WC00/6	WAD6004/00	Mediation	1
2	Balanggarra (Combination)		Active	WC99/47	WAD6027/98		
3	Bardi Jawi–Brue Reef	} These two applications are managed together as the Bardi Jawi claim	Determined	WC04/1	WAD6001/04	Federal Court Determination 30/11/05. Appeal to Full Federal Court lodged 10/7/06	2
4	Bardi Jawi		Active	WC95/48	WAD49/98		
5	Bunuba		Active	WC99/19	WAD6133/98	Mediation	3
6	Dambimangarri		Active	WC99/7	WAD6061/98	Mediation	4
7	Djabera-Djabera		Active	WC96/99	WAD6124/98	Mediation	5
8	Goolarabooloo – Jabirr Jabirr		Active	WC99/36	WAD6002/98	Mediation	6
9	Gooniyandi Combined # 2		Active	WC00/10	WAD6008/00	Mediation	7
10	Jiddngarri		Active	WC97/79	WAD6199/98	Not registered	8
11	Karajarri		Determined	WC00/2	WAD6100/98	Post determination implementation	9
12	Koongie – Elvire		Active	WC99/40	WAD6157/98	Mediation	10
13	Kurungal		Active	WC97/101	WAD6217/98	Mediation	11
14	Lambo		Active	WC99/20	WAD6095/98	Mediation	12
15	Lumgal		Active	WC06/1	WAD15/06	Not in mediation	13
16	Malarngowem		Active	WC99/44	WAD6182/98	Mediation	14
17	Mayala		Active	WC98/39	WAD6255/98	Mediation	15

18	Miriuwung Gajerrong #1	} } These two applications are managed together as Miriuwung Gajerrong	Determined	WC94/02	WAD6001/95	Post determination implementation	16
19	Miriuwung Gajerrong #4		Active	WC04/4	WAD124/04	Mediation	
20	Ngarrawanji	} } These two applications are managed together as Miriuwung Gajerrong	Active	WC96/75	WAD6107/98	Mediation	17
21	Ngurrara		Active	WC96/32	WAD6077/98	Mediation	18
22	Noonkanbah	} } These two applications are managed together as Miriuwung Gajerrong	Active	WC98/9	WAD6229/98	Mediation	19
23	Nyikina and Mangala		Active	WC99/25	WAD6099/98	Mediation	20
24	Purnululu	} } These two applications are managed together as Miriuwung Gajerrong	Active	WC94/11	WAD6007/98	Mediation	21
25	Rubibi # 6		Determined	WC95/28	WAD91/98	Finalised	22
26	Rubibi	} } These two applications are managed together as Rubibi	Active	WC99/23	WAD6006/98	Federal Court determination 28/4/06.	23
27	Rubibi #17		Active	WC04/6	WAD223/04	State Appeal to Full Federal Court lodged 1/6/06. Rubibi cross appeal lodged 22/6/06. Walmun Yawuru cross appeal lodged 23/6/06	
28	Tjurabalan	} } These three applications are managed together as Wanjina/Wunggurr-Wilinggin	Determined	WC95/74	WAD160/97	Post determination implementation	24
29	Uunguu		Active	WC99/35	WAD6033/99	Mediation	25
30	Wanjina/ Wunggurr-Wilinggin	} } These three applications are managed together as Wanjina/Wunggurr-Wilinggin	Active	WC99/11	WAD6015/99	Post determination implementation	26
31	Wanjina/ Wunggurr-Wilinggin #2		Active	WC02/4	WAD6006/02	Post determination implementation	
32	Ngarrinyin	} } These three applications are managed together as Wanjina/Wunggurr-Wilinggin	Active	WC95/23	WAD6016/96	Post determination implementation	26

At the end of the reporting period the KLC was under instruction to continue to represent and provide facilitation and assistance to 29 out of the 32 Native Title applicants in the Kimberley. The KLC was also under instruction to provide assistance to one other Native Title applicant to whose claim the KLC was a respondent.

The consolidation or combination of claims continued to be an efficient way to manage limited resources during the reporting period. For example, the Dambimangarri and Uunguu claims have been made by the same community or group that has already been found to hold Native Title in the Wanjinna/Wunggurr Wilinggin Native Title claim. Together, the three separate claims (Dambimangarri, Uunguu and Wilinggin) represent the Native Title interests of all people within a single cultural bloc. Because that cultural bloc has already been accepted by the Court in the Wanjinna/Wunggurr Wilinggin claim, mediation of the Uunguu and Dambimangarri claims has been significantly streamlined. Similarly, the MG #4 claim covers an almost identical Native Title claim group as the Miriuwung Gajerrong (MG) #1 claim and together the claims comprise one cultural bloc. Mediation in the MG #4 claim has been significantly streamlined by the resolution of Native Title by the MG #1 Consent Determination and the Miriuwung Gajerrong Ord Stage 2 Global Negotiations.

Given the significant progress towards resolution facilitated by this ‘cultural bloc’ approach, the KLC policy to investigate, lodge and negotiate Native Title country claims continued in the reporting period. Claims extending as far as possible across the traditional country of the Native Title holding group were in various stages of assessment in the reporting period. For example, significant work was undertaken in the reporting period to assess the Purnululu, Malarngowem and Ngarrawanji claim boundaries and to determine whether those claims and relevant surrounding unclaimed areas should be put forward as a single (Kija) cultural bloc.

New Application — Lumugal

During the reporting period, one new application was filed in the Federal Court.

The Lumugal application was lodged on 17 January 2006 and registered on 16 February 2006. The area of the Lumugal claim has been included in the assessment of a Kija cultural bloc claim discussed above. However, an application for two mining leases over a part of Doon Doon Station (a pastoral lease held by the Aboriginal Lands Trust) required the lodgment of a claim over that area by the traditional owners in order to preserve their Native Title rights and interests and rights to negotiation under the Native Title Act.

The KLC is also representing the Lumugal Native Title claimants in negotiations with the applicant for the two mining leases. Those negotiations are ongoing.

Priorities—Categories of Claims

The prioritisation of Native Title claims continued to be considered at regional planning meetings. Priorities were considered in consultation between KLC and the Office of Native Title (ONT) and with the assistance of the National Native Title Tribunal. The Office of Indigenous Policy Co-ordination (OIPC) also attended the regional planning meeting held on 24 June 2005 which set the agreed priorities for the reporting period. This co-operative approach has been maintained by the KLC and the ONT, assisted by the National Native Title Tribunal (NNTT), with a further Regional Planning meeting held with the ONT and the NNTT in the reporting period (1-2 March 2006) to identify agreed priorities for the next reporting period.

All claims in which KLC provides facilitation and assistance are important. However, as resources do not permit all claims to be progressed concurrently, claims are necessarily prioritised by reference to the policies adopted by the KLC for establishing priorities, including but not limited to consideration of resources.

In the reporting period KLC developed a system of categorising priorities as follows:

A Litigation

- Completion of all claims in litigation

B Mediation (in descending order)

- Negotiation of consent determinations following agreement on connection.
- Negotiation and agreement with the State on the scope of connection reports, assessment of existing material for inclusion in connection reports, finalisation of connection reports, and lodgment of reports with the State. State Government policy provides that agreement on connection is a prerequisite for a matter to proceed to mediation for a consent determination.
- Preliminary preparation and assessment of connection material.
- Resolution of claim boundaries in accordance with the scope and area of traditional country.

C Protection of Native Title

- Future acts: agreement-making to protect and preserve Native Title rights and interests and cultural heritage, to assist proponents develop an appreciation for such, and settlement of socio-economic benefits to compensate for loss or impairment of Native Title rights and interests.

The activity levels of claim work programs generally reflect the agreement reached between the KLC and the State at the Regional Planning meeting in June 2005.

As claims are finalised the Executive will consider, subject to the availability of resources, the upgrading of the activity attached to other claims.

A Litigation

Miriuwung Gajerrong #1

This matter was completed on 27 July 2005 when the Federal Court made orders accepting the Prescribed Body Corporate nominated by the Native Title holders to hold Native Title for the determination area.

Bardi Jawi

A determination was handed down on-country on 30 November 2005. The Federal Court excluded a number of areas from that determination and, following further submissions from the parties, determined on 19 June 2006 that those further areas were excluded from the claim area.

The Native Title claim group is appealing the decision of the Federal Court handed down on 30 November 2005. While a decision to appeal is never taken lightly by Native Title claimants, particularly given the extraordinary amount of time usually required to obtain a Native Title determination, there were a number of matters in the 30 November 2005 judgment that were considered not to be consistent with the traditional laws and custom of the Bardi Jawi, and are amenable to appeal. Notwithstanding this decision to appeal, the Native Title claimants have maintained discussions with respondent parties to ensure that all opportunities are taken to narrow or resolve issues in the appeal.

The appeal in this matter was lodged on 10 July 2006. The appeal will seek to overturn the exclusion of areas in the original application including the islands and sea off Dampier Peninsular.

Wanjina Wunggurr Wilinggin

As noted for the 2004-05 reporting period, this determination was handed down in August 2004, giving effect to the judgment of the Federal Court delivered on 8 December 2003.

This Native Title claim will be finalised when the KLC notifies the Court of the Prescribed Body Corporate (PBC) that will hold and manage Native Title on behalf of the Native Title holders. This will occur in the next reporting period.

A series of community meetings were held in September, October and November 2005, and in March and June 2006 to develop the PBC structure. Meetings were held at Derby, Mowanjum, Imintji, Gibb River, Kupungarri and Kalumburu. Following a final large claim group meeting in Derby in June 2006, the rules for the new PBC will be finalised and lodged with Office of the Registrar of Aboriginal Corporations. This is expected to occur early in the next reporting period.

The PBC structure agreed to by the Native Title holders will also allow it to hold and manage Native Title for the Dambimangarri and Uunguu Native Title claim areas. This means that the major post-determination task of establishing the PBC will already be completed when determinations are made for these two related claims.

Rubibi

In August 2005, the Federal Court determined the identity of the group holding Native Title in favor of Rubibi. On 13 February 2006 the Federal Court delivered a further interim judgment which dealt with the composition of the Native Title holding community, criteria for membership of the Native Title holding community and the nature of the rights and interests possessed by the community. A final decision addressing extinguishment was handed down by the Court on 28 April 2006, together with a determination of Native Title in favour of the Rubibi community.

Unfortunately, on 1 June 2006, the State of Western Australia filed an appeal against much of the decision of the Federal Court. As a result, the Rubibi Native Title holders instructed KLC to defend the appeal and to prepare a cross appeal. The Rubibi cross appeal was filed on 22 June 2006. The Walmun Yawuru respondents also filed a cross appeal on 23 June 2006.

The hearing of the appeal is likely to be in February 2007.

Discussions have also continued in the reporting period with the State Government for the negotiation of a comprehensive agreement to settle all land issues in the claim area (“global negotiation”). Significant and generally positive progress was made in these negotiations prior to the Federal Court’s decision on 28 April 2006. However, following the handing down of the determination, the State announced that it would appeal the Court’s decision in relation to a number of extinguishment issues. The State’s decision to appeal has not help build relationships in the “global negotiation”, although discussions have continued. It is unlikely there will be any resolution to the “global negotiation” until well after the appeal has been heard.

The appeal in this matter will continue into the next reporting period.

Karajarri

On 8 September 2004, following the signing by the parties of a Minute of Consent Orders, the Federal Court issued a determination on country recognising the Native Title rights and interests of the Karajarri traditional owners over the remaining part of their claim area. A prior determination was handed down over part of the claim area in 2002. As an element of the consent determination, the Karajarri and pastoralists agreed to enter into negotiations for a co-existence agreement.

Discussions have commenced between the Native Title holders, represented by the KLC, and pastoralists. However, a range of competing community and development-related activities have interceded and affected the progress of these negotiations. The KLC has maintained the commitment to the negotiations and will continue to progress the matter during the next reporting period.

Two other matters arising from the consent determination remain outstanding. These relate to commitments made by the respondents in relation to the consent determination, but not forming part of the consent determination. The first is the transfer of the ALT lands within the claim area to the Karajarri PBC. As part of the work on this, a mediation conference was run by the NNTT between the Karajarri and the Bidyadanga community. This continues to progress. The final matter is a joint management agreement with CALM over Dragon Tree Soak. It was hoped that a trip to visit the site, which is in a very remote corner of Karajarri country, would take place during the reporting period. Unfortunately, for a number

of reasons this did not eventuate. It is anticipated this matter will progress in the next reporting period.

B Mediation

Miriuwung Gajerrong #4

The resolution of this claim, registered in June 2004, has been significantly progressed during the reporting period.

Following the State's acceptance of connection in the last reporting period and the execution of the Ord Final Agreement in October 2005, formal mediation facilitated by the NNTT commenced in November 2005. That mediation has progressed considerably since then, and formal agreement on the terms of a consent determination of Native Title is expected in the first half of the next reporting period.

If this expectation is met, it will likely lead to a determination of Native Title in less than 12 months since formal mediation commenced.

Wanjina Wunggurr Unguu & Wanjina Wunggurr Dambimangarri

Wanjina Wunggurr Unguu and Wanjina Wunggurr Dambimangarri are related to the Wanjina Wunggurr Wilinggin claim, which was determined in August 2004. Together, the three claims cover the 'cultural bloc' for the traditional owners associated with the Wanjina cultural tradition.

Following agreement between the State and the KLC on a process to progress the Wanjina Wunggurr Unguu and Wanjina Wunggurr Dambimangarri claims in light of the determination in the Wanjina Wunggurr Wilinggin claim, the KLC provided the State with a range of material to address a number of issues relating to connection identified by the State.

In June 2006, the State indicated that connection in these claims had been satisfied. This means that the Unguu and Dambimangarri claims can now progress to active mediation for a consent determination, with the assistance of the NNTT. Very late in the reporting period, the State provided a Position paper summarising the nature of the Claim, and sought KLC's response prior to submission of a final draft to NNTT for circulation to the Respondent parties.

It is anticipated that active mediation of these two claims will commence in the first half of the next reporting period.

