

DJUNGAN NEWSLETTER

Kuku Djungan Aboriginal Corporation (KDAC) (in liquidation) and Kondaparinga Station
- the process for making sure the property remains with the Djungan People.

APRIL 2020



This newsletter has been prepared so that the Djungan common law native title holders, the Nguddaboolgan Native Title Aboriginal Corporation RNTBC (NNTAC) members and also Kuku Djungan Aboriginal Corporation (KDAC) (in liquidation) members are informed of the current circumstances regarding Kondaparinga Station and what legal steps need to be taken to make sure that it remains with the Djungan People.

The information circulated about the future of Kondaparinga Station over the last 12 months has caused a lot of stress and trauma amongst Djungan People and it is hoped that this newsletter provides some relevant background information to alleviate some of your concerns.

Because of the current health situation with COVID-19, it will not be possible to hold any face to face meetings. Despite this we want to assure you that there will not be any timeframe, especially in relation to the liquidation process, that will impact the work that NNTAC has been doing together with NQLC, Indigenous Land and Sea Corporation (ILSC) and National Indigenous Australians Agency (NIAA) to ensure that Kondaparinga Station remains with the Djungan People.

A. BACKGROUND

1. Kondaparinga Station includes Ngarraboolgan. Ngarraboolgan is one of the most significant cultural sites for Djungan People and the site is included on the National Heritage List. Additionally, Ngarraboolgan is an area recorded on the Cultural Heritage Register under the *Aboriginal Cultural Heritage Act 2003 (Qld)* and also on the register of National Heritage listings as a National Heritage Place for its cultural values. Under Djungan traditional law and custom, Djungan People have always had ownership and always will be the traditional owners of all Djungan land.
2. Historically, KDAC was used to secure legal ownership of Kondaparinga Station with the existing pastoral lease.
3. KDAC's objectives/obligations include among other things, to protect and maintain the relationship between Djungan People and Djungan land as well as assist in protecting Ngarraboolgan.
4. At the time of the Djungan People's native title determinations an Indigenous Land Use Agreement (ILUA) was entered into between KDAC and NNTAC which included clauses to make sure that KDAC could not sell the property without first offering it to NNTAC.
5. KDAC went into Liquidation on 6 February 2019 and as such was no longer able to meet its obligations as a corporation and also as Lessee.
6. Mr Todd Kelly of BDO North Queensland (BDO) was appointed as Liquidator by the Supreme Court of Queensland on 6 February 2019.
7. Since this time NNTAC has been working to ensure that Kondaparinga Station (the Station) remains in the hands of Djungan People. This plan has involved working closely with North Queensland Land Council (NQLC), the Indigenous Land and Sea Corporation (ILSC), National Indigenous Australians Agency (NIAA) and BDO, and so far has involved:
 - an application by NNTAC to the ILSC for funding to secure Kondaparinga Station where the leasehold interest of the Station

would be initially transferred to the ILSC and then a divestment plan is later put into place so that the leasehold interest is then transferred to NNTAC or a subsidiary of NNTAC set up to manage the property;

- an application by NQLC to NIAA for funding for NNTAC’s capacity building to support NNTAC in the work it must do to secure the Station as well as work required on various economic proposals once Kondaparinga Station is secured; and

- liaising directly with BDO and advocating on behalf of the Djungan People as the Station remains under BDO control until such time the ILSC funding becomes available.

Importantly, the work to date has meant that Kondaparinga Station has not gone to the open market. BDO have confirmed they have no intention of putting Kondaparinga Station up for sale provided that ILSC funding is realised within a reasonable timeframe.

This has been possible because of the work of NNTAC and the cooperation of all agencies and BDO. The drafting of the ILUA also provides for NNTAC to be afforded the right of first refusal should KDAC ever dispose of or transfer their interest in Kondaparinga Station.

