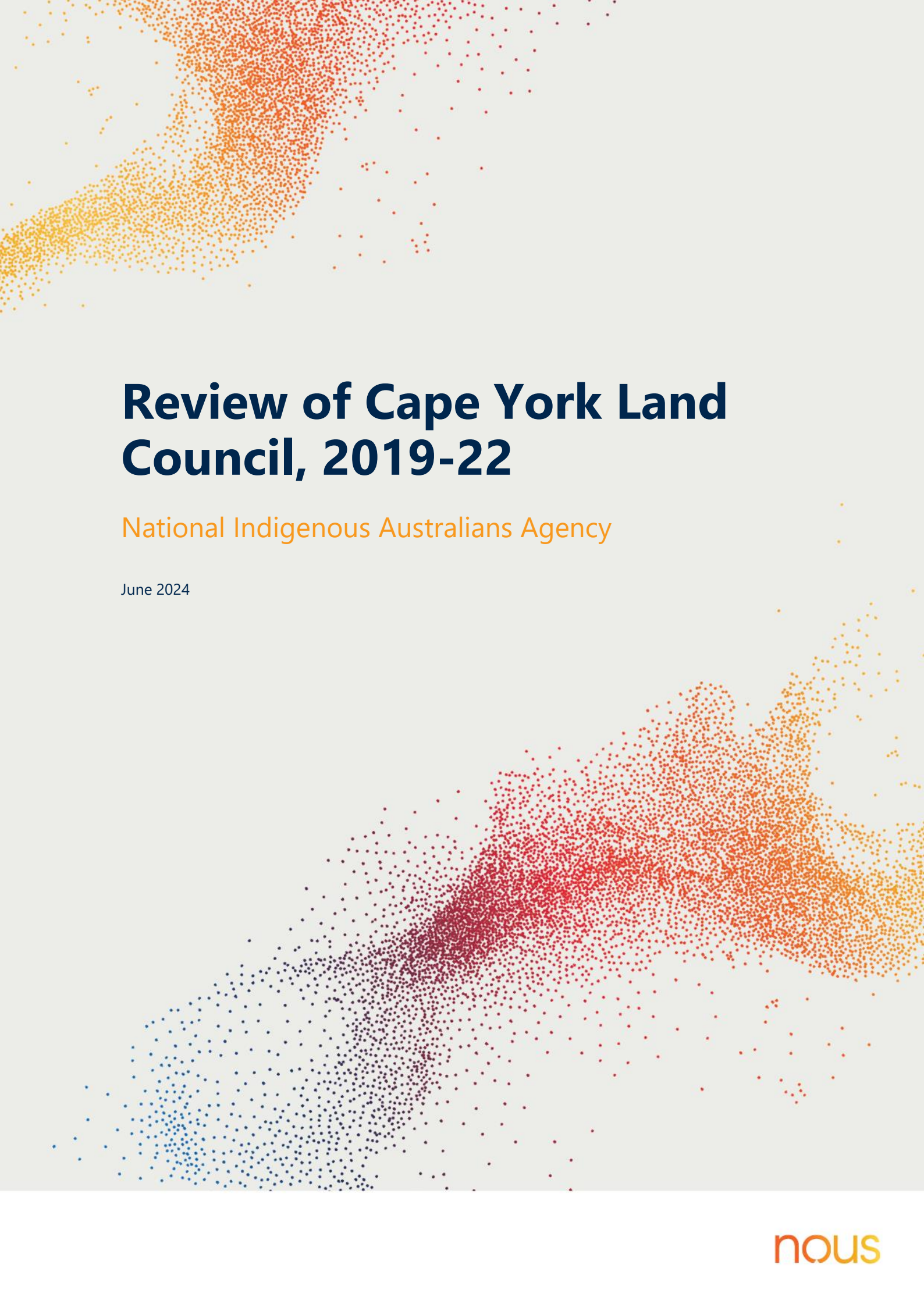




# Review of Cape York Land Council, 2019-22

National Indigenous Australians Agency

June 2024

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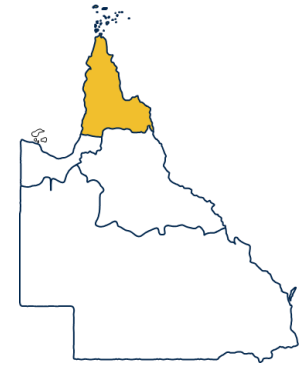
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# 1 Profile of the Cape York Land Council

**The Cape York Land Council (CYLC), based in Cairns, provides native title services to the far north region of Queensland**

Established in November 1990, CYLC is a Native Title Representative Body and Service Provider (NTRB-SP) funded under section 203FE(1) of the *Native Title Act 1993* (Cth) (the NTA). The organisation is the officially recognised Native Title Representative Body (NTRB) for the Cape York Representative Aboriginal/Torres Strait Islander Body (RATSIB) area in far north Queensland. CYLC's RATSIB area, pictured right, comprises 128,401 square kilometres of land accounting for approximately seven per cent of Queensland.