Noonkanbah

In the last reporting period the KLC and the State agreed that the Noonkanbah claim should be made an agreed priority. KLC is a respondent in this claim representing the rights and interests of a number of traditional owners.

KLC's assistance and facilitation of the claim in the current reporting period has comprised financial, logistic and technical support to the Applicant to finalise a consent determination in the matter. This assistance has been provided pursuant to an agreement reached between the KLC and the Applicants' representative and has necessitated a significant commitment of resources by the KLC, including significant staff resources.

Following the completion of joint field work and a joint anthropological report by the Applicant and the KLC, the KLC and the State will hold discussions, facilitated by the NNTT, on the progression of this matter. It is anticipated that these discussions will take place early in the next reporting period.

Balanggarra

Significant progress was made towards commencement of mediation for a consent determination in the reporting period. In January 2006, following the submission of a supplementary anthropological report to the Office of Native Title, the State accepted connection, in a mediation context, in relation to the land component of the Balanggarra Combined claim. The State has advised KLC that it requires further information regarding a limited number of outstanding issues in the Balanggarra Combined claim area and a significant amount of further information in the Balanggarra #3 claim area. The KLC has commenced preparation of the material required to address these matters, which is expected to be provided to the State in the first part of the next reporting period.

Subject to the finalisation of agreement on connection, it is anticipated that mediation of a consent determination will then be able to commence before the end of 2006 or early in 2007.

Ngurrara

Significant progress was made in this claim during the reporting period, with a substantial collection of supplementary material demonstrating connection presented to the Office of Native Title in January 2006. The process of collection of some outstanding supplementary material was finalised in June 2006. KLC is waiting for a response from the state on the connection material.

Submissions as to the Applicants' contentions for invoking sections 47, 47A and 47B respectively, of the Native Title Act 1993 (Cth), were prepared and will be forwarded to the Office of Native Title early in the next reporting period.

Subject to the position of the State on connection issues, this claim is likely to move into active mediation for a consent determination in the next reporting period.

Ngarrawanji, Purnululu & Malarngowem

A number of activities were undertaken in relation to these three claims in the reporting period. Most significantly, field work was completed on an assessment of these claims for inclusion in a 'cultural bloc' Native Title claim. The assessment has included consideration of current claim boundaries and whether any realignment is required to ensure consistency with cultural boundaries.

The outcome of that assessment, expected in the first half of the next reporting period, will inform the progress of these claims and clarify whether resolution should be most appropriately reached through a 'cultural bloc' approach. If the assessment indicates that a 'cultural bloc' approach is appropriate, discussions can take place with the State on this basis. If the assessment indicates that a 'cultural bloc' approach is not appropriate, the material collected in the assessment will be used to progress discussions on connection with the State for the Ngarrawanji, Purnululu and Malarngowem claims separately.

In relation to the Ngarrawanji Claim, progress has been made in negotiations with the State for housing development on the Moola Bulla Excisions Blocks, in which KLC has played an active part. These negotiations will continue into the next reporting period.

Nyikina Mangala

Significant resources were allocated to progress this claim during the reporting period. Collection and collation of existing anthropological material, as well as collection of further primary material during field work, was undertaken. A report on this work and associated material is expected to be completed in the next reporting period, following which the KLC has requested that the NNTT convene a meeting between the KLC and the Office of Native Title to discuss the future progress of the Nyikina Mangala claim. A full Connection report on this Claim was commissioned, and should be concluded early in the next reporting period.

Goolarabooloo – Jabirr Jabirr

The progress of this claim is affected by the resolution of the Rubibi claim. Following the State's decision to appeal the Rubibi claim, a review of the activity level in this claim has been necessarily deferred.

Mayala

During the reporting period the KLC undertook limited further field work for the Mayala claim in order to maximise the potential for resolution following the determination of the Bardi Jawi appeal.

Further progress of this claim will be determined by an appeal in the Bardi Jawi claim.

Lamboos

During the reporting period the KLC assisted the NNTT in discussions between members of the Lamboos Native Title claim group and other parties with interests in the pastoral lease within the claim area. **These discussions centred around entering into a Pastoral Co-existence Agreement between the Native Title Claimant Group and the Pastoral Lease Holder, and will be ongoing in the next reporting period.**

Kurungal

During the reporting period the KLC has commenced collection and collation of anthropological research relevant to the native title claimants' connection to the land and waters claimed. Further assessment and preparation of connection material will continue in the next reporting period.

Gooniyandi

As with the Kurungal claim, the KLC was able to allocate resources in the reporting period to the progression of the Gooniyandi claim following a period during which resources were necessarily prioritised to litigated matters. The KLC has commenced collection and collation of anthropological research relevant to the Native Title claimants' connection to the land and waters claimed. Further assessment and preparation of connection material will be undertaken in the next reporting period.

Bunuba

The KLC was not able to directly allocate resources to progress this claim during the reporting period because of the priority given to litigated matters. However, the progress of the Bunuba claim is

expected to be assisted by work being carried out in other bordering claims in the area, in particular the anthropological and ethnographic work currently being undertaken for the Gooniyandi and Nyikina Mangala claims.

Koonjie-Elvire

As with the Bunuba claim, the KLC was not able to directly allocate resources to progress the Koonjie-Elvire claim during the reporting period because of the priority given to litigated matters. However, the progress of the Koonjie-Elvire claim is expected to be assisted by work being carried out in other claim areas, in particular the anthropological and ethnographic work currently being undertaken for the Malarngowem, Purnululu and Ngarrawanji claims.

C Protection of Native Title

The KLC's functions and activities in relation to protection of Native Title are performed concurrently through:

- 1 pursuing recognition of Native Title rights and interests, through progression of applications for determinations of Native Title as described above; and
- 2 utilising of future act provisions and processes, including representation of Traditional Owners in future act negotiations.

The KLC has negotiated a number of major agreements for the protection of Native Title rights and interests during the reporting period. These agreements are reported on in more detail below.

As in previous reporting periods, the KLC has also maintained representation of Native Title claimants' rights and interests in relation to the very large number of notices for future act developments issued in the reporting period, and continues to pursue resolution of the issues surrounding such notices through agreement making. The KLC's performance in relation to future acts notices is reported on in more detail below.

Output 1.2 – Non-claimant applications

No non-claimant applications were made in the Kimberley Land Council NTRB area in the reporting period.

Output 1.3 – Agreements

This section refers to agreements made and finalised in the reporting period. Some negotiations may have commenced in the previous reporting period.

During the reporting period negotiations were conducted, progressed and concluded in two major matters:

- completion of the Miriuwung Gajerrong Ord Stage 2 Global Negotiations, resulting in the execution of the Ord Final Agreement; and
- finalisation of the ILUA between Nyikina Mangala Native Title claimants and the Shire of Derby / West Kimberley.

Miriuwung Gajerrong Ord Stage 2 Global Negotiations

As previously reported, the KLC has been engaged over the past two years in an intensive program of negotiations with the State Government for the development of the Ord Stage 2 project. The KLC represented the interests of the Miriuwung Gajerrong Native Title holders in the negotiations which, by the time all issues were resolved, constituted one of the largest and most complex Native Title negotiations in Australia.

The Miriuwung Gajerrong Ord Stage 2 Global Negotiations covered more than 65,000 hectares of land in the north east Kimberley and dealt broadly with the future development of the region, including the proposed expansion of the Ord Irrigation Scheme Area (the Ord Stage 2 project).

The negotiations also addressed compensation for the harm caused by the development of the Ord Stage 1 project, heritage protection measures for areas affected by Ord Stage 2, future development of the Kununurra township, and resolution of compensation for extinguishment of Native Title rights and interests in the Miriuwung Gajerrong No. 1 and Miriuwung Gajerrong No. 4 claim areas that will be affected by the Ord Stage 2 project. The negotiations were finalised in October 2005, and the Ord Final Agreement was signed on 6 October 2005. The Ord Final Agreement was lodged with the NNTT for registration as an Indigenous Land Use Agreement on 15 February 2006 and registered on the 16 August 2006.

The Ord Final Agreement represents a significant achievement for Native Title holders and delivers a range of community, social, cultural and economic benefits to the traditional owners of the north east Kimberley.

As with other future act proposals, resolution by agreement rather than litigation has delivered wide ranging benefits to Native Title holders, the State Government, developers and the community at large.

Nyikina Mangala Shire of Derby / West Kimberley ILUA

Following the signing of a Memorandum of Understanding between the Nyikina Mangala Native Title claimants and the Shire of Derby/

West Kimberley during the last reporting period, an Indigenous Land Use Agreement (ILUA) was negotiated and finalised by the parties in the current reporting period. The ILUA was signed by the parties during a ceremony at Udialla Springs on 19 October 2005.

The ILUA covers approximately 27,000 square kilometres of land and puts in place an agreed process for future act development works by the Shire and an agreed protocol for heritage protection.

Output 1.4—Compensation claims

No compensation applications for the loss of Native Title were made in the reporting year.

Output 1.5—Responses to future acts

The role of agreement-making in the performance of NTRB functions

It continues to be KLC's experience that negotiated outcomes provide tangible benefits for Traditional Owners, proponents and the wider community. Negotiations generally occur at a far lower cost than litigation or other forms of disputation when measured in terms of resource allocation, social and community benefits, and the cost to relationships between Native Title holders, proponents and the wider community.

Many future act negotiations require highly technical expert advice, particularly in relation to mineral resource development. The necessity for KLC to contract this expertise from outside the organisation has been an issue over a long period of time. While external assistance will continue to be required, particularly for more complex or technical matters, the KLC has moved significantly towards reducing external costs associated with agreement-making by developing its own internal expertise. The development of this internal expertise will continue in future reporting periods.

It remains KLC's practice to seek financial assistance from proponents to meet the costs of negotiation and agreement making. This approach alleviates the strain on limited NTRB funding and has allowed KLC to successfully conclude a number of important agreements, including the Koolan Island Co-Existence Deed and the Ord Final Agreement in this reporting period. Where third party funding cannot be secured and NTRB funds must instead be allocated for agreement-making to proceed, tension can be created between the need to respond fully and systematically to the future act matters and the need to progress Native Title applications. This tension is a major factor in prioritising and progressing future act negotiations.

All work is important in terms of advancing or protecting the rights and interests of Kimberley Traditional Owners and the KLC's NTRB responsibilities under the NTA. Unfortunately, the resources available to the KLC are not sufficient to meet all the demand for negotiations in all future act matters and, as such, there continues to be a process of prioritisation of work. The KLC has adopted practices, such as seeking third party funding and developing internal expertise, to mitigate the effects of this need to prioritise and will continue to pursue a more satisfactory path in the future so as to maximise the number of future act matters it is able to respond to.

The appointment of a Future Act Officer, funded by the State Government Office of Native Title (ONT), was maintained during the reporting period. This State-funded position remains a fundamental part of the KLC's ability to respond to the very large number of future act notices it receives in each reporting period.

The degree of response to future act notices by the KLC is dictated by the available resources and subject to the priorities set by the Executive Committee. The KLC has adopted policies and procedures to ensure that, so far as possible, registered Native Title claimants are notified of any acts that may affect their Native Title rights and interests. This is done as a matter of principle and in accordance with the requirements of this function under the NTA. Internal procedures adopted by the KLC to maximise this response output include the entry of all future act notices on to a dedicated database and provision of those notices to respective Native Title claim groups for the purposes of notification.

The Future Act Officer continued to be responsible for streamlining the process by which the KLC responds to future act notices, in particular mining and exploration matters, and refining the data collection process and the database for reporting purposes. Streamlining of the future acts procedures, and further development of the future acts database and notification process will continue to be a priority in the next reporting period.

The level of work in the future act area is shown in Table 2 (Output 1.5 and Output 4 – Notification). In the reporting period the KLC made, or otherwise facilitated the making of, responses to 269 future act notices. Of the 269 notices received in the reporting period, 239 were mineral tenement-related applications.

The various types of notices received by the KLC pursuant to the future act provisions of the NTA include:

- mineral tenement-related notices such as exploration, prospecting,

mining and petroleum titles;

- compulsory acquisition notices for land to be used by a third party;
- compulsory acquisition by a government party for public purposes;
- water licenses;
- road building; and
- other purposes.

Each type of future act attracts a different procedural right for registered claimants.

In accordance with the Service Level Agreement between the State and the KLC, during the reporting period the KLC submitted to the State of Western Australia two (2) six-monthly Future Acts Officer Reports showing the number of future acts for which notices were received, by type. This information is set out in Table 2 below.

Table 2: Future Acts

Type of future act	Number
Exploration license application	218
Mining lease application	10
Prospecting license	11
Miscellaneous license	5
Clear native vegetation	11
Compulsory acquisition	1
Diversification permit	3
Lease	1
Power supply	2
Public work	1
Residential	2
Tourist development lease	2
Water supply	2
TOTAL notices received	269

Major Future Act Negotiations & Agreements

- maintenance of negotiations for a Kimberley Regional Heritage Protection Agreement with mining industry representatives;
- agreement and execution of a co-existence agreement with Aztec Resources Ltd, allowing the mining of iron ore to restart on Koolan Island;

- ongoing facilitation of discussions between north Kimberley traditional owners and Inpex Browse Ltd;
- ongoing facilitation of discussions between affected Native Title holders and Woodside Energy Ltd on a range of matters, including heritage protection;
- re-commencement of negotiations with Sally-Malay Resources Ltd;
- ongoing discussions with the Indigenous Land Corporation on divestment of properties held on trust for Traditional Owners;
- ongoing discussions with the Aboriginal Lands Trust (ALT) on divestment of ALT-held properties; and
- heritage protection agreements for mining and exploration activities.

These agreements are reported on in more detail below.

Regional Heritage Agreement

Following recommendations made by its Technical Taskforce on Mineral Tenements and Land Title Applications (Taskforce), the Western Australian Government established the Heritage Protection Working Group (HPWG), in which the KLC continued to participate during the reporting period.