STEPS REQUIRED FOR ILSC TO ACQUIRE KONDAPARINGA STATION

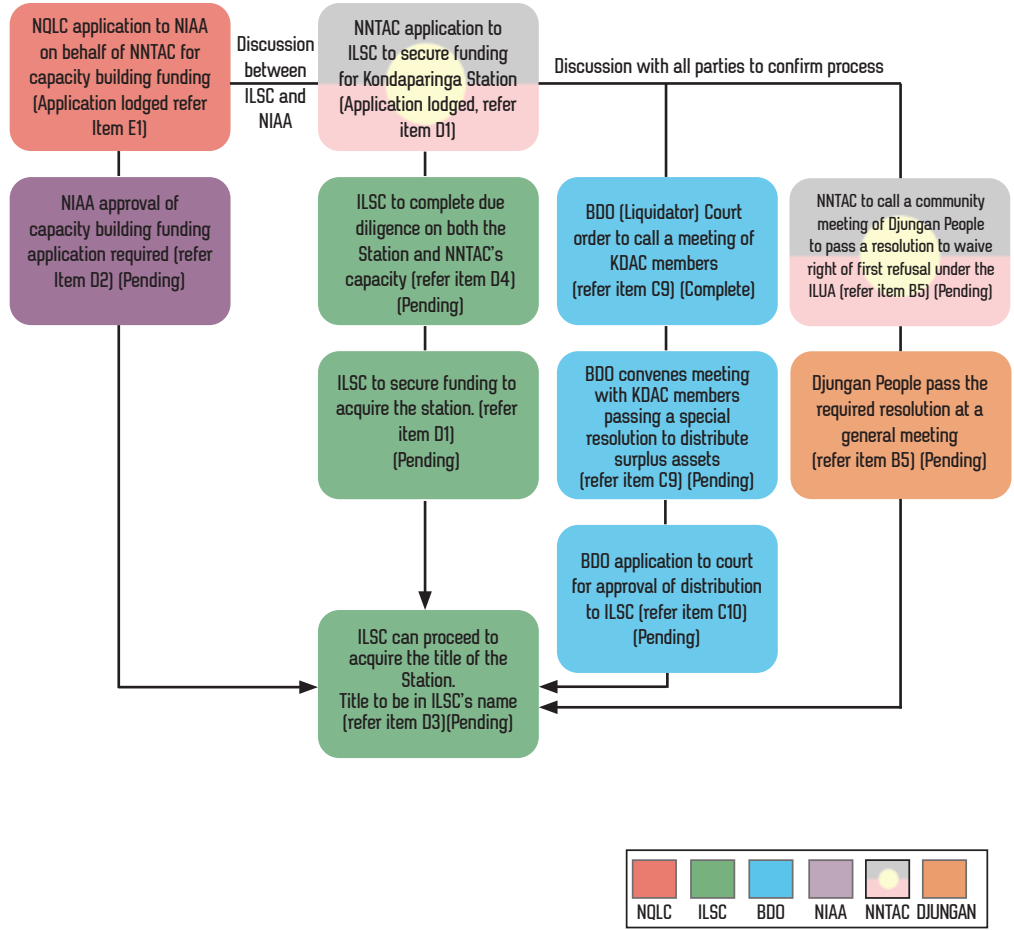


Image Description: NNTAC successfully secured a Regional Arts Development Fund grant from the Mareeba Shire Council, for a Djungan cultural sign. The sign was installed in July 2019 at the base of Ngarraboolgan. The sign provides visitors to Ngarraboolgan with information on the Djungan People’s laws and customs, dreamtime stories and also includes a detailed timeline of their historic events.



B. RIGHT OF FIRST REFUSAL UNDER THE ILUA AND CONSENT TO WAIVE IT BY DJUNGAN PEOPLE

1. Pursuant to Clause 16.1 of the ILUA if KDAC:

wishes to transfer or otherwise dispose of the whole or part of its interest in the Lease, before doing so it must give written notice to the RNTBC of its intention and set out the terms and conditions upon which it is prepared to transfer or otherwise dispose of the interest. The Lessee must offer to sell the interest to the RNTBC or its nominee on those terms and conditions.

NNTAC is the RNTBC that is referred to in the above clause.

2. Todd Kelly acts on behalf of KDAC in his capacity as the appointed liquidator. As such he has a duty to see that KDAC's obligations as Lessee and also as party to the ILUA are fulfilled, to the extent that the financial circumstances allow.
3. This is no ordinary corporation obligation for BDO because, as well as its obligations to meet all of KDAC's financial burdens, it carried with it the added responsibility of recognising the rights of the Djungan common law Native Title holders under the ILUA. This means the rights of NNTAC under the ILUA have not changed, paving way for Kondaparinga Station to remain with Djungan People once NNTAC (or a subsidiary) are set up to manage the property through a divestment plan once the Station

has been acquired by the ILSC.