**Figure 1 | Cape York RATSIB**



CYLC is an Aboriginal Corporation incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (the CATSI Act). It has a representative Board, with each of the 17 elected Board Directors representing one of the communities in the Cape. As of 30 June 2022, the organisation had 37 staff, all based in their one office in Cairns, with 13 identifying as Aboriginal and/or Torres Strait Islander. CYLC has six business units, including anthropology and research; land reform; community relations/dispute resolution; business advisory support (now Prescribed Body Corporate (PBC) Support Unit), native title and corporate services. In addition to its functions under the NTA, CYLC has also played a role in supporting the Queensland Tenure Resolution program, which is administered by Balkanu Cape York Development Corporation, and works with other agencies such as Balkanu and Cape York Partnership (CYP) to respond to submissions and reviews of state and Commonwealth legislation and policy.

As of May 2024, there had been 43 determinations of native title within the Cape York RATSIB area since the passage of the NTA, two of which occurred between 1 July 2019 to 30 June 2022 (the Review period). CYLC was the solicitor on record for both determinations. CYLC achieved an additional sixteen consent determinations in the 23 months since the Review period ended – that is, between July 2022 and May 2024. This is a considerable achievement (including the highest number of determinations achieved by an NTRB-SP in a year) and reflects the activity undertaken during the Review period.

There was one active claim that fell wholly in the Cape York RATSIB area as of 30 June 2022 that CYLC was the representative for. This is the Cape York United #1 Claim which covers about 55 per cent of Cape York and all areas that were not within a previous native title determination (except for an area around the Weipa peninsula).

During the Review period, CYLC's PBC Support Unit (formally the Business Advisory Services Unit (BASU)) provided a suite of services to the 22 PBCs within the RATSIB area under the four broad categories of compliance and training, financial management support, legal advice and service delivery.<sup>1</sup>

Over the three years of the Review period, CYLC received National Indigenous Australians Agency (NIAA) Native Title Program Funding of \$9,519,662 in financial year (FY) 2019-20; \$8,063,400 in FY2020-21 and \$10,848,826 in FY2021-22. This included base agreement, mid-year, PBC support and additional grant funding (demand-driven funding to address litigation and a one-off payment in 2022 for Strengthening Community Sector Organisations funding). CYLC also received additional grant funding from the Indigenous Advancement Strategy in 2019 for the Pama Futures Cape York Summit 2019, bringing

<sup>1</sup> At the time of finalising the report in May 2024, there were an additional two PBCs being established.

together stakeholders across the Cape to build a stronger and unified approach for Cape York into the future.

## 2 Scope of the Review

The NIAA has engaged Nous Group (Nous) to undertake an independent review of 13 NTRB-SPs.

The purpose of this Review was to assess the individual and comparative performance of NTRB-SPs in delivering native title outcomes for Aboriginal and Torres Strait Islander people and communities under the NTA over a time period of 1 July 2019 to 30 June 2022.

The Review is an opportunity to assess all the organisations over a consistent time period to understand performance during and post the COVID-19 pandemic and the extent to which organisations have addressed recommendations from previous organisational performance reviews.

The Terms of Reference (TOR) provided by the NIAA for the Review are to determine the extent to which each organisation:

- has achieved positive native title outcomes for persons who hold or may hold native title in its region taking account, where relevant, of disruptions caused by COVID-19
- assesses and prioritises applications for assistance in a manner that is equitable, transparent and robust and is well publicised and understood by clients and potential clients
- deals respectfully, equitably, transparently and in a culturally appropriate manner with persons who hold or may hold native title in its region, including by adequately investigating and resolving complaints
- performs its functions in a cost-effective manner, including by identifying the key cost drivers for the organisation
- has governance and management structures, and organisational policies and an organisational culture that support efficient and effective project delivery
- is adequately supporting PBCs towards self-sufficiency
- has developed its planning for a post-determination environment.

The complete TOR are included in Appendix A.

### Methodology

Nous originally designed the methodology for the previous round of Reviews conducted from 2017 to 2021, which was reviewed at that time by NTRB-SPs and the NIAA. The methodology has been modified to incorporate lessons learned, streamline some previously repetitive elements, reflect current context and be consistent with the current TOR.

The method draws on a defined set of performance indicators under each TOR. These indicators combine qualitative and quantitative performance assessment and include external factors to account for the unique context within which each NTRB-SP operates, based on broader social and geographical factors that impact performance.

Nous used a mixed method approach to undertaking this Review, including an analysis of quantitative data on the progress of claims, Future Acts and Indigenous Land Use Agreements (ILUA), performance against milestones, budgetary performance and staffing. A list of the data and documents that informed the Review can be found at Appendix C.