A further recommendation of the Taskforce was the development of regional heritage agreements between Native Title representative bodies and the mining industry. These agreements are intended to streamline the processing and granting of mining tenements, reduce the backlog of applications, and address heritage protection issues. The KLC maintained its involvement in the negotiation of a Kimberley regional heritage protection agreement during the reporting period. While no agreement has been reached to date KLC continues to use its existing regional exploration agreement as a standard heritage protection agreement. The negotiation was facilitated by the NNTT. The NNTT formed a view that the negotiations had reached a stalemate and therefore terminated ongoing negotiations.

Aztec Resources

During the last reporting period Aztec Resources Ltd applied to recommence iron ore mining over part of Koolan Island, which is located within the Wanjina Wunggurr Dambimangarri claim area. Following the development of a negotiation protocol, negotiations were conducted during the reporting period to secure the social, cultural, environmental, and economic interests of Native Title claimants in the land and waters affected by Aztec's proposed mining operations.

Following a period of negotiations, the Wanjina Wunggurr Dambimanggarri claimants authorised the Koolan Island Co-Existence Deed in early March 2006. The agreement was formally executed on 24 April 2006 and sets a new benchmark for agreement making between Native Title claimants and mineral development proponents, both in terms of process and outcomes.

The Koolan Island Co-Existence Deed is an example of the wide ranging benefits available to Native Title claimants, proponents and the wider community when competing interests are accommodated through negotiation rather than disputation.

[Inpex Browse Ltd](#)

During the reporting period the KLC continued to provide a high level of facilitation to affected Native Title claimants in relation to Inpex Browse Ltd's resource development proposals in the north Kimberley region. KLC will continue to operate in accordance with the co-operation and access agreements between the KLC and Inpex entered into during the last reporting period.

The KLC will continue to provide facilitation as necessary and appropriate in the next reporting period, and otherwise represent the interests of affected Native Title claimants in dealings with Inpex Browse Ltd.

[Woodside Energy Ltd](#)

During the reporting period the KLC continued to provide a high level of facilitation and assistance to Native Title claimants affected by Woodside Energy Ltd's consideration of sites for a gas processing facility in the north Kimberley region. This facilitation and assistance has been provided in accordance with the co-operation and access agreement reported on previously and, among other things, has resulted in Woodside entering into a formal heritage protection agreement and an agreement setting out procedures and protocols for the conduct of flora and fauna studies on the proposed sites.

The KLC has also facilitated a number of meetings between Woodside and affected Native Title claimants during the reporting period.

The KLC will continue to provide this high level facilitation and assistance as necessary and appropriate in the next reporting period, and will otherwise represent the interests of affected Native Title claimants in dealings with Woodside Energy Ltd.

[Sally Malay Ltd](#)

During the reporting period the KLC recommenced negotiations with Sally Malay Ltd in relation to its existing mining activities and future

mining activities. These negotiations are ongoing and are expected to continue into the next reporting period.

Aboriginal Lands Trust

The KLC continued to work with the Department of Indigenous Affairs regarding the transfer of ALT owned land to identify priorities. In February 2006, a number of KLC staff met with DIA staff over two days to discuss aspects of the ALT transfer process, including priorities and re-sourcing. Substantial work was undertaken taken to facilitate the transfer of the Derby leprosarium, where KLC provided a high level of facilitation and assistance to ensure appropriate traditional owner involvement was maintained through workshops, community meetings and other means. Work was also undertaken in relation to commitments made by the State of Western Australia in relation to the Karajarri consent determination, regarding the transfer of ALT lands within the claim area.

Other Future Act Activities

The KLC continues to be engaged in a high number of significant future act negotiations, whilst managing a broad future acts workload. During the reporting period:

- 80 objections were lodged,
- 39 agreements were entered into, and
- 34 objections were withdrawn (21 of those were withdrawn because an agreement had been signed)
- one tenement was excised so that it will not affect any Native Title Groups

Output 2 — Certification

Once work commences on the preparation of an application for determination of Native Title, KLC staff undertake the following tasks:

- ethnographic research to identify the basis of the community of Native Title holders, the area of land and/or sea to be claimed, and the membership of the claimant group;
- assistance to the community of Native Title holders to organise a series of inclusive and widely advertised meetings in relation to the application;
- provision of advice on the legal and other issues affecting the application;
- if requested, the provision of advice to the community in relation to the selection of the appropriate named applicants;
- making records of minutes of all meetings, and of the decision-making process undertaken within the meetings; and

- drafting application forms.

As part of the process of certification, a memorandum is prepared detailing the decision-making process by which the claimants select and authorise the applicants. If the KLC is satisfied that there has been a proper and fair process to authorise the named applicants by the claimant group, that all reasonable efforts have been made to identify all persons who hold or may hold Native Title rights and interests in the relevant land and waters, and that the application properly identifies the Native Title claimant group, then the Executive Director may certify the application.

In the reporting year, one new application for a determination of Native Title was certified by the KLC and filed in the Federal Court, in order to establish a right to negotiate with a mining party. In the same period, two Indigenous Land Use Agreements were certified by the KLC.

Output 3—Dispute Resolution

KLC dispute resolution functions are based on a philosophy that emphasises mediation and negotiation within the community of Native Title applicants, and seeks to identify one cohesive Native Title holding group prior to the lodgment or progressing of Native Title applications.

The process undertaken to assist in developing agreement between and within groups generally comprises of four parts.

- 1 Development of a comprehensive profile of the relevant Native Title community through detailed anthropological, historical, cultural and linguistic research, in order to guide facilitation and mediation strategies.
- 2 Convening inclusive community meetings that attempt to identify any relevant differences and disagreements between people. Depending on the gravity of a dispute, a community member of high standing or an impartial person of high standing from outside the community (such as the KLC Chairman or Executive Member) may be asked to chair the meeting. The KLC will assist the community to propose their own solutions to the relevant issues.
- 3 Where necessary, individual meetings may be held with concerned people to provide information and advice.
- 4 If no progress is made through internal attempts at dispute resolution, assistance may be requested from various formal institutions in relation to mediation. Such institutions include the Kimberley Aboriginal Law and Culture Centre, the National Native Title Tribunal and the Federal Court.

Output 3.1—Disputes relating to Native Title applications

It is the KLC's policy to endeavour to resolve disputes relating to Native Title applications by consultation at claimant meetings and in the course of claim preparation. In the current reporting period resolution of one dispute was attempted in this way. The dispute related to the Lamboo Native Title claim. Resolution of the issues in dispute is ongoing and will continue in the next reporting period. The National Native Title Tribunal has been assisting with these meetings.

Output 3.2—Disputes relating to ILUAs, rights of access and other matters

During the reporting year, the KLC did not provide assistance in disputes relating directly to right of access issues.

Output 4—Notification

The KLC has adopted policies and procedures to ensure that, so far as possible, registered Native Title claimants are notified of any acts that could affect their Native Title rights and interests. This is done as a matter of process and in accordance with the requirements of this function under the NTA.

KLC's performance against this function is reported in detail in the section above dealing with future act notices.

Output group 5—Agreement Making*Output 5.1—Number of ILUAs effected*

The Ord Final Agreement ILUA was finalized, executed and registered in the reporting period and the Nyikina Mangala—Shire of Derby/West Kimberley ILUA was finalised and executed in the reporting period and registration is expected in the next reporting period.

Output group 6—Internal Review

The KLC has two separate review policies relating to the exercise of KLC NTRB functions. One relates to decisions of the NTRB Grants Committee Application for Assistance in Native Title matters and the other relates to decisions of the KLC generally in the performance of our functions or exercise of powers.

Review of KLC NTRB Grants Committee decisions—Reasons for decision

Open and transparent policies have been adopted and implemented by the KLC over a number of years in relation to the decision making and review processes of its Grants Committee. The KLC's *Guidelines for Assistance in Native Title Matters* sets down the following procedure in

cases where the Grants Committee determines that assistance should not be provided.

- 1 If the Grants Committee rejects an application for assistance, the KLC provides the applicants with written reasons for the decision. The applicants are informed of their right to have the decision reviewed.
- 2 If applicants are dissatisfied with any aspect of the decision, and they give the KLC written notice that they wish to have the decision reviewed, then a review is conducted by a KLC NTRB Review Committee. The Review Committee consists of the KLC Chairperson and four nominees. This review committee cannot include any member of the Grants Committee that made the original decision, and members must declare any conflict of interest and absent themselves from the committee in the case of any such conflict.
- 3 In reviewing the decision, the NTRB Review Committee considers whether:
 - (a) any breach of natural justice has occurred;
 - (b) the decision was in any way induced or affected by fraud;
 - (c) there was insufficient material presented to justify the decision;
 - (d) an irrelevant consideration was taken into account;
 - (e) a relevant consideration was not taken into account;
 - (f) there was any element of bad faith in the decision making process;
 - (g) proper consideration was not made of the merits of the case before the decision was made;
 - (h) the decision was an unreasonable one; and/or
 - (i) the decision was arbitrary.
- 4 Once a decision is made, the NTRB Review Committee provides written reasons to the applicants for the decision. If the applicants are still not satisfied, they have the right to have the decision reviewed under the *Administrative Decisions (Judicial Review) Act 1977* (Cth). Applicants also have the right to seek a review of a decision under s203FB of the NTA.

The availability of this process of internal review is publicised through the following mechanisms:

- in writing at the time of informing applicants about the initial NTRB Grants Committee Decision;
- in community meetings; and
- at KLC Executive Committee meetings, in accordance with KLC guidelines for assistance.

KLC Grievance Resolution Policy

The grievance resolution policy is applicable where a member of the KLC is dissatisfied with a decision of the KLC Executive Director, a Sub-Committee of the Executive Committee, a delegated decision, or any act of a member of KLC staff. This policy excludes decisions of the NTRB Grants Committee.

The complainant is required to notify the Executive Director of their complaint. If the matter relates to a member of staff, it is referred to that staff member's supervisor and an internal investigation commences. If the grievance relates to a decision or act of the Executive Director, the matter is referred to the Chairman and an internal investigation takes place. The complainant is notified in writing of the outcome of the complaint.

This procedure is communicated to the community through appropriate measures.

Output group 6.1 & 6.2—Number of reviews pending and/or completed

No internal reviews were conducted in the reporting period.

Output 7—Other functions

Output 7.1—Educational Resources

During the reporting period the KLC produced 14 newsletters for our constituents containing information and educational material on current issues affecting the organisation and developments in Native Title law and related matters. The KLC also produced an Annual Report. Individual project and claimant newsletters were prepared to inform applicants of developments specific to their area.

The Chairman and Executive Director of the KLC appeared periodically on Kimberley regional, and wider radio and television, and in print to provide information about issues currently affecting Native Title holders. The KLC issued media releases about relevant issues on a regular basis.

The KLC maintained and updated its website, containing information for members and the general public on a range of relevant issues. The website allows downloading of newsletters, media releases, Annual Reports, the Strategic Plan, and other documents. Links are provided to other relevant websites, including the National Native Title Tribunal.

The KLC monitors the media for relevant information, which is distributed as appropriate to members, the Executive, and staff.

It is the policy of the KLC to produce innovative ways of disseminating information to address the diverse linguistic and cultural needs of the community.

Meetings with claimant groups were regularly convened at which information was provided to our members about current issues affecting Native Title holders and claimants, and developments in Native Title law. Regular meetings of the Executive Committee were held at which KLC policy positions were developed. As part of this process, the Executive Committee was informed of the wider community's range of views on Indigenous issues, and responses were developed as appropriate. The Executive Committee members are charged with the responsibility of representing their claim group's views and communicating KLC policy developments back to their claim groups.

Output 7.2—Agreements with other Representative bodies

The KLC has two formal agreements with other NTRBs.

- An agreement (Alliance of Western Australia Aboriginal Land Councils) has been made in the reporting period under section 203BJ and 203BK(1) of the Native Title Act, with all WA NTRBs (Ngaanyatjarra Council, Goldfields Land And Sea Council, Yamatji Marlpa Land And Sea Council, South West Land And Sea Council, and the Kimberley Land Council) to work together and create efficiencies.
- KLC members resolved to work with and establish the National Native Title Council. It is expected that formal creation of a legal entity will be completed in the next reporting period.

Output 7.3—Identification of Claimants and Holders

During the reporting period the KLC conducted ethnographic research across several regions. The results of this research are held within the KLC's records management systems. This research also contributes to the substantial holdings of the KLC's library. Current data retrieval records are updated to ensure all information is captured and accessible.

Governance and Administration

The KLC maintains appropriate accountability and management systems which result in unqualified audit reports. The system provides timely and high-quality information to support governance decision making and accurate and meaningful information to users on a regular basis. This ensures adequate financial controls are in place to responsibly manage the resources of the organisation.

Consultation (203D)

In compliance with its statutory functions of consultation about matters relevant to the operations of the NTA, the KLC consults as extensively with its members as resources permit.

As a community-based organisation, the KLC employs various consultative mechanisms. The primary means of consultation is through Native Title claimant group meetings, which are held as regularly as resources permit. These meetings provide a community and claim group-based forum where Traditional Owners are advised on the legal framework of Native Title, and recent court decisions relevant to the progress of their Native Title applications and/or agreement negotiations. These meetings also provide a forum for the taking of instructions in relation to specific future act or Native Title claim developments, as necessary and appropriate.

The degree of consultation with any particular claim group reflects priorities set by the Executive Committee. The KLC Executive Committee recognises that the priorities will shift in the next financial year following the successful completion of current matters in litigation, as they have done so in previous years. For example, the significant progress in litigated matters in the last reporting period allowed resources to be allocated to a number of claims in this reporting period which had, for several years, been allocated only very limited resources. This allocation of resources to claims which were previously classified as having low resources will continue in the future, and possibly accelerate if the trend towards negotiation and mediation over litigation and disputation is maintained by all major parties involved in Native Title resolution process.

Decision making and Review (203D)

It is KLC policy to make orderly and transparent decisions in accordance with the organisation's *Guidelines for Assistance in Native Title Matters*. The KLC continues to review, improve and publicise the KLC's decision making policies to ensure that they are effective, with appropriate and efficient internal review processes.