Decision by Djungan common law Native Title holders

4. The benefit of the first right of refusal is for Djungan People. This means that under the ILUA that Djungan People must consent to it being waived to then allow Kondaparinga Station to go to the ILSC.
5. Before ILSC can provide the required funding to BDO to secure Kondaparinga Station Djungan People will need to consent at a community meeting to waive their right of first refusal under the ILUA. This will be an essential step to pave the way for the ILSC to legally acquire the leasehold interest
6. Once the community meeting is held and Djungan People agree to waive the first right of refusal, BDO can finalise the required liquidation process for KDAC.



Image Description:
Djungan People's Native Title Consent Determination
(#1, #2, #3 & #4) poster, August 2012.

C. THE LIQUIDATION PROCESS

ILSC PROPOSAL

1. It is proposed that the ILSC will provide funding that is sufficient to discharge KDAC's debts as well as BDO's liquidation costs in return for receiving a transfer of KDAC's leasehold interest in Kondaparinga Station, as this is KDAC's only real asset. This means initially the ILSC will own the title to Kondaparinga Station.
2. It is anticipated that the total cost of paying KDAC's outstanding debts and liquidation costs is approximately \$600,000.00. It is important to note that the market value of Kondaparinga Station considerably exceeds this amount. There will be a surplus in assets and the legal transfer of KDAC's leasehold interest in Kondaparinga Station to the ILSC cannot occur by a simple sale and purchase. The transfer to ILSC must be regarded as a distribution of a surplus. This means that there must be a distribution of the total value remaining/balance of KDAC's leasehold interest in the Station after the total liquidation costs/debts have been met.
3. To give effect to the transfer to ILSC, BDO, as the court appointed liquidator, must follow a specific legal process for ILSC to secure Kondaparinga Station on behalf of the Djungan People. BDO must adhere to the relevant legislation and the legal process by complying with the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)* (CATSI Act), the *Corporations Act 2001 (Cth)* (the Act), KDAC'S Rule

Book and also apply to the court for special leave to distribute any surplus of assets.

CATSI ACT PROVISIONS

4. KDAC is an Aboriginal and Torres Strait Islander organisation registered with the Office of the Registrar of Indigenous Corporations (ORIC) under CATSI Act. The provisions for winding up such a corporation are found in Part 11-5 of the CATSI Act. Section 526-25 advises on the process of distribution of surplus assets and in the case of KDAC, section 526-25 (3) is of relevance:

If:

(a) the corporation's constitution does not include provisions for the distribution of the surplus assets of the corporation in the event of the corporation's being wound up; and

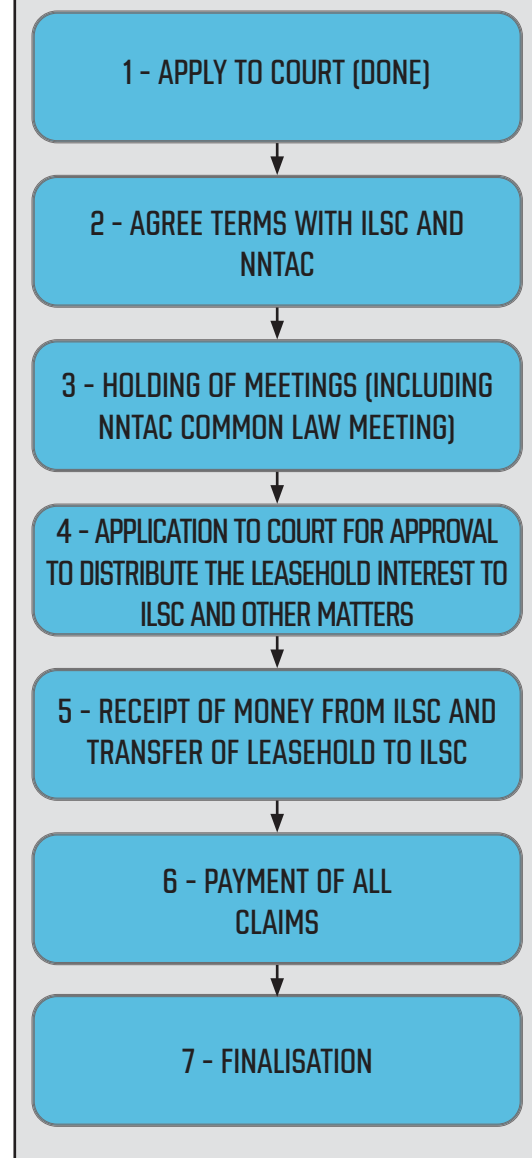
(b) the members of the corporation pass a special resolution relating to the distribution of the surplus assets of the corporation;

the Court or the liquidator must distribute those assets in accordance with that special resolution. This subsection has effect subject to subsection (4).