The quantitative analysis was complemented by stakeholder interviews. As required by the NIAA, and in accordance with the TOR, this Review involved consultations with persons affected by the activities of each NTRB-SP, including Traditional Owners, PBCs, staff of the NTRB-SP, state governments, NIAA, the Federal Court and legal stakeholders. A list of the stakeholder consultations undertaken for this Review is set out in Appendix B.

A full description of the methodology and the performance indicators under each TOR was provided to each NTRB-SP. Nous used a variety of methods to contact stakeholders, including Traditional Owners, for feedback. The approach to stakeholder consultation for the Review was set out in the Consultation Plan, which was also provided to each NTRB-SP at the outset.

### **Limitations**

Nous acknowledges that, despite best efforts to seek broad feedback:

- only a limited number of stakeholders provided feedback (see Appendix B for further detail)
- stakeholders who responded to the call for feedback were, in the main, those who were dissatisfied with the process or outcome of their native title claim.

Accordingly, Nous appreciates that the views of the consulted stakeholders may not be representative of the views of most stakeholders who actually interacted with, or used the services of, each NTRB-SP.

As part of the consultation process, Nous listened to the views of Traditional Owners across all regions of Australia, including Traditional Owners who were dissatisfied with the process or outcome of their native title claim.

These concerns and complaints have been acknowledged and reported (as communicated to Nous) as part of this Review.

It is acknowledged that Nous has not investigated or assessed the merits of these concerns, as part of this Review. This falls outside the scope of Nous' role and the TOR. Accordingly, no statement is made regarding the legitimacy of these concerns or complaints.

NTRB-SPs have been given the opportunity to view the draft reports and to provide feedback to Nous about the issues raised in them. They will also be given the opportunity to make a formal response at the time of publication.

### 3 List of abbreviations

| Abbreviation | Meaning                                               |
|--------------|-------------------------------------------------------|
| AGM          | Annual general meeting                                |
| ARU          | Anthropology and Research Unit                        |
| BASU         | Business Advisory Services Unit                       |
| BINM         | Boundary identification and negotiation mediation     |
| CEO          | Chief Executive Officer                               |
| CYLC         | Cape York Land Council                                |
| CYP          | Cape York Partnership                                 |
| CRDRU        | Community Relations and Dispute Resolution Unit       |
| CRU          | Community Relations Unit                              |
| FAN          | Future Act notification                               |
| FY           | Financial year                                        |
| GIS          | Geographic information system                         |
| HR           | Human resources                                       |
| ILUA         | Indigenous Land Use Agreements                        |
| MOU          | Memorandum of understanding                           |
| NIAA         | National Indigenous Australians Agency                |
| NNTT         | The National Native Title Tribunal                    |
| Nous         | Nous Group                                            |
| NTRB         | Native Title Representative Body                      |
| NTRB-SP      | Native Title Representative Body and Service Provider |
| NTU          | Native Title Unit                                     |
| ORIC         | Office of the Registrar of Indigenous Corporations    |
| PBC          | Prescribed Body Corporate                             |
| PLO          | Principal Legal Officer                               |

| Abbreviation      | Meaning                                                                    |
|-------------------|----------------------------------------------------------------------------|
| RATSIB            | Representative Aboriginal/Torres Strait Islander Body                      |
| RNTBC             | Registered native title bodies corporate                                   |
| The CATSI Act     | <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth) |
| The NTA           | <i>Native Title Act 1993</i> (Cth)                                         |
| The Review period | 1 July 2019 to 30 June 2022                                                |
| TOR               | Terms of Reference                                                         |

## 4 Executive summary of performance and recommendations

The summary and recommendations for each TOR are reproduced here as an overall summary. The detailed performance assessment against each performance indicator follows in section 5.

### **TOR 1 | Extent to which each organisation has achieved positive native title outcomes for persons who hold or may hold native title in its region taking account, where relevant, of disruptions caused by COVID-19.**

During the Review period, CYLC made significant progress on the Cape York United #1 Claim. While there were only two determinations within the Review period, CYLC achieved another 16 determinations in the 23 months after the Review period. This was a significant milestone and included the highest number of claims ever achieved by an NTRB-SP in a single year.

The approach to the Cape York United #1 Claim involved significant Traditional Owner input and close collaboration with the Federal Court and Queensland Government. At the time of writing in May 2024, CYLC noted there were further determinations scheduled which CYLC anticipated would result in the conclusion of the Cape York United #1 Claim within a couple of years and almost the whole RATSIB area within a native title determination.

The Review period was not without the pressures of resolving boundary disputes and establishing PBCs with available resources and within Court timetables. However, the performance of staff at CYLC facilitated and managed this success. Many Traditional Owners were positive about the native title support from CYLC.