Priorities (203D)

The KLC continued to progress claims and applications prioritised according to the principles and categories outlined and in the KLC *Guidelines for Assistance in Native Title Claims*, including:

- the finalisation of Native Title cases currently before the courts;
- the advancement of Native Title applications in the mediation process by preparing connection reports; and
- the maintenance of other Native Title applications in the mediation stream by assisting claimant groups with side negotiations and agreements relating to Native Title rights and interests.

ii Actual performance in relation to performance targets, and reasons for differences

Set out below in tabular form is a summary report of the KLC's performance against output targets in the reporting period. The information in the table summarises the more detailed report on performance in the above sections of the Annual Report.

Table 3: Actual Performance In Relation to Performance Targets

Facilitation and assistance	Number
Claimant Applications (total)	32*
• Filed this year	1
• Number current	29
• Number registered with NNTT	29
Non-Claimant Applications	–
Agreements	39
Compensation Claims	0
Responses to Future Acts	269
Determination of Native Title	3
ILUAs registered	2
Disputes relating to Native Title Applications	2
Disputes relating to ILUAs, rights of access and other matters	0
Number of ILUAs effected	2
Number of reviews pending	0
Number of reviews completed	0

**NOTE: There were 32 claimant applications, although as Table 1 indicates the KLC grouped some of these applications as single activities.*

b) Narrative Discussion and Analysis of Performance Trend Information

The KLC was, generally, able to manage its workload in accordance with the Operational Plan in relation to both time and budget.

Factors, events or trends influencing performance

Factors which influenced the KLC's performance were generally external and beyond KLC's control. Significant external factors that impacted directly on the KLC's ability to maintain its objectives and priorities within desired timeframes included:

- the approach taken by the State Government, Commonwealth Government and other parties to the settlement of Native Title claims by agreement;
- the management of Native Title applications by the Federal Court, including the timetables directed by the Court and time taken to consider and deliver judgment; and
- resource constraints.

Legal Environment

There appears to be a trend towards mediation as opposed to litigation of Native Title claims. In light of developing High Court and Federal Court jurisprudence, there is increasing certainty as to how Native Title operates in relation to interests in land and water.

The High Court decisions in *Yorta Yorta*, *Ward* and *Yarmirr* established the general legal requirements that Native Title claimants must prove in order to establish connection to the land and waters subject to a Native Title application. These general legal requirements have been augmented by detailed judgments on specific fact situations in cases such as the *Neowarra*, *Alyawarr* and *De Rose* decisions. Both the *Alyawarr* and *De Rose* decisions were appealed to the Full Federal Court, and, in both cases, the Full Federal Court clarified important developments in the construction and recognition of Native Title rights and interests. Special leave applications to the High Court in both cases have been rejected, strengthening the position of the Native Title rights and interests found by the Full Federal Court in favour of the claimants. However, without a determinative decision of the High Court, the law cannot be said to be completely settled.

The development of increasing legal certainty will provide a more secure basis for all parties to enter into negotiated, rather than litigated, settlements of Native Title.

The KLC's priorities and activities were consistent with the increasing policy trend towards economic and social development in Indigenous communities.

The Commonwealth indigenous policy framework in relation to indigenous issues takes a whole of government and outcomes-focused approach to resolving entrenched economic, social, political and cultural concerns within many indigenous communities. Within this Commonwealth policy framework, Native Title is a necessary foundation for the development of effective and durable economic and social systems. Consistent with KLC policy this framework provides the KLC with the opportunity to further develop the links between economic and social development within indigenous communities and the recognition of traditional ownership of country, and of traditional laws and customs and traditional representative and governance structures.

The KLC Operational Plan prioritises the agreement making functions, including future acts and Indigenous Land Use Agreements, reflecting the policy of the KLC to continue to deliver sustainable economic development underpinned by recognition of Native Title.

The KLC continued its strong commitment to working with all parties to achieve negotiated and agreed Native Title outcomes, to ensuring the expedited resolution of all claims, and to negotiating sustainable economic development outcomes. As such the Operational Plan reflected the Commonwealth's commitment to a fair, stable, and effective Native Title system through whole-of-government co-ordination.

Regional Planning

The trend towards agreement on the prioritisation of Native Title claims continued in the reporting period. Regional Planning meetings were held with the NNTT and the State Government Office of Native Title. The meetings considered the status of each Kimberley claim, identified the claims which could realistically be advanced in the 2005-2006 reporting period, and the assistance to be provided by the NNTT.

The NNTT submitted mediation reports for the Federal Court Directions Hearings identifying the status of each of the applications and referring to major Future Act negotiations. The mediation reports identified priorities and activities agreed at Regional Planning Meetings and established in the Operational Plan. The reports provided an update on progress and made recommendations in relation to future activities.

The process has facilitated agreement between the KLC and the State on the prioritisation of claims and provided the basis of agreed submissions to the Federal Court on the programming of claims by the Court.

The Approach taken by Other Parties

State Native Title Policy Framework

It remained the policy of the KLC to seek settlement of Native Title claims by agreement where possible. Success in achieving this goal is dependent on the willingness of the other parties to negotiate fair agreements.

Positions adopted by the Western Australia Office of Native Title (ONT) reflected a developing commitment to address Native Title through negotiation rather than litigation. The KLC is committed to consultation with the Office of Native Title. The KLC is hopeful that, through the consultative process, opportunities for negotiated settlements of remaining Kimberley Native Title applications will be enhanced.

The policy governing negotiation of Native Title claims is established in the State of Western Australia's *Guidelines for the Provision of Information in*

Support of Applications for a Determination of Native Title. Compliance with the Guidelines is a precondition to commencing consent determination negotiations. During the reporting period it remained the policy of the State Government to require comprehensive connection material prior to entering into settlement discussions with the Native Title claimants.

Notwithstanding the willingness of ONT to clarify and discuss its connection requirements, significant resources were required to prepare connection material. This requirement remained a significant factor affecting the KLC's ability to progress more than a limited number of Native Title claims at the same time.

The State has a number of published policy documents that inform their relationships with Aboriginal people. Of particular importance are the "*Statement of Commitment to a New and Just Relationship Between the Government of Western Australia and Aboriginal Western Australians*", the "*Guidelines for the Preparation of Connection Material*", and the discussion paper "*Towards an Alternative Settlement Framework*".

Resource Constraints

The Kimberley covers an area of approximately 412, 451 square kilometres, divided into four local government areas, with six major towns and some 200 Aboriginal communities. Native title has been recognised over approximately 35% of the Kimberley region. Kimberley land tenure includes national parks (6%, with plans for further 4%), Aboriginal reserve (11%), pastoral leasehold (52%, with half held by Aboriginal interests) and unallocated Crown land (15%). The Kimberley economy is driven by the mining, tourism, agriculture, pastoral, pearling and fishing industries, together with the community services and public administration sectors.

The KLC's 2005–2006 Operational Plan sought to establish a balance between demand and resources. However the resources, human and financial, available to the KLC were limited. The KLC's capacity to progress all claims and to respond to all issues, including land access, was governed by resources. Any reduction in resources affects KLC's performance.

The substantial reduction in staff numbers in the reporting period 2003–2004 continued to affect the amount of work that could be undertaken by the KLC. Ensuring that constituents and third parties have realistic expectations of the KLC's capacity, and understand workload pressures, remains an ongoing issue.

As a result of the reduced staff numbers the KLC's centralisation of service delivery from the KLC's Broome and Kununurra offices has reduced the KLC's ability to service more remote areas. Effectively, each office must service an area in excess of 200,000 square kilometers. The organisation as a whole,

including its Executive Committee and management staff, service an area in excess of 412,000 square kilometers. As an example, travel between Broome and Kununurra for Executive meetings involves two days' driving. This significantly adds to costs, and has a marked effect on human resources.

While the KLC continues to progress those matters in the litigation stream, the financial and human resources available to progress other matters in mediation, and to respond to future acts, remained limited during the reporting period. The reduction in staffing levels has intensified the demands on remaining staff to respond to the range of statutory functions. This has placed extremely high workload pressure on remaining staff in the organisation.

In the reporting period, a new Principal Legal Officer and three new Legal Officers were appointed. In the KLC's Native Title Services Unit a new Manager and two Senior Native Title Services Officers were appointed. With the exception of one Legal Officer position, these appointments were made to fill vacancies in existing positions.

An ongoing issue for the KLC is the strong demand on the labor market created by the ongoing growth and development of industries in the Kimberley region, in particular industries associated with the mining and resources boom in Western Australia. The KLC is not in a position to compete in the current labor market with other employers, primarily because it cannot offer salary packages which are commensurate with those offered in both the public and private sectors to experienced and less experienced professional staff. This lack of competitiveness is exacerbated by the high cost of living, including rental accommodation, in the Kimberley.

In the reporting period, the KLC has also had difficulty recruiting and retaining experienced support staff. The highly competitive labor market, exacerbated by the high cost of living in the Kimberley was again the significant factor. This has had a particular impact on the KLC's capacity to recruit staff.

The KLC's physical office accommodation remains below standards that are conducive to efficiency, safety, and productivity. The inability of KLC to secure capital to upgrade its office accommodation continues to negatively affect the organisation's outputs and performance.

Federal Court Approach to Kimberley Native Title Applications

The Federal Court continued to case manage Native Title applications at six monthly Directions Hearings during which the Court reviewed and monitored the progress of all KLC applications in the mediation stream. If the Court considers that mediation is unlikely, or that insufficient progress has been made, the matter may be referred to hearing.

The Federal Court continued to take a rigorous approach to progressing

Native Title applications in the reporting period and ordered the development of mediation protocols for two claims in mediation. Mediation protocols require concrete progress on an application otherwise the matter would be set down for hearing and determination.

Significant changes in the nature of principal KLC Functions/ Services

There were no significant changes in the nature of the KLC's principal functions and services. Resource allocation remained heavily weighted towards the facilitation and assistance function of the litigation cases.

Performance against service charter/standards, complaints data, and the KLC's response to complaints

The KLC does not have an explicit service charter or customer service standards. A process of management of complaints is used. Written complaints are referred to the Executive Director, or delegate, who assesses them. In cases where it is appropriate to respond, the Executive Director refers them to an appropriate person to manage the complaint resolution process, allocates a priority response time, and either directly manages or case manages responses required to deal with the complaint.

Six new complaints were received in the reporting period. The NNTT assisted with a seventh complaint that has been on going from the previous reporting period.

These complaints dealt with four main areas:

- lack of consultation with Traditional Owners across the region - this follows from the KLC's inability to maintain offices and staff in Halls Creek and Fitzroy Crossing;
- Intra-Indigenous issues;
- Clarification of native Title rights and interests under the Native Title Act; and
- Actions of KLC staff members.

KLC responded to, and is dealing with, these complaints in accordance with the complaints procedure process detailed in the Policy and Procedure Manual.

c) Discussion and analysis of the NTRBs financial performance

During the reporting year the KLC recorded a surplus on all activities of \$214,768 (2005 — \$174,728).

This surplus was achieved against a background of strong pressures on the costs of doing business in the Kimberley, flowing from the significant increase in the price of fuel during the reporting period. These pressures are expected to continue during the new reporting period.

The KLC has adopted a process of continuous improvement of its financial controls and procedures to ensure that effective financial management is maintained.

The level of funding provided does not allow for re-opening of offices in Fitzroy Crossing and Halls Creek. This requires KLC staff to travel extensively, resulting in total travel costs exceeding \$1 million, a significant proportion of the KLC's expenditure.

Some additional funding has been provided during the period for improvements to the KLC's offices. Although still less than ideal, this has created a more satisfactory work environment, and allows the KLC to present more professionally to its clients and business partners.

At June 30 2006 the KLC was in a strong financial position with net assets increasing to \$1,982,247 (2005 — \$1,767,582) and with the net current asset position improving to \$597,025 (2005 — \$458,443).

Unexpended Grants at 30 June 2006 stood at \$703,211 (2005 — \$542,703) of which \$10,561 is a deficit related to NTRB Operational Grants.

Table 4: Summary of Resources by Output

	(1) Alloca- tion of Expenses 2004–05 \$'000	(2) Alloca- tion of Expenses 2005–06 \$'000	(3) Variation (column 2 minus column 1)
Price of NTRB Functions			
-Facilitation and Assistance	3,019	3,443	424
-Certification	41	120	79
-Dispute Resolution	81	214	133
-Notification Function	367	237	(130)
-Agreement Making	122	84	(38)
-Internal Review	163	0	(163)
-Other Functions	448	790	341
Total Price of Functions	4,241	4,888	647
Source of Funding			
Revenue from Australian Government for NTRB functions	3,680	4,215	535
Revenue from other Sources	526	413	(113)
Total Price of Functions	4,206	4,628	422

It should be noted that the figures reported in this table are not actual

expenses, but allocations of expenses derived from modeling of best estimates of use of the KLC's staff and resources.

Table 5: Operational Plan Expenditure

	(1) Actual Expenses 2004–05 \$'000	(2) Budgeted Expenses 2005–06 \$'000	(3) Actual Expenses 2005–06 \$'000	(4) Variation (column 3 minus column 2)
Operational Plan				
-Activities	N/A	2,571	2,486	(85)
-Corporate	N/A	1,918	2,153	235
Total	N/A	4,489	4,639	150

Note: This format was not used for Operational Plan and reporting in 2004-05

d) Developments since the end of the financial year that have affected or may significantly affect the Kimberley Land Council's operations or financial results in future.

Funding

The amount of Commonwealth funding in the year 2006–2007 was reduced by \$1,055,097 (20%) from the requested amount. The KLC's capacity to implement the Operational Plan is governed by available resources. Furthermore, the final funding offer and payment was not agreed until 1 August 2006, limiting the KLC's ability to conduct new business during the early weeks of the financial period.

Changes to the Native Title Act formally announced in August 2006 include multi-year funding for NTRBs. Although the practical impact is yet to be seen, it is anticipated that the KLC will need to make significant changes to its financial planning, budgeting and management processes.

Commonwealth Native Title Policy Framework

The Attorney-General has announced details of Government reforms aimed at improving the resolution of Native Title claims. These reforms focus on mediation over litigation and establish directions for dismissing Native Title claims which do not meet the registration test in section 190 of the NTA or which are not progressed in a timely manner. Amendments to the Native Title Act are likely to be introduced later this year, along with legislation covering other elements of the Government's (technical amendment) reforms. It is likely that these reforms could have significant resourcing implications for the Kimberley Land Council.