Note: The liquidator may have powers in relation to the distribution of the surplus under section 488 of the Corporations Act (as applied by section 526-35 of this Act).

5. The CATSI Act provides the basis of the process for KDAC to follow to legitimately wind up and transfer

LIQUIDATION PROCESS



surplus assets such as the Station. Additionally, the relevant wind up section makes reference to the corporations' constitution provisions in this regard, so it is pertinent to refer to KDAC's Rule Book.

KDAC'S RULE BOOK

6. As detailed in clause 10 of KDAC's Rule Book:

The winding up of the corporation shall be in accordance with the CATSI Act.

Where:

- *the corporation is wound up*
- *after all debts and liabilities have been taken care of, and costs of winding up have been paid, surplus assets of the corporation exist,*

the members may pass a special resolution relating to the distribution of the surplus assets of the corporation. The distribution of surplus assets must not be made to any member or to any person to be held on trust for any member.

MEETING OF KDAC MEMBERS

7. As noted above the members of KDAC would need to pass a special resolution relating to the distribution of the surplus of assets so that the ILSC proposal for the acquisition of Kondaparinga Station may be realised.

BDO APPLICATION/S TO THE COURT

8. The CATSI Act provides that in these types of circumstances that a court may order meetings of a corporation's members to be held. This will require BDO to make an application to the court in relation for court directions for convening a meeting of KDAC members.
9. The court has now ordered that a meeting of KDAC members be convened for the purpose of considering a resolution for the distribution of surplus assets. That meeting is to be held in Cairns and chaired by Todd Kelly as liquidator, or his nominee.
10. After the court order, BDO as liquidator has powers in relation to the distribution of KDAC's surplus assets under section 488 of the Corporations Act (as applied by section 526-35 of the CATSI Act). It is anticipated that once a meeting of KDAC members has been held BDO will need to apply for special leave of the court section 488(2) of the Act:

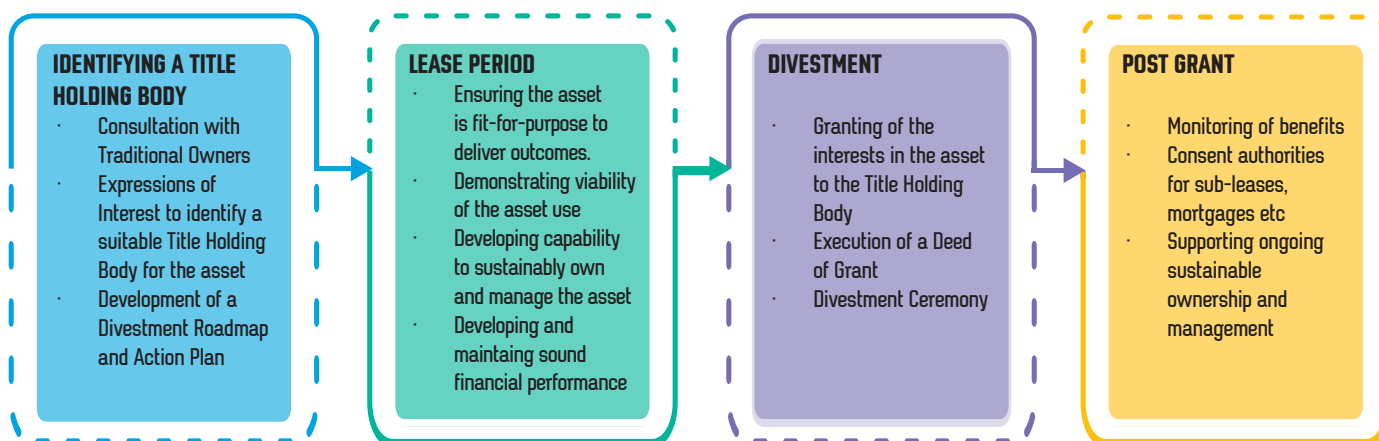
Despite anything in rules or regulations made for the purposes of subsection (1), a liquidator may distribute a surplus only with the Court's special leave.

This process requires that BDO make submission to the court and provide evidence if necessary that the members resolution to distribute the surplus of assets complies with KDAC's Rule Book and the relevant legislation. Additionally, BDO is required to demonstrate to the court that any resolution passed represents the views of the members. Even if a special resolution is not passed, BDO may seek the leave of the court to make a distribution.