CYLC also achieved good progress with its sea claims, with almost all the Torres Strait Regional Seas Claim successfully determined just after the Review period concluded. The organisation responded to Future Acts in a timely manner and made significant progress with three ILUAs registered during the Review period.

### **TOR 2 | Extent to which each organisation assesses and prioritises applications for assistance in a manner that is equitable, transparent, and robust and is well publicised and understood by clients and potential clients.**

CYLC has a published and easily accessible assessment and prioritisation process that has been designed to support equity, transparency and robustness. Given the nature of the Cape York United #1 Claim, however, assessment and prioritisation of claims was not a significant issue during the Review period. It was more important for CYLC to negotiate boundaries, manage authorisation of claims and to support the intended PBC.

The Boundary Identification, Negotiation and Mediation (BINM) process that CYLC developed through the Cape York United #1 Claim received positive feedback, particularly from external stakeholders. Clients had a strong awareness of the process and while some were not satisfied with the outcomes, Court feedback would suggest that CYLC applied the process in a rigorous, effective and transparent manner. CYLC noted that native title and community relations staff worked very closely to ensure that decision making is Traditional Owner led.

### **TOR 3 | Extent to which each organisation deals respectfully, equitably, transparently and in a culturally appropriate manner with persons who hold or may hold native title in its region.**

Since the previous Review (FY2015-16 to FY2017-18), CYLC saw a marked improvement in their community relations model with the creation of a Traditional Owner led community relations team. The team played a direct role in strengthening the relationships between CYLC and Traditional Owners as well as supporting CYLC staff to work in a respectful and culturally appropriate manner, including through training. CYLC did not receive any formal complaints nor any requests for internal review during the Review period.

Opportunities to continue to strengthen CYLC's engagement include:

- Having greater connection with local communities in the RATSIB area through on the ground presence with local staff or through more regional staff working in Cairns to increase the representation of regionally based community members and improve connectivity with Traditional Owners.
- Improving digital and written communications so that Traditional Owners can follow the activities of CYLC and any organisational changes
- Seeking more client feedback through formal and informal complaints to understand the concerns of the community.

#### **RECOMMENDATION**

1

Increase connection with local communities in the RATSIB area through:

- identifying ways to enhance on the ground presence of local staff, or
- identifying opportunities to increase the number of client groups represented in CYLC's staff based in Cairns (appreciating that this needs to be considered alongside the relevant skills required for roles).

#### **RECOMMENDATION**

2

Improve digital and written communications through:

- improved communication including varied modes for notification of meetings and up-to-date information provided through newsletters and on digital platforms such as their website or Facebook.
- updating the CYLC website to capture more clearly the current activities and organisational information.

#### **RECOMMENDATION**

3

Seek more client feedback; not just rely on the formal complaints process.

### **TOR 4 | Extent to which each organisation performs its functions in a cost-effective manner, including by identifying the key cost drivers for the organisation.**

CYLC had a strong focus on performing its functions in a cost-effective manner during the Review period. This was within a difficult context recognising that the full RATSIB area of Cape York is remote with limited commercial travel options. During the Review period, CYLC had been cost conscious around travel and

drew on the opportunity presented by the COVID-19 pandemic to explore virtual engagement when appropriate.

Salaries were commensurate with other similar organisations and the organisation effectively engaged external consultants, particularly consultant anthropologists who worked on the original research for the Cape York United #1 Claim. The finances of CYLC were managed directly by the Chief Financial Officer, with individual units not managing their own budgets.

Stakeholders indicated opportunities to improve the efficiency of spending through greater investment in digital systems, particularly in the human resources (HR) and finance space, and by developing and implementing travel guidelines with tightened accountability for all travel across the organisation.

#### RECOMMENDATION

4

Implement the newly developed policies, including travel, and communicate them to all staff and Board members.

#### RECOMMENDATION

5

Indicate clear funding allocations for each unique operational unit, with clear allocation of funding for individual units and for split roles, allowing for greater accountability of function leads in managing unit finances.

### **TOR 5 | Extent to which each organisation has governance and management structures, and organisational policies and an organisational culture that support efficient and effective project delivery.**

CYLC had a clearly defined set of responsibilities for decision making at the Board, Chief Executive Officer (CEO), and senior staff levels with the delineation of responsibilities between the Board and Executive consistent with other organisations. Conflict of interest protocols were well considered but could be improved by being better articulated and aligned to the core functions of CYLC in native title.

There was some uncertainty raised about responsibilities and functions, particularly by external stakeholders, where functions overlap with CYLC's sister organisations, Balkanu Cape York Development Corporation, and CYP. The Review found that there was an opportunity to clarify roles between CYLC and its sister organisations potentially through the development and implementation of memoranda of understanding (MOUs). An MOU could clarify the roles of each organisation, enabling a clear path toward the achievement of outcomes each organisation seeks to achieve as a regional network seeking to empower Traditional Owners within the Cape.