As part of the reforms, the National Native Title Tribunal will be granted additional (and exclusive) powers to mediate Native Title claim matters. In practice, this will mean that all Native Title claims will be referred to mediation by the NNTT exclusively - no other dispute resolution mechanism (including mediation by the Federal Court or other suitably qualified body) will be available. As the NNTT might not always be best placed, qualified or properly resourced to conduct certain mediations, the grant of exclusive mediation powers to the NNTT could lead to greater procedural delays and increased costs for all parties.

Other reforms include the introduction of periodic recognition for Native Title Representative Bodies and other Native Title Service delivery providers. Under this reform, NTRBs will be recognised for fixed term periods of between 1 and 6 years only and will be required to seek re-recognition at the end of each fixed term. The requirement to re-apply for recognition at the end of each fixed term period is likely require diversion of key NTRBs resources away from their core functions.

The Kimberley Land Council has raised these concerns with the Government.

5 CORPORATE GOVERNANCE

Statement of the main corporate governance practices in place

The Corporate Governance of the KLC takes place in accordance with its incorporation under the *Aboriginal Councils and Associations Act 1976*. Governance practices are set out in the KLC's constitution. To the extent allowed under this framework, the elected Executive makes decisions from time to time about governance practices.

The Executive appoints an Executive Director to manage the affairs of the KLC on a day to day basis. The Executive Director is also a member of the Executive committee. The Executive Director is the interface between the Executive and the staff of the KLC. The Executive Director and senior management staff provide regular reports to the Executive, but the Executive take no direct role in staff management or day to day operation of the KLC. The KLC is managed through a delegations framework and in accordance with the policy and procedures set by the Executive Committee.

a) Name of the senior executive and their responsibilities

The Chairman and the Deputy Chairman are elected by the Executive Committee to represent the members, the committee, and the organisation. They provide leadership and direction to the committee and the organisation, ensure that the KLC operates properly and fairly for all its members, speak on behalf of the KLC and its members, sign off on legal documents, and chair KLC meetings.

Mr Tom Birch is the Chairman of the KLC (elected 1998, current). The responsibilities of the Chairman are to ensure that the KLC runs successfully by making sure meetings are held, and that they are run properly, managing meeting agendas, allowing all Executive members to participate in decision making, ensuring they understand all decisions made by the Executive, and signing to confirm accuracy of meeting minutes.

The Chairman provides leadership to the KLC, the Executive Committee, the Executive Director, and staff and acts as KLC spokesman and interface between the KLC and the broader community.

Mr Frank Davey is the Deputy Chairman of the KLC (elected 1998, current). The responsibilities of the Deputy Chairman are to work closely with the Chairman, and to take the place of the Chairman when necessary. The Deputy Chairman shares the responsibilities of the Chairman in guiding the committee and ensuring the smooth running of the KLC.

Mr Wayne Bergmann is the Executive Director of the KLC (appointed June 2001, current). The responsibilities of the Executive Director are the overall

day-to-day operational and administrative management of the KLC, including overseeing the operations of the corporate services, financial, legal, and Native Title services units. The Executive Director is the interface between the Executive and the staff of the KLC.

The Executive Director is assisted by a management team consisting of the Principal Legal Officer (Ms Judith Bornstein [1/7/05–28/2/06], and Mr Robert Powrie [23/5/06 on]), the Finance Manager (Mr Kevin Smith), the Native Title Services Unit Manager (Mr Bruce Goring [1/7/05–8/12/05], and Ms Athlea Sullivan [27/1/06 on]), and the Executive Unit/Corporate Services Manager (Ms Christine Robinson).

The Executive Director and management team meet on a monthly basis to determine operational and administrative matters. Managers conduct meetings, as required, with staff in their areas of responsibility.

b) Senior management committees and their roles — separation of powers

Number of board and committee meetings; attendance by members

The Executive meets a minimum of four times per year to make decisions about the direction and activities of the organisation and other appropriate matters including the Strategic and Operational Plans.

The Executive has no direct role in the day to day administration and operation of the KLC. Specifically, they do not have a direct role in staff recruitment and management, or in financial management. The role of the Executive is to set the direction of the organisation, establish priorities, and direct the development of the Strategic and Operational plans. The Executive delegates implementation of its decisions, including implementation of the Strategic and Operational Plans, to the Executive Director, and through him to the staff of the organisation.

The Executive Committee members for this reporting period, and meetings they attended, are listed in Tables 6 and 8 following.

**Table 6: KLC Executive Committee Members 2004–2006
[as at end of reporting period]**

CLAIM GROUP	EXECUTIVE NOMINATION	PROXY NOMINATION
Balanggarra	Tom Birch, Vernon Gerrard	
Bardi Jawi	Frank Davey, Brian Lee	Ian Davey
Bunuba	George Brooking, June Oscar	
Dambimangarri	Warren Barunga, Lindsay Mungulu	
Goolarabooloo – Jabirr Jabirr	TBA	
Gooniyandi	Sam Cox, Lorraine Shandley	Topsy Chestnut, Michelle Torres
Karajarri	Edna Hopiga, Nita Marshall	Mervyn Mulardy Jnr, Dwayne McMahon
Kurungal	Alan Lawford, Butcher Wise	
Lambo	Rosemary Carey, Rosemary Yeeda	TBA
Malarngowem	Rammel Peters, Shirley Drill	TBA
Mayala	Aubrey Tigan, Daphne Wilfred	Lorna Hudson
Miriuwung Gajerrong	Edna O'Malley, Des Hill	Ben Ward, Marjorie Brown
Ngarrawanji	TBA	
Ngurrara	Percy Bulgardie, Marmingee Hand	Tom Lawford, Ronnie Jimbidie
Nykina Mangala	Anthony Watson, Neville Poelina	
Purnululu	Pearl Gordon, Phyllis Gallagher	
Rubibi	Frank Sebastian, Linda Dean	Louisa Grey, Mary Tarren
Scotty Birrell & Ors	Stuart Morton, Christine Birrell	
Tjurabalan	Sandy Cox, Fatima Lulu	Gracey Mosquito, Donovan Jenkins
Uunguu	Louis Karadada, Regina Karadada	
Wanjina Wungurr Wilinggin	Penny Bidd, Pansy Nulgit	Geoffrey Dutchie, Keith Nenowat
Special Executive Members	Ben Ward, John Watson	
Special Advisers	Joe Davey, Joe Brown	

Joe Brown and Joe Davey acted as Special Advisers to the Executive Committee. Wayne Bergmann continued as Executive Director during the reporting year. The Special Members and Special Advisers may attend any scheduled meetings.

As a community-controlled organisation, all major decisions are made by the Executive Committee, or the Executive Sub-Committees, and then implemented by the Executive Director.

**Table 7: KLC Executive Sub-Committee Members
2004–2006 [as at end of reporting period]**

Tom Birch (Chairman)	Frank Davey (Deputy Chairman)
Anthony Watson	Rosemary Carey
Neville Poelina	Edna O'Malley
Linda Dean	Daphne Wilfred
Vernon Gerrard	Pearly Gordon
Alan Lawford	Des Hill
Joe Brown (Special Adviser)	

Table 8: Executive Committee and Executive Sub-Committee Member Meeting Attendances for 2005–2006

EXECUTIVE MEMBER	Aug-05 Sub	Aug-05 AGM	Oct-05 Special	Dec-05 Full	Feb-06 Sub	Apr-06 Full	Jun-06 Full	MTGS AT-TENDED	TOTAL MTGS TO ATTEND
Barunga, Warren	N/A	Y	N/A	Y	N/A	Y	PROXY	4	4
Bergmann, Wayne	Y	Y	Y	Y	Y	Y	Y	7	7
Bidd, Penny	N/A	PROXY	N/A	N	N/A	N	N	1	4
Birch, Tom	Y	Y	Y	Y	Y	Y	Y	7	7
Birrell, Christine	N/A	N	N/A	N	N/A	N	N	0	4
Brooking, George	N/A	Y	N/A	Y	N/A	N	Y	3	4
Brown, Joe	N	Y	Y	Y	Y	Y	Y	6	7
Bulgardie, Percy	N/A	Y	N/A	Y	N/A	N	Y	3	4
Carey, Rosemary	N	N	N/A	Y	N	N	Y	2	6
Cox, Sam	N/A	N	N/A	N	N/A	N	N	0	4
Cox, Sandy	N/A	Y	N/A	Y	N/A	Y	N	3	4
Davey, Joe	N	Y	N/A	Y	Y	Y	N	4	6
Davey, Frank	N	Y	N/A	Y	Y	Y	PROXY	5	6
Dean, Linda	N	N	N/A	Y	Y	N	Y	3	6
Drill, Shirley	N/A	N	N/A	Y	N/A	N	Y	2	4
Gallagher, Phylis	N/A	N	N/A	Y	N/A	Y	Y	3	4
Gerrard, Vernon	N	Y	N/A	Y	Y	PROXY	Y	5	6
Gordon, Pearl	N	N	N/A	Y	Y	N	Y	3	6
Hand, Marmingee	N/A	PROXY	N/A	N	N/A	N	N	1	4
Hill, Des	Y	Y	Y	N	Y	N	N	4	7
Hopiga, Edna	N/A	Y	PROXY	Y	N/A	Y	N	4	5
Karadada, Louis	N/A	Y	N/A	Y	N/A	Y	PROXY	4	4
Karadada, Regina	N/A	Y	N/A	Y	N/A	Y	Y	4	4
Lawford, Alan	N	Y	N/A	N	Y	Y	Y	4	6
Lee, Brian	N/A	N	N/A	Y	N/A	Y	Y	3	4
Lulu, Fatima	N/A	Y	N/A	Y	N/A	Y	N	3	4
Marshall, Nita	N/A	Y	N/A	Y	N/A	Y	Y	4	4

Morton, Stuart	N/A	N	N/A	N	N/A	Y	N	1	4
Mungulu, Lindsay	N/A	N	N/A	N	N/A	N	Y	1	4
Nulgit, Pansy	N/A	N	N/A	N	N/A	N	N	0	4
O'Malley, Edna	N	PROXY	N/A	N	Y	N	Y	3	6
Oscar, June	N/A	Y	N/A	Y	N/A	N	N	2	4
Peters, Rammel	N/A	Y	N/A	N	N/A	N	N	1	4
Poelina, Neville	N	Y	Y	Y	Y	N	Y	5	7
Sebastian, Frank	Y	Y	N/A	Y	Y	N	Y	5	6
Shandley, Lorraine	N/A	Y	N/A	N	N/A	N	Y	2	4
Tigan, Aubrey	N/A	N	N/A	Y	N/A	N	Y	2	4
Ward, Ben	N/A	N	N/A	N	N/A	N	N	0	4
Watson, John	N/A	Y	Y	N	N/A	Y	N	3	5
Watson, Anthony	N	Y	Y	Y	Y	N	Y	5	7
Wilfred, Daphne	N	Y	N/A	Y	Y	Y	Y	5	6
Wise, Butcher	N/A	Y	Y	Y	N/A	Y	Y	5	5
Yeeda, Rosemary	N/A	N	N/A	Y	N/A	N	N	1	4
TOTAL	4	29	9	29	15	20	27		

Training arrangements for board members

During the reporting period

- the Chairman and Executive Director attended the NTRB's CEO Forum, Canberra, 15-16 March 2006
- The Executive Director also attended Chief Financial Officers Forum, Adelaide, 8-9 February 2006
- Five Executive members also attended the NTRB national conference in Darwin where they attended a variety of sessions on the current issues and trends in Native Title.
- Two executive members accompanied the Executive Director to Canada to present a paper on implementation of agreements, at the *Achieving Objectives, A new Approach to Land Claims Agreements in Canada* conference in Gatineau, Quebec.

During the reporting period information sessions were also provided by staff on planning and prioritisation of claim work activities. The KLC Executive adopted a code of conduct for Executive members and staff.

Development of the 2006-07 Operational Plans included a component of informing the Executive of how the planning process operated, methods of prioritisation, and how the Plans are implemented.

During the reporting period, Executive members participated in one workshop conducted by the NNTT on the future acts process.

c) **Corporate and Operational Planning and Associated Performance Reporting and Review**

The KLC conducted three staff workshops in the reporting period. The purpose of the workshops was to review the 2005–06 Operational Plan and prepare suggested priorities for the 2006–2007 Operational Plan to present to the Executive, and staff induction and cultural awareness bush camp workshop. Issues discussed also included:

- Tasks and function of the Native Title Services Unit—outputs and outcomes;
- Revised Delegations Framework;
- Workplace planning;
- Servicing the KLC NTRB area; and
- Management and decision-making processes and lines of responsibility.

There were also three workshops held involving Native Title Services Unit staff and Legal Unit staff. These were used to update progress towards the Operational Plan, refine claims strategies, and discuss operational and management matters.

d) Financial and operational risk management

Following the processes established in the previous reporting period (when the KLC was under grant control), the KLC has maintained and applied stringent financial and operational procedures to ensure that adequate information is available for the effective management of the organisation.

The KLC employs a Financial Manager to manage the financial affairs of the organisation. The Financial Manager is a qualified CPA, and forms part of the KLC's senior management team.

The senior management team meets monthly to review progress, and identify upcoming issues. Financial and operational reports are presented to these meetings, and any issues or potential issues requiring attention are dealt with. The management group is pro-active in identifying financial and operational risk, and invariably adopts a cautionary position.

The Executive Director and senior staff provide financial and operational reports to the Executive meetings, and assists the Executive in identifying potential risks and appropriate courses of action to minimize or exclude those risks.

The KLC retains an Auditor who assists the organisation with financial management, compliance, and risk analysis.

The Executive Director maintains a watching brief on all the activities of the KLC, and keeps the Chairman and Deputy Chairman apprised of operational and financial matters.

e) Ethical policy and standards

The work of the KLC staff is conducted in accordance with ethical standards relevant to their particular disciplines or professions, to professional codes of conduct, and in line with the KLC policy and procedures manual.