D. ILSC APPLICATION

1. On 6 February 2020 an application was lodged by NNTAC to the ILSC, with the assistance of NQLC, to secure funding to pay the liquidation costs/debts in order to facilitate the transfer of the KDAC's leasehold interest in Kondaparinga Station to the ILSC.
 2. The ILSC has indicated to NNTAC that success of the application was subject to NIAA also approving NNTAC's capacity building funding application which has been applied for by NQLC on NNTAC's behalf.
 3. The ILSC proposal requires that:
 - the ILSC will enter into negotiations with BDO to secure the title to the Station, and prevent it from being sold on the open market;
 - the ILSC provides funds to discharge the KDAC debts as well as paying the liquidator's costs;
 - the ILSC will initially own the title to Kondaparinga Station;
 - the ILSC will work with NNTAC, NQLC and NIAA on a process to build the capacity of both NNTAC as an organisation, its members and Djungan People with the aim of eventually divesting title of Kondaparinga Station to NNTAC or an entity created by NNTAC to hold the title of the Station; and
 4. ILSC's proposal requires several processes are followed as detailed below:
 - NNTAC be successful in securing from NIAA multi-year funding for capacity development.
 - the ILSC working with BDO on the legal and practical aspects involved with discharging the debts owed by KDAC;
 - the ILSC and BDO working with NQLC and NNTAC on the legal aspects involved with waiving/allowing for the first right of refusal held by NNTAC;
 - the multi-year capacity development funds being approved and released by NIAA;
 - the ILSC conducting any further due diligence on the Station and NNTAC as it sees fit; and
 5. The divestment of the title of Kondaparinga Station to an entity representative of Djungan People is not included in the above processes. The short-term priority is to transfer title to the ILSC to secure Kondaparinga Station to prevent it going on to the open market. However, once the ILSC has the title to the station it will work together with NNTAC, the Djungan People and NQLC on the terms on how Kondaparinga Station can be divested to an entity controlled by Djungan People. Refer to the Divestment Process Diagram at the end of the document.
- The processes outlined above will take some time to work through and at this point it is unknown as to when all requirements will be complete. All parties are / remain committed to working on what is required so that the Station remains in the control of Djungan People.

THE DIVESTMENT PROCESS





6. ILSC Divestment criteria that will need to be met to ILSCs satisfaction include:

CRITERIA	WHAT DO WE MEAN BY THIS?
OPPORTUNITY AND OUTCOMES	Does the divestment present an opportunity to achieve outcomes in line with ILSC purpose? We will consider: <ul style="list-style-type: none"> · the property's and assets condition – is it fit-for-purpose to deliver the activities and outcomes? · the plan to guide the future of the project – will the outcomes be sustainable after the ILSC's assistance has finished? · whether the plan has clear timeframes and achievable results · how the project complies with statutory requirements, sound land management, workplace health and safety and environmental practices · Cultural Heritage and Native Title considerations
PROJECT VIABILITY	Will the Divestment be viable/sustainable beyond ILSC funding to meet its ongoing requirements and therefore deliver on proposed outcomes? We will consider: <ul style="list-style-type: none"> · Capacity to meet landholding costs · whether there is sufficient co-investment (partnership funding, income generation, in-kind support) to cover current and future activities expenditure requirements · recent financial performance of the current income generating activities
CAPABILITY	Does the proponent demonstrate the ability to own and manage the property as well as monitor and report back on project outcomes? We will consider: <ul style="list-style-type: none"> · whether the organisation demonstrates good governance and operates effectively · the organisation's experience and performance during the lease period to sustainably manage the property (and with similar projects/activities if applicable) · skill levels and experience of staff and project partners (if applicable)
FINANCIAL HEALTH	Does the proponent demonstrate the ability to maintain sound financial performance and position over the long-term? We will consider: <ul style="list-style-type: none"> · financial performance (income, expenditure, profit/loss) over the past three years · financial position (assets, liabilities, liquidity, debt, equity) · stability of income/funding streams · Financial management processes and controls

7. At a NNTAC Board meeting held on 6 March 2020, Mr Callum Howell, ILSC Operations Manager, provided an update with regards to the ILSC application. At that meeting Mr Howell advised NNTAC that the application had progressed to the point that the ILSC had given Mr Howell the 'go ahead' to commence discussions with the liquidator in establishing what was required should the ILSC approve the acquisition of the Station. Mr Howell confirmed that any acquisition was subject to compliance with ILSC's internal processes which includes sourcing the required funding and first being satisfied that it has the legal authority to purchase.