Many staff noted that CYLC is a good place to work with a commitment to professional development and training, and rigorous financial management. The Review made some suggestions to support CYLC to continue to operate as a high-performing and productive organisation.

#### RECOMMENDATION

6

Work with the relevant regional organisations – Balkanu and CYP – to develop an MOU that supports greater collaboration in achieving outcomes for the Cape York people.

#### RECOMMENDATION

7

Review and update relevant HR policies to be more clearly aligned to the strategic and operational business of CYLC, for example, demonstrating examples of the types of conflict of interest that may arise in native title to explicitly demonstrate CYLC's approach.

#### RECOMMENDATION

8

Implement a short staff survey to understand CYLC's staff experience and engagement, provide staff with an avenue for offering feedback and identify opportunities for improvement.

#### RECOMMENDATION

9

Make changes to CYLC's financial management systems to:

- move from a paper-based payroll and timesheet system to an electronic system which would save time and minimise the chance of error in manual inputs.
- move from a paper-based invoice and purchase order system to an electronic system which would minimise the chance of error in manual inputs and create a system that supports easier approvals and tracking of spending (noting that the current process involves the CEO approving expenses after they have already been paid).

#### RECOMMENDATION

10

Invest in professional development opportunities for executive staff – noting the CEO being new to the role – recognising the importance of the leadership for high-performing organisations.

### **TOR 6 | Extent to which each organisation is adequately supporting Prescribed Body Corporates towards self-sufficiency.**

CYLC supported 15 PBCs in the Cape York RATSIB area during the Review period. Areas of support included compliance and training, financial management support and legal advice. While many clients found the support valuable, the progress towards self-sufficiency was hampered by limited resources available in the PBC Support Unit and the extent to which self-sufficiency is achievable for PBCs in the region. Some PBC stakeholders were looking for greater clarity on the scope of CYLC's services and the funding available to them either through CYLC or that they could access directly.

CYLC had an established process for the return of cultural materials but Traditional Owners indicated that relationships between CYLC and Traditional Owners would be improved through greater visibility and communication of return timelines.

There would be value in CYLC having service agreements with all client PBCs going forward so that there is greater understanding about the support CYLC can provide. With the determinations achieved following the Review period this will be even more important as the number of PBCs had already increased to over 20 and there will likely be another ten more through the progress of the Cape York United #1 Claim.

#### RECOMMENDATION

11

Implement service agreements with all client PBCs to strengthen the relationship between CYLC and PBCs, and:

- enable CYLC to actively seek feedback from client PBCs on the type and quality of support provided
- allow CYLC to better understand PBC needs and refine services to address the identified needs and improve satisfaction.

#### RECOMMENDATION

12

Formalise policy for the return of cultural materials to Traditional Owners after claim determination, with policy emphasis on increasing visibility and communication of return timelines.

### **TOR 7 | Extent to which each organisation has developed its planning for a post-determination environment.**

With 45 per cent of the RATSIB area determined prior to the Review period, CYLC's focus was largely on the Cape York United #1 Claim during the Review period. Given that 95 per cent of the Cape York RATSIB area is expected to be determined in the next few years (at the time of writing in May 2024), this significant shift will require CYLC's focus to pivot towards a post-determination environment. While the Strategic Plan 2020-2026 provides a high-level set of indicators and early planning for post-determination, there needs to be greater focus in the next Strategic Plan on how to take this forward.

A best-practice approach in developing a post-determination strategy would see CYLC engage closely with all relevant stakeholders, most importantly with Traditional Owners. The strategy should consider how CYLC can best support Traditional Owners with their land rights aspirations and native title into the future, including through PBC support and compensation claims.

#### RECOMMENDATION

13

Develop a formal, detailed post-determination strategy based on extensive consultation with Traditional Owners in the Cape York RATSIB area and CYLC staff, executive and Board.

## 5 Performance assessment

This section assesses performance against the relevant performance indicators for each TOR. See Appendix A for the performance indicators.

### 5.1 TOR 1 | Extent to which each organisation has achieved positive native title outcomes for persons who hold or may hold native title in its region taking account, where relevant, of disruptions caused by COVID-19.

#### Summary

During the Review period, CYLC made significant progress on the Cape York United #1 Claim. While there were only two determinations within the Review period, CYLC achieved another 16 determinations in the 23 months after the Review period. This was a significant milestone and included the highest number of claims ever achieved by an NTRB-SP in a single year.

The approach to the Cape York United #1 Claim involved significant Traditional Owner input and close collaboration with the Federal Court and Queensland Government. At the time of writing in May 2024, CYLC noted there were further determinations scheduled which CYLC anticipated would result in the conclusion of the Cape York United #1 Claim within a couple of years and almost the whole RATSIB area within a native title determination.

The Review period was not without the pressures of resolving boundary disputes and establishing PBCs with available resources and within Court timetables. However, the performance of staff at CYLC facilitated and managed this success. Many Traditional Owners were positive about the native title support from CYLC.