The KLC Board ratified a new Code of Conduct for the Board and staff at the June 2006 Executive meeting.

f) Remuneration of senior staff

Remuneration of senior staff is negotiated in relation to market factors, and resource and other recruitment issues for the organisation. Three employees received a salary package of more than \$100,000 during the reporting period.

6 EXTERNAL SCRUTINY

Significant developments in external scrutiny

The KLC was subject to an audit by the Office of Evaluation and Audit (Indigenous Programs), under the Department of Finance and Administration pursuant to Section 193Y(1) and 193X(1)(c) of the *Aboriginal and Torres Strait Islander Act 2005*. The draft report from this audit was provided to the KLC in late June 2006. The report is expected to be finalized early in the next reporting period.

a) Judicial decisions and decisions of administrative tribunals

There have been no judicial or administrative tribunal decisions in relation to the KLC during the reporting period, other than legal decisions that affected Native Title matters generally.

b) Evaluation and/or audit reports — findings and responses

As mentioned above, the KLC was subject to an audit by the Office of Evaluation and Audit (Indigenous Programs). The report from this audit was not finalized as at the end of this reporting period.

The KLC Financial Statements to the end of June 2006 were independently audited. Details of this audit can be found in the Financial Statements section of this Annual Report.

c) Other external review

There have been no other external reviews of the KLC.

7 MANAGEMENT OF HUMAN RESOURCES

Assessment of effectiveness in managing and developing human resources to achieve NTRB objectives

a) Workplace planning, staff retention and turnover

The KLC recognises the importance and value of the Executive Committee and staff contribution to workforce planning. In line with policies developed in previous reporting periods, all operational staff prepare detailed workplans. These reflect the Strategic and Operational Plans of the organisation.

Executive Committee members and staff were extensively involved in planning processes for the 2006–2007 Operational Plan.

Managers conduct regular planning sessions with staff in their units. Information from these sessions informs review and planning undertaken by the senior management group on a monthly basis.

Staff from the various offices meet regularly to discuss workplace issues. The Native Title Services Unit and legal department met on several occasions to report on progress of activities to the Operational Plan and develop strategies for the progression of activities. An annual three day whole-organisation meeting was held on strategic directions and induction of staff with input from Executive Committee members.

The induction and training of new staff has created additional pressures on the remaining staff in the short-term and additional training and support was required and implemented.

The KLC also recruited a new Principal Legal Officer during the reporting period.

Performance management

The KLC continues to utilise and refine its performance management procedures and activity based reporting. Staff performance is reviewed on a regular basis as required, and staff prepare and work to detailed workplans.

b) Training and development undertaken and its impact

The KLC values its staff members and recognises the importance of skills development not only for staff but also for its Executive Committee members.

During the reporting period staff participated in training sessions with NNTT on future acts, agreement making, the history of Native Title, the NTA and amendments to the Act. The PLO and a Legal Officer attended industry specific training at University of NSW on “Native Title Law, Policy & Practice” conducted by Sean Brennan. Nine staff members also attended the NTRB conference in Darwin.

Two Indigenous and one non-Indigenous staff members undertook undergraduate or postgraduate studies in business and management. The KLC Anthropologist received a scholarship from ONT to undertake a Graduate Certificate in Native Title and Cultural Heritage Research.

Project staff attended Red Cross workshop on Participatory Project Management. Staff members attended both the Senior Professional Officers workshop and the Field Officers workshop, held in Adelaide.

Finance and corporate services staff attended workshops on 'Salary Packaging for Not-For-Profits', 'Implementing International Financial Reporting' standards for not for profits and CPA workshops on KPIs and integrating budgets and reporting.

The Legal Unit has held two professional development workshops which included consideration of progressing of claims in the context of developing legal principles and ONT policy.

c) Impact and features of certified agreements and AWAs

Employment at the KLC is covered by the KLC Enterprise Agreement (2004). This agreement includes provisions covering employment and remuneration, rates of pay and their adjustment, leave and allowances, workplace relations, organisational change and human resource management.

The agreement provides for certainty and transparency in staff employment conditions, defining the role and activities of the organisation in staff management. This has improved employment security and simplified staff management.

d) Occupational Health and Safety performance

While the KLC complies with the basic occupational health and safety requirements, it is concerned to improve standards in this regard. However, in the absence of adequate funding it is difficult to achieve best practice in this area. Every effort continues to be made to ensure that staff work in a safe working environment at all times, whether in the office or the field. During the reporting year, many staff workstations were upgraded and all staff were offered OHS, first aid and four-wheel-drive driver training. One staff member completed the five-day OHS Representatives Training Course.

e) Statistics on staffing

The KLC staff is comprised of Indigenous and non-Indigenous personnel and includes lawyers, anthropologists, Native Title officers, librarians, and financial and administrative personnel. Fifteen positions were funded through project grants other than OIPC's NTRB funding.

Table 9: Staff profile as at 30 June 2006

	Indigenous	Non-Indigenous	Total
Male	8	9	17
Female	12	18	30
Total	20	27	47

At 30 June 2006 there were no staff vacancies.

f) Indemnities and insurance premiums for officers

The officers of the KLC are covered for professional indemnity under the policy of *Aboriginal Association Liability Insurance (Professional Indemnity)* to the value of \$10M.

8 CONSULTANTS, TENDERING AND CONTRACTING

Competitive Tendering and Contracting Practices

The KLC uses a register of consultants, as previously approved by ATSIC. Consultants are required to submit fixed fees for each financial year, which makes for competitive tendering.

The practice of contracting consultants to provide expertise is less than ideal for the KLC. The reality is that the KLC cannot employ (on a salaried staff basis) all the necessary expertise required to progress Native Title claims and complex commercial negotiations. The demands of litigation and negotiations within difficult timetables necessitate high expenditure on external assistance. With limited funds to devote to training and specialist skills development within the organisation, it is KLC policy that consultant contractors work closely with staff, to facilitate transference of skills and expertise. This approach will help to develop and retain capacity within the organisation.

Number and expenditure – consultancy services

The KLC let 73 consultancy service contracts in 2005–2006. Thirty eight (38) were related to legal counsel services, 29 to anthropological services and 6 to other services. The total costs to the KLC for consultancy services in the reporting year were:

Table 10: Consultancy Services Costs

Area	Amount
Legal	587,393
Anthropological	332,827
Other	124,064
TOTAL	1,044,284

9 FINANCIAL STATEMENTS

FOR THE YEAR ENDED 30 JUNE 2006

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**KIMBERLEY LAND COUNCIL
ABORIGINAL CORPORATION**

EXAMINER'S REPORT 2006

[section 59(3) Aboriginal Councils and Associations Act]

To the Members of Kimberley Land Council Aboriginal Corporation,

PART A - Financial Statements

SCOPE OF AUDIT

We have audited the financial statements, being a general purpose financial report, of Kimberley Land Council Aboriginal Corporation for the financial year ended 30th June 2006. The Association's Committee members are responsible for the preparation and presentation of the financial statements and have determined that the accounting policies used are consistent with the financial reporting requirements of the Association and are appropriate to meet the needs of the members and funding agencies. We have conducted an independent audit of these financial statements in order to express an opinion on them to the members of the Association. No opinion is expressed as to whether the accounting policies used are appropriate to the needs of the members.

The financial statements have been prepared for distribution to members, in accordance with Section 59(2) of the Aboriginal Councils and Associations Act, and to the Association's funding agencies. We disclaim any assumption of responsibility for any reliance on this report or on the financial statements to which it relates to any person other than the members and the Association's funding agencies, or for any purpose other than that for which it was prepared.

The audit has been conducted in accordance with Australian Auditing Standards applicable to the audit of general purpose financial reports. Our procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial statements, and significant accounting estimates. These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial statements are presented fairly in accordance with accounting policies described in Note 1 to the financial statements. These policies do not require the application of all accounting standards.

The audit opinion expressed in this report has been formed on the above basis.

Independence

In conducting our audit, we followed applicable independence requirements of Australian professional ethical pronouncements.

OPINION

In our opinion,

- the financial statements present fairly, in accordance with the accounting policies described in note 1 to the financial statements, the financial position of the Association as at 30th June 2006 and the results of its operations for the year then ended;
- the financial statements are based on proper accounts and records and are in agreement with those accounts and records;

PART B - Compliance

SCOPE OF AUDIT

Section 59(3)(a)(i) of the Aboriginal Councils and Associations Act 1976 requires the Examiner to examine, "whether the Governing Committee and the Association have complied with the obligations imposed by this Act, the regulations and the Rules of the Association and to report on "any irregularity that is disclosed".

The audit has been conducted in accordance with Australian Auditing Standards as necessary to provide reasonable assurance as to whether, in all material respects, the Governing Committee and the Association have complied with the Rules of the Association and the relevant requirements of the following provisions [to the extent applicable] of the Aboriginal Councils and Associations Act 1976 and regulations: sections 49, 49A, 49B, 49C, 49D, 49E, 52, 53, 54, 56, 57, 58, 59.

**KIMBERLEY LAND COUNCIL
ABORIGINAL CORPORATION**

EXAMINER'S REPORT 2006

[section 5M(3) Aboriginal Councils and Associations Act]
(continued)

Our procedures included examination, on a test basis, of evidence supporting compliance with the Rules of the Association and those requirements of the Aboriginal Councils and Associations Act 1976 and regulations as specified. These tests have not been performed continuously throughout the period, were not designed to detect all instances of non-compliance and have not covered any other provisions of the Aboriginal Councils and Associations Act 1976 and regulations apart from those specified.

The Governing Committee of the Association is responsible for ensuring compliance with the Aboriginal Councils and Associations Act 1976, its regulations and the Rules of the Association.

The opinion on compliance expressed in this report has been formed on the above basis.

OPINION

In our opinion, the Governing Committee and the Association have substantially complied with the obligations imposed by the Rules of the Association and those sections as specified above in the Aboriginal Councils and Associations Act 1976 and regulations.

Ron Richards

R.S. RICHARDS CPA [Auditing]
PO Box 328
Ravensthorpe WA 6346
Tel: 08 9838 1117

15th September 2006

STATEMENT BY COMMITTEE

KIMBERLEY LAND COUNCIL ABORIGINAL CORPORATION

Native Title Act 1993
(as amended)


In our opinion the attached financial statements for the year ended 30 June 2006 are based on properly maintained financial records and give a true and fair view of the matters required to be disclosed by Schedule 2 of the Finance Minister's Order as promulgated in accordance with the Commonwealth Authorities and Companies Act 1997.

In our opinion, at the date of this statement, there are reasonable grounds to believe the Kimberley Land Council Aboriginal Corporation will be able to pay its debts as and when they become due and payable.



Executive Director

Finance Manager



Committee Member

August 2006

INCOME STATEMENT

for the year ended 30 June 2006

	Note	2006 \$	2005 \$
INCOME			
Revenue			
Revenues from Grants	3A	5,870,141	4,400,568
Goods and Services	3B	1,942,400	3,900,713
Donations	3E	47,770	22,523
Interest	3C	73,887	33,697
Total Revenue		7,934,199	8,357,500
TOTAL INCOME		7,934,199	8,357,500
EXPENSES			
Employees	4A	2,803,745	2,964,031
Suppliers	4B	4,757,081	5,102,747
Depreciation and amortisation	4C	100,502	75,200
Finance Costs	4D	22,250	20,365
Net loss from disposal of assets	3D	13,375	-
Other Expenses	4E	37,853	20,429
TOTAL EXPENSES		7,734,806	8,182,772
Operating Result before income tax		199,393	174,728
Income tax expense		-	-
OPERATING RESULT		199,393	174,728

The above statement should be read in conjunction with the accompanying notes

BALANCE SHEET

for the year ended 30 June 2006

	Note	2006 \$	2005 \$
ASSETS			
Financial Assets			
Cash	5A	2,846,220	2,117,857
Receivables	5B	761,114	1,019,289
Investments - controlled entity		1	1
Total financial assets		<u>3,607,336</u>	<u>3,137,146</u>
Non-financial assets			
Land & Buildings	6A	1,283,546	1,225,086
Plant and Equipment	6B	300,475	282,119
Total non-financial assets		<u>1,584,020</u>	<u>1,507,207</u>
TOTAL ASSETS		<u>5,191,356</u>	<u>4,644,353</u>
LIABILITIES			
Payables			
Suppliers	7	1,532,097	1,626,685
Unexpended grants	17	726,319	542,703
Unexpended Project Funds	18	358,181	135,717
Total Payables		<u>2,616,597</u>	<u>2,305,105</u>
Interest Bearing Liabilities			
Loans	8A	118,880	120,972
Leases	8B	124,937	132,645
Total Interest Bearing Liabilities		<u>243,816</u>	<u>253,616</u>
Provisions			
Employee provisions	9A	363,974	318,049
Total Provisions		<u>363,974</u>	<u>318,049</u>
TOTAL LIABILITIES		<u>3,224,387</u>	<u>2,876,771</u>
Net Assets		<u>1,966,969</u>	<u>1,767,582</u>
Equity			
Accumulated funds		<u>1,966,969</u>	<u>1,767,582</u>
Total Equity		<u>1,966,969</u>	<u>1,767,582</u>
Current Assets		3,602,026	3,231,086
Non-current Assets		1,589,329	1,512,514
Current Liabilities		3,009,469	2,777,958
Non-current Liabilities		214,917	198,067