Additionally, in an email forwarded by Mr Howell on 20 March 2020 Mr Howell confirmed his comments he made to the NNTAC board and outlined the above processes that ILSC had committed to following subject to approved funding to acquire the Station. It is likely that the ILSC will hold the title to Kondaparinga Station for up to three years in line with their standard practices. During this time ILSC will work in conjunction with NNTAC on the maintenance and development of the Station. Any monies derived from the Station during this period while ILSC holds the title will be managed by the ILSC and will be only spent on the management and activities related to the Station.

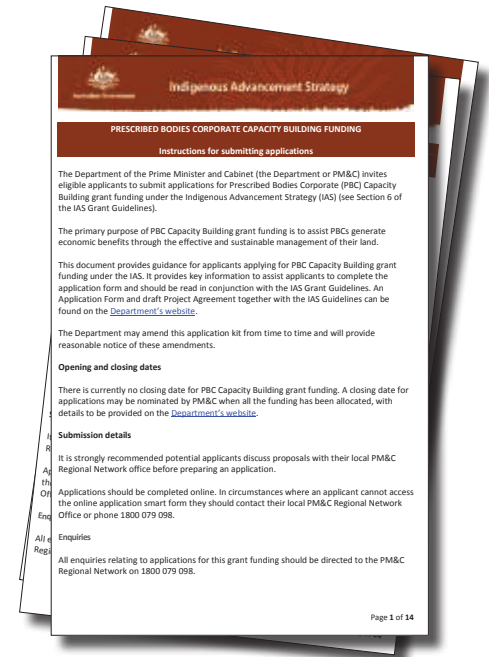
E. NIAA APPLICATION

1. On the 7 February 2020 NQLC lodged a capacity building funding application on behalf of NNTAC. As mentioned above the success of the ILSC application is conditional on NIAA's approval of NNTAC's application.
2. This capacity building funding is required in order to support NNTAC in the work it must do to secure the Station and to demonstrate to the ILSC it has the capacity to:
 - manage the property so that it can pay for all associated costs in running the Station in the short term;
 - develop various proposed business plans and economic ventures to realise the full potential of the property in the long term;
 - hold the necessary meetings with the Djungan People in order

to gain the required consent / authorisation to waive the Right of First Refusal as mentioned above as well as to gain the consent of the Djungan People to enter into new economic ventures that may be proposed for the property;

- demonstrate how these plans for the property will be for the benefit of the Djungan People; and
 - implement the required internal governance policies and processes associated with managing the property.
3. On 16 March 2020, Mr Wade Mullings, Director - Strategy, Planning & Coordination for NIAA, advised by email to NQLC that:

...that the application for capacity building funding is progressing and that a decision is anticipated



in the coming weeks. We are doing our best to ensure that the application is moving as quickly as reasonably possible.



F. OTHER OPPORTUNITIES

1. There are several other opportunities that ILSC have identified / will investigate that can be developed for the Station to enhance and protect the cultural and environmental values of the property. These take the form of grants, income generating projects, ranger programs which include:
 - Queensland Government Environmental Offsets scheme;
 - Bush Heritage funding; and
 - Queensland Government Department of Environment and Science programs.
2. NNTAC have also been exploring other commercial opportunities which would be able to be progressed in consultation with Djungan People after the initial transfer of Kondaparinga Station to the ILSC. Some of these include:
 - a. agistment agreements;
 - b. a windfarm;
 - c. an Indigenous forestry initiative and harvesting opportunities;
 - d. bush foods;
 - e. tourism development;
 - f. formalised research programs; and
 - g. a ranger program.

NEXT STEPS

Once it is again possible to hold community meetings and a special general meeting NNTAC and NQLC will hold a meeting of Djungan People in relation to the consent required under the ILUA and also any other consents required for immediate opportunities for Kondaparinga Station

BDO as liquidator will also need to call a general meeting of KDAC to seek a resolution in relation to the distribution of surplus assets. '

Until such time NNTAC and NQLC will continue to liaise with BDO, ILSC and NIAA to the extent that matters can be progressed until that time.

If you have any queries in relation to the process generally and this newsletter, please contact John Cecchi at NQLC on free call 1800 814 779.