CYLC also achieved good progress with its sea claims, with almost all the Torres Strait Regional Seas Claim successfully determined just after the Review period concluded. The organisation responded to Future Acts in a timely manner and made significant progress with three ILUAs registered during the Review period.

#### 5.1.1 TOR 1: Assessment of performance

This section presents an assessment of performance against the performance indicators for this TOR. To see the performance indicators please see Appendix A.

#### Native title outcomes including from facilitation and assistance, certification, notification, dispute resolution and other relevant functions

#### **CYLC achieved two landmark consent determinations during the Review period with another 16 in the 23 months after the Review formally concluded (by May 2024)**

At the outset of the Review period, CYLC had delivered native title determinations over 45 per cent of Cape York land. To focus on the remaining area of the Cape York, during the Review period CYLC had directed its attention to the Cape York United #1 Claim.

In November 2021, a landmark case resulted in a successful determination over 2,188 square kilometres of land for the Kuuku Ya'u and Uutaalnganu people. Native title was found to exist in almost the entire determination area. These were the first successful determinations in the Cape York United #1 Claim and were the first successful claims in over four years. They were described as landmark by Mortimer J, having taken seven years to reach the first determinations. Mortimer J acknowledged:

*Despite the factual and legal challenges which had arisen in the Cape York United #1 proceedings, including a possible defect in the authorisation of the application relating to the description of the native title claimant group, the key parties had navigated a path to consensual recognition in this case [46]-[48].*

Mortimer J further stated:

*If ever there was a situation...where a favourable exercise of discretion by the Court is appropriate to ensure resolution of a claim to which the parties agree, this is that situation [48].<sup>2</sup>*

While occurring outside of the Review period, 16 more determinations had been made since 30 June 2022 by the time of writing in May 2024. This is the highest number of determinations an NTRB-SP has achieved in a single year. This includes successful determinations through the Cape York United #1 Claim for:

- almost 1.5 million hectares of land for the Northern Kaantju, Southern Kaantju, Ayapathu and Lama Lama Traditional Owners in July 2022 with exclusive native title
- almost 850,000 hectares of land for the Central West Wik, Taepithiggi, Umpila and Weipa Peninsula people in July 2023
- almost 6.5 million hectares of land and sea being successfully determined for the Kemer Kemer Meriam and Kulkalgai Nations and Kaurareg, Ankamuthi and Gudang Yadhaykenu people in December 2022, resolving seven partially overlapping land and sea claims, and being the largest sea claim in Australian history.

### **The Cape York United #1 Claim is an appropriately strategic approach to native title in Cape York**

With a clear objective of resolving all outstanding native title claims in Cape York, in 2014, CYLC lodged an application to the almost 55 per cent remaining land in the RATSIB area. The outer boundary of the claim follows the southern boundary of the Cape York RATSIB area and the coast of Cape York to the mean high-water mark.

The Cape York United #1 Claim is one of the largest current claims in Australia and has been described as a unique, strategic approach to native title. The approach was informed by a detailed information and consultation process that CYLC had undertaken earlier in 2014. This consultation and authorisation process “overwhelmingly authorised CYLC to lodge the large, united regional claim, now known as the Cape York United #1 Claim. The key principle of the Cape York United

**Figure 2 | Cape York United #1 Claim area**



<sup>2</sup> Ross on behalf of the Cape York United #1 Claim v State of Queensland (No 3) [2021] FCA 1465. Accessed at: <https://database.atns.net.au/agreement.asp?EntityID=9504>

#1 Claim is that the Traditional Owners for an area continue to speak for their Country according to their laws and customs.”<sup>3</sup>

Due to its size and complexity, the Cape York United #1 Claim area was divided into nine report areas for the purpose of individual connection assessments to be undertaken by a number of anthropologists.<sup>4</sup> Alongside these anthropologists, CYLC also engaged a consultant historian and genealogist to assist in progressing matters relating to the apical ancestors associated with the Cape York United #1 Claim. This involved:

- The genealogist supporting CYLC to compile a genealogical database for most of the organisation’s RATSIB area. The work has progressed from consolidating existing databases and native title research materials to assisting in the process of preparing material as part of the Cape York United #1 Claim.
- The historian working with consultant anthropologists to settle materials to be used in the determination process (by undertaking archival and other research to create a more detailed and comprehensive resource) and enabling a more streamlined process for dealing with Future Acts and other activities on Cape York.<sup>5</sup>

During the Review period, the CYLC team continued to progress resolution of the Cape York United #1 Claim, despite travel restrictions imposed as a result of the COVID-19 pandemic. This involved boundary resolution meetings as part of the Traditional-Owner-led BINM process, meetings to resolve group descriptions and to discuss future PBCs. The BINM process is discussed further under TOR 2.