The above statement should be read in conjunction with the accompanying notes

STATEMENT OF CASH FLOWS

for the year ended 30 June 2006

	Note	2006 \$	2005 \$
OPERATING ACTIVITIES			
Cash Received			
Grants		7,010,733	6,493,990
Services		2,513,396	2,980,452
Interest		73,887	15,182
Donations		47,770	22,133
Total Cash Received	10	<u>9,645,786</u>	<u>9,511,758</u>
Cash Used			
Employees		2,755,944	2,724,424
Suppliers		5,410,746	4,999,745
Financing Costs		22,250	20,365
Net GST Payments to ATO		536,929	353,608
Total Cash Used		<u>8,725,869</u>	<u>8,098,143</u>
Net cash from operating activities		<u>919,917</u>	<u>1,413,615</u>
INVESTING ACTIVITIES			
Cash Received			
Proceeds on sale of fixed assets		21,078	-
Total Cash Received		<u>21,078</u>	<u>-</u>
Cash Used			
Fixed asset purchases		(138,298)	-
Total Cash Used		<u>(138,298)</u>	<u>-</u>
Net cash used by investing activities		<u>(117,220)</u>	<u>-</u>
FINANCING ACTIVITIES			
Cash Used			
Repayment of debt		(74,334)	(56,228)
Total Cash Used		<u>(74,334)</u>	<u>(56,228)</u>
Net cash used by financing activities		<u>(74,334)</u>	<u>(56,228)</u>
Net increase in cash held		728,363	1,357,387
Cash at the beginning of the reporting period		2,117,857	760,470
Cash at the end of the reporting period		<u>2,846,220</u>	<u>2,117,857</u>

The above statement should be read in conjunction with the accompanying notes

STATEMENT OF CHANGES IN EQUITY
for the year ended 30 June 2006

	Total Equity	
	2006	2005
	\$	\$
Opening balance	1,767,576	1,592,847
Net Operating Result	199,393	174,729
Closing Balance	1,966,969	1,767,576

The above statement should be read in conjunction with the accompanying notes

SCHEDULE OF COMMITMENTS

as at 30 June 2006

		2006	2005
		\$	\$
BY TYPE			
Capital commitments			
Plant and equipment	1	151,371	153,769
Total Capital commitments		<u>151,371</u>	<u>153,769</u>
Other commitments			
Operating leases	2	675,393	686,799
Total other commitments		<u>675,393</u>	<u>686,799</u>
Net commitments by type		<u><u>826,764</u></u>	<u><u>840,568</u></u>
BY MATURITY			
Capital commitments			
One year or less		43,749	56,556
From one to five years		107,622	97,213
Over five years		-	-
Total Capital commitments		<u>151,371</u>	<u>153,769</u>
Operating lease commitments			
One year or less		304,786	306,828
From one to five years		370,607	379,971
Over five years		-	-
Total Operating commitments		<u>675,393</u>	<u>686,799</u>
Net commitments by maturity		<u><u>826,764</u></u>	<u><u>840,568</u></u>

NB: Commitments are GST inclusive where relevant

- Finance leases for the purchase of motor vehicle for Executive Director and photocopiers for Broome and Deby offices.
- Operating leases included are effectively non-cancellable and comprise:

<u>Nature of lease</u>	<u>General description of leasing arrangement</u>
Lease for office accommodation	Lease payments are subject to annual increase in accordance with upward price movements in the Consumer Price Index. Lease is current until 30 June 2008.
Motor vehicles for use in conducting Land Council business.	No contingent rentals exist. There are no renewal or purchase options available.

The above schedule should be read in conjunction with the accompanying notes

OPERATING STATEMENT — ALL FUNCTIONS

for the year ended 30 June 2006

	2006	2005
	\$	\$
INCOME		
Grants		
Operational	6,136,106	4,584,830
Capital	140,000	-
Unexpended Grants Brought forward	542,703	489,639
Unexpended Project Funds Brought forward	135,717	-
Less Unexpended Grants Carried forward	(726,316)	(542,703)
Less Unexpended Project Funds Carried forward	(358,068)	(135,717)
	5,870,141	4,396,049
Other income		
Services	1,902,967	3,844,241
Rental income	39,433	56,471
Interest received	73,887	33,697
Donations	47,770	22,523
Total Income	7,934,199	8,352,982
EXPENDITURE		
Depreciation	100,502	75,200
Doubtful debts	29,539	15,911
Interest expense	22,250	20,365
Minor capital items	69,451	61,149
Motor vehicle expenses	558,562	553,550
Other	8,314	-
Loss on sale of non-current assets	13,375	-
Payroll expenses	2,803,745	2,964,031
Repairs and maintenance	89,238	121,445
Services	2,805,681	3,628,279
Supplies	213,474	184,170
Travel	1,020,675	554,154
Total expense	7,734,806	8,178,253
Surplus from ordinary activities	199,393	174,728

OPERATING STATEMENT — NTRB FUNCTIONS

for the year ended 30 June 2006

	2006	2005
	\$	\$
INCOMEe		
Grants		
Operational	3,941,846	3,680,391
Less Specific Funding for Global Negotiations	-	(165,000)
Capital	140,000	-
Unexpended Project Funds b/f	135,717	-
Unexpended grants Brought forward	172,870	128,538
	4,390,433	3,643,929
Less: Unexpended grants carried forward	11,454	(172,870)
Other income		
Profit on Sale of Assets	(13,375)	353
Services	353,542	491,082
Rental income	39,030	47,651
Interest received	34,168	16,361
Total Income	4,815,252	4,026,506
EXPENDITURE		
Depreciation	100,502	69,705
Doubtful debts	(9,143)	15,911
Interest Expense	22,250	20,320
Minor capital items	196,673	69,918
Motor vehicle expenses	316,982	272,073
Other	0	5,494
Payroll expenses	1,922,711	1,869,971
MG Ord Negotiations Project	135,717	-
Repairs and maintenance	62,712	99,868
Services	1,474,441	1,431,195
Supplies	133,527	87,470
Travel	532,559	134,811
Total expense	4,888,932	4,076,736
Surplus from ordinary activities — NTRB Functions	(73,681)	(50,230)

**GRANT ACQUITTAL STATEMENT —
OIPC NATIVE TITLE GRANTS**
for the year ended 30 June 2006

	Actual \$	Budget \$	Variance \$
INCOME			
Grants			
Operational	3,941,846	3,941,847	(1)
Capital	140,000	140,000	0
	<u>4,081,846</u>	<u>4,081,847</u>	<u>(1)</u>
Unexpended Project Funds B/f	135,717	135,717	0
Unexpended grants B/f	172,869	172,869	0
Total grants	<u>4,390,432</u>	<u>4,390,433</u>	<u>(1)</u>
Other income			
Activity Generated Income	88,621	60,261	28,360
Recovered expenses	264,920	173,416	91,505
Sale of Motor Vehicle	21,078	21,078	
Interest income	34,168	0	34,168
Rental income	39,030	0	39,030
	<u>447,818</u>	<u>233,677</u>	<u>214,141</u>
Total income	<u>4,838,250</u>	<u>4,624,109</u>	<u>214,140</u>
EXPENSES			
Capital	150,744	140,000	10,744
Payroll expenses	1,922,711	1,894,511	28,200
MG Ord Negotiations Project	135,717	135,717	0
Motor vehicle expenses	354,991	280,485	74,506
Repairs & maintenance	62,712	54,996	7,716
Interest expense	47	0	47
Services	1,500,470	1,700,114	(199,643)
Supplies	189,753	132,785	56,968
Travel	532,559	285,502	247,057
Total expense	<u>4,849,704</u>	<u>4,624,109</u>	<u>225,595</u>
Unexpended at year end	(11,454)	0	(11,455)
Transfer to unexpended grants	11,454	0	11,454
Net amount carried forward	<u>(0)</u>	<u>0</u>	<u>(1)</u>

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

for the year ended 30 June 2006

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

1.1 Basis of Preparation of the Financial Statements

The financial statements are required by clause 1(b) of Schedule 1 to the Commonwealth Authorities and Companies Act 1997 and are a general purpose financial report. The statements have been prepared in accordance with:

- Finance Minister's Orders (or FMOs, being the Financial Management and Accountability Orders (Financial Statements for reporting periods ending on or after 01 July 2005));
- Australian Accounting Standards issued by the Australian Accounting Standards Board that apply for the reporting period; and
- Interpretations issued by the AASB and UIG that apply for the reporting period.

This is the first financial report to be prepared under Australian Equivalents to International Financial Reporting Standards (AEIFRS). The impacts of adopting AEIFRS are disclosed in Note 2

The Income Statement, Balance Sheet and Statement of Changes in Equity have been prepared on an accrual basis and are in accordance with historical cost convention.

The financial report is presented in Australian dollars

Unless alternative treatment is specifically required by an accounting standard, assets and liabilities are recognised in the Balance Sheet when and only when it is probable that future economic benefits will flow and the amounts of the assets or liabilities can be reliably measured, subject to the treatment of trade creditors and accruals described at Note 1.15

Unless alternative treatment is specifically required by an accounting standard, revenues and expenses are recognised in the Income Statement when and only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

1.2 Significant Accounting Judgements and Estimates

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

1.3 Statement of Compliance

The financial report complies with Australian Accounting Standards, which include Australian Equivalents to International Financial Reporting Standards (AEIFRS).

1.4 Revenue

Revenue from rendering of services is recognised by reference to the stage

of completion of contracts at the reporting date. The revenue is recognised when:

- The amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- The probable economic benefits with the transaction will flow to the entity.

1.5 Employee Benefits

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for 'short-term employee benefits' (as defined in AASB 119) and termination benefits due within twelve months are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

1.6 Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees is estimated to be less than the annual entitlement for sick leave.

1.7 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and rewards incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight line basis which is representative of the pattern of benefits derived from the leased assets.

1.8 Borrowing Costs

All borrowing costs are expensed as incurred.

1.9 Cash

Cash means notes and coins held and any deposits held at call with a bank or financial institution. Cash is recognised at its nominal amount.

1.10 Financial Risk Management

The Kimberley Land Council's activities expose it to normal commercial

financial risk. As a result of the nature of The Kimberley Land Council's business and internal policies, dealing with the management of financial risk, The Kimberley Land Council's exposure to market, credit, liquidity and cash flow and fair value interest rate risk is considered to be low.

1.11 Investments

Investments are initially measured at their fair value.

1.12 Derecognition of Financial Assets and Liabilities

Financial assets are derecognised when the contractual rights to the cash flows from the financial assets expire or the asset is transferred to another entity. In the case of a transfer to another entity, it is necessary that the risks and rewards of ownership are also transferred.

Financial liabilities are derecognised when the obligation under the contract is discharged or cancelled or expires.

For the comparative year, financial assets were derecognised when the contractual right to receive cash no longer existed. Financial liabilities were derecognised when the contractual obligation to pay cash no longer existed.

1.13 Trade Creditors

Trade creditors and accruals are recognised at their nominal amounts, being the amounts at which the liabilities will be settled.

Accounting standards require that an item be recognized as a liability when "it is probable that future economic benefit associated with the item will flow from the entity" [AIFRS Framework Paragraph 83]. Further, the Commonwealth Finance Ministers Orders, "REQUIREMENTS AND GUIDANCE FOR THE REPARATION OF FINANCIAL STATEMENTS OF AUSTRALIAN GOVERNMENT ENTITIES", [2006] is instructive in determining what liabilities are to be brought to account for the purposes of Commonwealth grant funds:- "While most obligations are contractual, others are equitable or constructive. An equitable obligation is governed by social or moral sanctions or custom rather than legal sanctions. A constructive obligation is created, inferred or construed from the facts in a particular situation rather than contracted by agreement or imposed by government". [FMO Paragraph 4B.1.2] Liabilities have been raised in accordance with these Standards.

1.14 Acquisition of Assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

1.15 Property, Plant and Equipment (PP&E)

Asset Recognition Threshold

Purchases of property, plant and equipment are recognised initially at cost in the Balance Sheet, except for purchases costing less than \$5,000, which

are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

Revaluations

Basis

Land, buildings, plant and equipment are carried at fair value, being revalued with sufficient frequency such that the carrying amount of each asset is not materially different, at reporting date, from its fair value. Valuations undertaken in each year are as at 30 June.

Fair values for each class of asset are determined as shown below:

Asset class	Fair value measured at:
Land	Market selling price
Buildings	Market selling price
Leasehold improvements	Depreciated replacement cost
Plant & equipment	Market selling price
Heritage & cultural assets	Market selling price

Following initial recognition at cost, valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not materially with the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised through profit and loss. Revaluation decrements for a class of assets are recognised directly through profit and loss except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

Depreciation

Depreciable property plant and equipment assets are written-off to their estimated residual values over their estimated useful lives using, in all cases, the straight-line method of depreciation. Leasehold improvements are depreciated on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Impairment

All assets were assessed for impairment at 30 June 2006. Where indications of impairment exist, the asset's recoverable amount is estimated and

an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced the Kimberley Land Council were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

No indicators of impairment were found for assets at fair value.

1.16 Taxation

The Kimberley Land Council is exempt from all forms of taxation except fringe benefits tax and the goods and services tax (GST).

Revenues, expenses and assets are recognised net of GST:

- except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- except for receivables and payables.

NOTE 2: THE IMPACT OF THE TRANSITION TO AEIFRS FROM PREVIOUS AGAAP

There was no AEIFRS impact on the amounts presented in the Kimberley Land Council's financial statements.