Many stakeholders commented on the pace at which CYLC has progressed claims during the Review period. This has been a combination of the fast-moving timelines from the Federal Court as well as an interest in resolving native title to then focus on the post-determination space. While the tight timelines have resulted in positive native title outcomes, this did put pressure on resourcing and the teams.

As explored in the previous Review, CYLC has had to revisit their approach to the Cape York United #1 Claim several times. In 2022, CYLC received \$2.6 million in contested litigation funding to re-progress the Cape York United #1 Claim. This came following a decision in 2020 that re-focused the claim by progressing each native title group towards determination at different stages. The front loading of effort and funding to progress the claim may result in the rapid progress to 95 per cent determination in the RATSIB area over the coming years.

Numerous stakeholders commented on Cape York United #1 Claim being a strategic and well-considered approach for CYLC that is yielding successful outcomes. While the overall number of claims during the Review period itself is quite small, the fact that they were set up strategically to work the determinations within the Cape York United #1 Claim has led to the subsequent success.

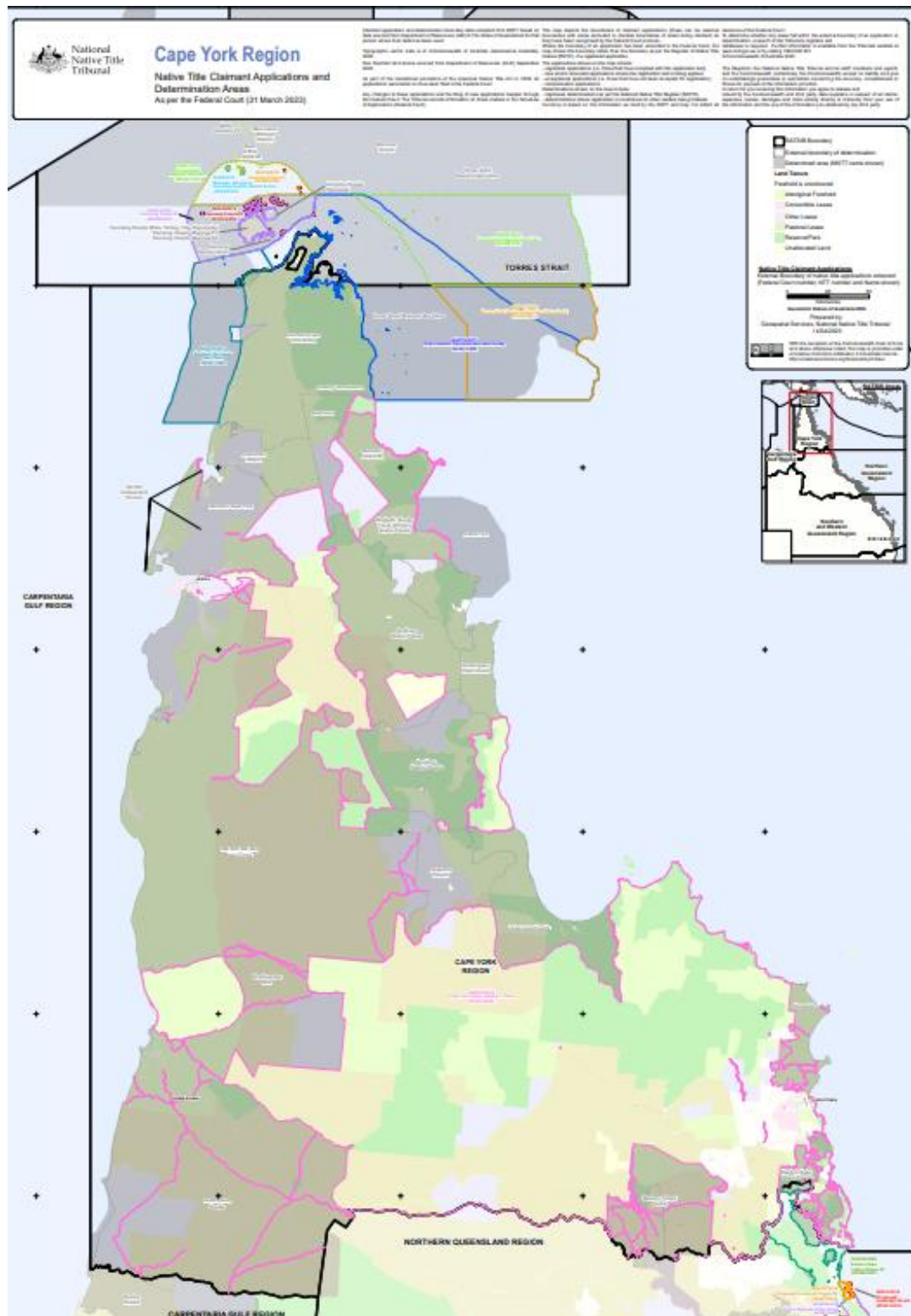
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<sup>3</sup> CYLC (2022) Cape York Land Council Annual Report for 2020-2021.