	2006	2005
	\$	\$
NOTE 3: INCOME		
<i>Revenues</i>		
Note 3A: Revenue from Grants		
Grants for NTRB Functions	4,081,846	3,515,391
Less: Unexpended grants	11,454	(172,870)
Add: Grants carried forward	172,870	128,538
Total Grants for NTRB Functions	4,266,170	3,471,059
Grants for non-NTRB Functions	2,194,260	1,069,439
Less: Unexpended grants	(737,770)	(369,833)
Less: Unexpended Project Funds	(358,068)	(135,717)
Add: Grants carried forward	369,833	365,619
Add: Unexpended Project Funds carried forward	135,717	-
Total Grants for non-NTRB Functions	1,603,971	929,509
Total Revenue from Grants	5,870,141	4,400,568
Note 3B: Services		
Services NTRB Functions	353,542	491,082
Services non-NTRB Functions	1,549,426	3,353,159
Rental received	39,433	56,471
Total rendering of Services	1,942,400	3,900,713
Note 3C: Interest		
Interest on deposits–NTRB Accounts	34,168	16,361
Interest on deposits - non NTRB Accounts	39,719	17,335
Total Interest	73,887	33,697
Note 3D: Net Loss from Sale of Assets		
Infrastructure, plant and equipment		
Proceeds from disposal	21,078	353
Net book value of assets disposed	34,453	-
Selling expenses	-	-
Net gain/(loss) from disposal of assets	(13,375)	353
Note 3E: Other gains		
Donations	47,770	22,523

	2006 \$	2005 \$
NOTE 4: OPERATING EXPENSES		
Note 4A: Employee Expenses		
Wages, Salaries and Leave payments	2,538,099	2,669,151
Superannuation	187,093	227,460
Other Employee Entitlements and Payments	78,553	67,420
Total Employee Expenses	2,803,745	2,964,031
Note 4B: Suppliers		
Goods and Services	4,303,689	4,663,015
Operating lease rentals	396,931	414,053
Workers Compensation premiums	56,461	25,678
Total Suppliers	4,757,081	5,102,747
Note 4C: Depreciation and Amortisation		
Depreciation		
Infrastructure, plant and equipment	100,502	75,200
Total Depreciation and Amortisation	100,502	75,200
Note 4D: Finance Costs		
Loans	8,844	8,722
Leases	13,406	11,644
Total Finance Costs	22,250	20,366
Note 4E: Other Expenses		
Provision for Doubtful Debts	29,539	15,911
Other	8,314	4,518
	37,853	20,429

	2006	2005
	\$	\$
NOTE 5: FINANCIAL ASSETS		
Note 5A: Cash and cash equivalents		
Cash at bank - NTRB Funds	453,413	1,151,903
Cash at bank - non-NTRB Funds	2,718,940	1,064,848
Cash on hand	555	355
	<u>3,172,908</u>	<u>2,217,106</u>
Less funds held on behalf of Traditional Owner groups as detailed below	(326,687)	(99,000)
Total Cash and cash equivalents	<u>2,846,220</u>	<u>2,118,106</u>

Funds held on behalf of Traditional Owner groups as detailed below

Marlgowan Purnululu	18,154	18,154
Scotty Birrel Community	2,299	2,299
Marlangowan Community	6,596	6,596
Ngarrawanji Community	1,536	1,536
Lambo	7,506	7,506
Wanjina Willingin - De Beers	2,500	2,500
Sundry others	40,873	16,681
Miriuwung ADM Funds	103,549	-
Malarngowem ADM Funds	103,549	-
Butchers Creek trust monies	319	319
Tjurabalan trust monies	3,112	3,112
Mt Pierre Station trust monies	6,270	5,960
Dambimangari trust monies	760	4,672
Goondiyandi trust monies	19,070	19,070
Malardy Family trust monies	6,596	6,596
Rubibi trust monies	4,000	4,000
	<u>326,687</u>	<u>99,000</u>

Cash at bank is a “restricted asset” as amounts representing unexpended grants may only be applied for the purpose specified in the conditions of grants and there exists no right of offset.

Note 5B: RECEIVABLES

	2006	2005
	\$	\$
Goods and Services	661,320	1,032,324
Less Allowance for doubtful debts	(97,070)	(67,531)
	<u>564,250</u>	<u>964,793</u>
Other debtors	196,865	54,496
Total receivables	<u>761,114</u>	<u>1,019,289</u>

Other debtors represents recovery entitlements from sundry projects. All receivables are current assets and are with entities external to the entity. Credit terms are net 30 days.

	2006	2005
Receivables (gross) are aged as follows:	\$	\$
Current	138,136	522,652
Overdue by:		
Less than 30 days	48,292	267,142
30 days to 60 days	242,492	72,280
61 to 90 days	-	25,371
More than 90 days	232,399	144,879
Total Receivables (gross)	661,320	1,032,324

The allowance for doubtful debts is aged as follows:

Current	-	-
Overdue by:		
Less than 30 days	-	-
30 days to 60 days	-	-
61 to 90 days	-	-
More than 90 days	97,070	67,531
Total allowance for doubtful debts	97,070	67,531

NOTE 6: NON-FINANCIAL ASSETS

Note 6A: Land and Buildings

At valuation	1,283,546	1,225,086
Less: Accumulated depreciation	-	-
Total land and buildings	1,283,546	1,225,086

Increase in valuation from improvements to leasehold premises in Broome and Derby

The above item includes \$215,887 being cost of office and extension located on reserve land in Kununurra vested in the Aboriginal Lands Trust

Note 6B: Infrastructure, Plant and equipment

Plant and equipment at cost	537,531	428,234
Less: Accumulated depreciation	(403,068)	(325,142)
	134,463	103,092
Mobile plant at cost	57,734	57,734
Less: Accumulated depreciation	(24,762)	(13,771)
	32,972	43,963
Plant and equipment under finance lease	159,714	183,776
Less: Accumulated amortisation	(26,674)	(48,712)
	133,039	135,064
Total Infrastructure, Plant and equipment	300,475	282,119

	2006	2005
	\$	\$
NOTE 7: PAYABLES		
Suppliers	1,518,443	1,450,955
GST Payable to ATO	13,655	175,985
Total payables	1,532,098	1,626,939

All Supplier payables are current liabilities
Settlement is usually made net 30 days.
Payables to suppliers includes GST

NOTE 8: INTEREST BEARING LIABILITIES

Note 8A: Loans

Bank loans	118,880	120,972
Total Loans	118,880	120,972

The bank loan from ANZ Bank commenced in 2002-2003 and is secured by a first mortgage over the Kimberley Land Council's property at Lot 42 Cox Street, Halls Creek. Repayments are interest only. Maturity date 19 June 2028. At 30 June 2006 it was 7.57%

Note 8B: Leases

Finance Lease Commitments

Payable:

Within one year

Minimum Lease payments	43,749	56,556
Deduct future finance charges	14,850	8,951
	28,899	47,605

In one to five years

Minimum Lease payments	107,622	97,213
Deduct future finance charges	11,585	12,174
	96,037	85,039

Finance leases recognised in the balance sheet	124,937	132,645
--	----------------	----------------

Finance leases exist in relation to certain major office equipment assets and a motor vehicle. The leases are non-cancellable and for fixed terms of either three or five years. The lease assets secure the lease liabilities. The Kimberley Land Council guarantees the residual value of all assets leased.

NOTE 9: PROVISIONS

Note 9A: Employee Provisions

Annual Leave	201,469	172,423
TOIL	74,493	57,767
Long Service Leave	88,009	87,860
Total Employee Provisions	363,972	318,049

	2006	2005
NOTE 10: CASH FLOW RECONCILIATION	\$	\$
Reconciliation of operating result to net cash from operating activities		
Operating result	199,393	174,729
Depreciation and amortisation	100,502	75,200
Net (gain)/loss on sale of non-current assets	-	(353)
Change in operating assets and liabilities		
Decrease/(Increase) in receivables 258,174	950,128	
Decrease/(Increase) in other current-assets	4,685	-
Decrease/(Increase) in rental bonds on leased premises	-	(8,483)
Increase/(Decrease) in payables	(94,839)	(30,677)
Increase/(Decrease) in interest bearing liabilities	15,464	
Increase/(Decrease) in employee entitlements	45,922	53,340
Increase/(Decrease) in unexpended grants	183,616	48,545
Increase/(Decrease) in unexpended project funds	222,464	135,717
Net cash inflow from operating activities	919,917	1,277,894

NOTE 11: DIRECTOR REMUNERATION

Corporation included in these figures are shown below in the relevant remuneration bands:

\$	\$	2006	2005
15,000	– 29,999	1	-
135,000	– 149,999	-	1
150,000	– 164,999	1	-
		\$	\$
Total remuneration received or due and receivable by directors of the Corporation		173,117	146,986
		173,117	146,986

NOTE 12: RELATED PARTY DISCLOSURES

The Kimberley Land Council (KLC) is the sole shareholder of Kimberley Sustainable Development Pty Ltd. The sole activity of this entity is to act as Trustee of the Kimberley Development Sustainable Charitable Trust. The Company has not traded in its own right since incorporation.

The Corporation is in the process of establishing a Register of Directors' Interest to enable it to monitor and report and related party transactions should they occur.

NOTE 13: EXECUTIVE REMUNERATION

No senior executives received total remuneration of \$130,000 or more. Executive Director's remuneration is reported at Note 11.

NOTE 14: REMUNERATION OF AUDITORS

	2006	2005
	\$	\$
The cost of financial statement audit services provided to the Authority were:	29,150	19,902
	<u>29,150</u>	<u>19,902</u>

The auditor of the Corporation did not perform any other services for the Corporation.

NOTE 15: AVERAGE STAFFING LEVELS

	2006	2005
	\$	\$
The average staffing levels for the Authority during the year were	50	48

NOTE 16: RECONCILIATION OF NTRB OPERATING STATEMENT OF ACQUITTAL STATEMENT

	2006
	\$
Deficit from ordinary activities—	
NTRB Functions	(73,681)
Add:	
Unexpended Grant	(11,454)
Doubtful Debts	(9,143)
Depreciation	100,502
Non cash Interest Charges	22,203
Written down value of sold assets	34,453
Mortgage and Hire Purchase payments	<u>(74,334)</u>
Unexpended funds	<u><u>(11,453)</u></u>

NOTE 17. SCHEDULE OF GRANTS

OIPC (Department of Family Community Services and Indigenous Affairs) Grants	B/Fwd 30-Jun-05 \$	Transfer To/(From) \$	Released 30-Jun-06 \$	Expended 30-Jun-06 \$	C/fwd 30-Jun-06 \$
Native Title Operational 03/04	172,870			(172,870)	-
Native Title Operational 04/05	-		4,702,533	(4,713,987)	(11,454)
Other Grants					
Aust Govt Envirofund—Paraku	17,800		-	(18,055)	(255)
CALM—Mammals Survey	2,169		-	(2,169)	0
CRC—Gibb River Tourism Project	2,264		-	(2,264)	-
CRC—Jikali	(528)		40,000	(40,015)	(543)
CRC—Nailsma Forum	-		18,182	(18,752)	(571)
CRC—Turtle and Dugong Research Project	24,852		114,727	(32,707)	106,873
Department of Indigenous Affairs L&S Coordinator	10,520		50,000	(10,103)	50,417
Land & Sea Co Ordinator	14,604		32,867	(12,090)	35,381
ILC L&S Management	-		83,000	(39,158)	43,842
DIA—Archive Project	5,000		-	(5,000)	-
DP—North Kimberley Consultation	1,023		-	(1,023)	0
Environment AusT—Cane Toad Project	600		-	813	1,413
Environment Aust. Paraku (Lake Gregory) IPA Project	28,954		100,000	(121,911)	7,043
FACS—Tjurabalan (2004)	53,579		-	(48,708)	4,871
FACS—Tjurabalan (Post)	0			-	0
Great Sandy desert IPA Project	39,901		55,000	(52,797)	42,104
Indigenous Land Management Project	19,577		115,240	(133,698)	1,120
Karajarri—Envirofund Landcare	15,435		-	(818)	14,617
Karajarri—Coastal Mgt Plan	-		10,000	-	10,000
Karajarri—Ranger Project	-		74,146	(21,051)	53,095
KDC—Sustainable Wild Harvest	22,499		-	(4,045)	18,454
Land & Water Australia— East Kimberley Pastural	30,832		222,090	(122,227)	130,695
Land & Water Australia—Fish Passage	8,400		-	-	8,400
Minyirr Park—Coast Care	975		-	(975)	-
Minyirr Park—Coast West	(3,473)		-	3,474	1
Minyirr Park—Coast West 24034	19,572		15,658	(24,814)	10,416
Minyirr Park—Donations	2,475		16,858	(10,513)	8,820
Minyirr Park—Other	310		1,975	(331)	1,953
Minyirr Park—Community Water Project	-		45,455	(6,250)	39,205
Minyirr Park—Seedling Nursery	-		10,000	-	10,000
Minyirr Park—Water Supply	3,800		27,466	(4,450)	26,816

NOTE 17. SCHEDULE OF GRANTS cont...

OIPC (Department of Family Community Services and Indigenous Affairs) Grants	B/Fwd 30-Jun-05 \$	Transfer To/(From) \$	Released 30-Jun-06 \$	Expended 30-Jun-06 \$	C/fwd 30-Jun-06 \$
Minyirr Park—Work for the dole	8,590		17,828	(24,177)	2,242
Minyirr Park—Youth Camp	20,000		-	(16,384)	3,616
Minyirr Park (Broome)	(15,270)		69,744	(55,970)	(1,496)
Roebuck Bay Working Group	-		8,000	(4,621)	3,379
NAILSMA—Broome Training	(12,742)		12,919	-	177
Ngauwudu Management—Munurru	(2,867)		-	-	(2,867)
Natural Heritage Trust — Landcare	7,941		-	(248)	7,693
Ord-Bonaparte Program	-				-
Other grants	4,841		3,706	(3,791)	4,756
Rangelands NRM—Fitzroy Rivercare	4,128		20,000	(9,384)	14,744
Rangelands NRM—					
Ingigenous Engagement	(1,578)		42,541	(54,398)	(13,435)
Rangelands NRM - Salt Water	11,524		95,543	(104,335)	2,732
Appropriate Economies RT—					
Thomas Kantor Foudation	20,000		-	(35,943)	(15,943)
Appropriate Economies RT—					
Poola Foundation	-		39,000	(23,032)	15,968
Appropriate Economies RT—					
Office of Water Strategy	-		14,000	(5,199)	8,801
Waters & Rivers Comm—					
Ribbons of Blue	4,125			(4,125)	-
World Wildlife Fund—					
Fitzroy Sawfish	-		10,748	96	10,844
WWF Threatened Species Network	-		35,055	-	35,055
Balangarra Mgt Strategy	-		53,500	(37,950)	15,550
Regional Heritage Agreement	-		39,129	(29,344)	9,785
Tjurubalan Signs	-		12,000	-	12,000
	542,703	-	6,208,910	(6,025,296)	726,316

NOTE 18. SCHEDULE OF UNEXPENDED PROJECT FUNDS AND
OTHER DEBTORS

	B/Fwd 30-Jun-05 \$	Transfer To/(From) \$	Released 30-Jun-06 \$	Expended 30-Jun-06 \$	C/fwd 30-Jun-06 \$
Unexpended Project Funds					
Office of Native Title MG Corp	-		358,181		358,181
	-				
	-	-	358,181	-	358,181