<sup>4</sup> Ross on behalf of the Cape York United #1 Claim v State of Queensland (No 3) [2021] FCA 1465. Accessed at: <https://database.atns.net.au/agreement.asp?EntityID=9504>

<sup>5</sup> CYLC (2022) Cape York Land Council Annual Report for 2020-2021.

Figure 3 | Cape York RATSIB area<sup>6</sup>



<sup>6</sup> National Native Title Tribunal (2023) Cape York NTDA Schedule – updated 31 March 2023.

## **CYLC made positive progress with its sea claims**

In addition to the Cape York United #1 Claim, CYLC also progressed two other claims, including the Northern Peninsula Sea Claim and the North Eastern Peninsula Sea Claim. These claims, both filed in 2017, became part of the Torres Strait Regional Seas Claim Part B (21 years in the making) and sought for the determination of approximately 65,000 square kilometres around the tip of Cape York and into the Torres Strait. It is the first joint determination between Aboriginal and Torres Strait Islander people of the Torres Strait and mainland Australia.

This required a Joint Working Group to negotiate the multiple overlapping issues. The successful outcome involved the overlapping claims being determined by agreement collectively, following a series of Cairns-based meetings in May 2021 facilitated by CYLC. The claim included all onshore and offshore areas within the claim area (except in the primary area of the Kaurareg People).<sup>7</sup>

The claim was successfully recognised as land and sea belonging to native title groups outside the Review period in late 2022. The five groups forming this claim were the Kemer Kemer Meriam and Kulkalgal Nations and Kaurareg, Ankamuthi and Gudang Yadhaykenu people.

## **There has been positive feedback from Traditional Owners regarding CYLC's performance**

The high number of determinations within the Cape York United #1 Claim and the significance of sea claims has been positively received by Traditional Owners. CYLC had focused its efforts on both the Cape York United #1 Claim and the sea claims being Traditional Owner-led and having Traditional Owners drive the decision making for all aspects of the native title claims. Many Traditional Owners have been very satisfied with the outcomes from the work of CYLC during the Review period.

Mortimer J acknowledged in the Kuuku Ya'u and Utaalnganu determinations in November 2021, that not everyone would be happy with the judgement. This links to specific feedback regarding joinder applications and considerations from the Kuuku Ya'u Aboriginal Corporation.<sup>8</sup> Many external stakeholders and CYLC staff noted that there have been disputes among groups relating to claimed areas. Some disputes have arisen due to the native title process, specifically around people with only historical connection claiming to be part of the native title group as compared to those defined by descent from apical ancestors. It is important to note that these disputes were primarily between the native title groups and not with CYLC. It is not within the remit of CYLC to resolve such disputes. This is further covered under TOR 2.

The Review received feedback regarding communication and timing about decision making. As previously noted, on timing, the current Federal Court timetable has dictated the pace of claims and therefore is out of the control of CYLC. Further discussion about communication and engagement is covered under TOR 3.

## **Anthropological research**

### **The Anthropology and Research Unit (ARU) focused during the Review period on progressing the Cape York United #1 Claim**

During the Review period, the ARU worked closely with the Native Title Unit (NTU) to review reports provided by consultant anthropologists, provided advice to the legal team, and assisted the running of claim group meetings and claimant consultations with Community Relations and Dispute Resolution Unit (CRDRU). These activities were aimed at supporting the NTU to comply with court-ordered timetables of

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<sup>7</sup> CYLC (2022) Cape York Land Council Annual Report for 2020-2021.

<sup>8</sup> Mortimer J, Order QUD 673 of 2021. Accessed at <https://www.cylc.org.au/wp-content/uploads/2021/11/ross-obo-cyu1-claim-group-v-queensland-2021-fca-1463.pdf> in July 2023.

the steps needed to achieve consent determinations for Cape York United #1 Claim. For the Cape York United #1 Claim, CYLC had undertaken a strategic approach that involved working with the consultant anthropologists who prepared the original reports for relevant regions to now progress each of the consent determinations.

Aside from assisting with the Cape York United #1 Claim and the sea claims that CYLC has progressed, the ARU worked closely with the PBC Support Unit and also with the Future Acts Unit to produce a large number of reports as advice for Future Acts. This has been a significant workload for a team with a limited number of staff.

Key focus areas for the ARU after the Cape York United #1 Claim has been progressed include:

- developing and ratifying an Information Management Policy
- developing and communicating the processes and criteria for the sharing of anthropological, genealogical and ethnohistorical materials and information held by CYLC with communities of provenance
- developing processes and criteria for Service Agreements so that in the future CYLC will be recognised as the primary authority and “go to” agency for Cape York Aboriginal peoples’ anthropological research and information services.<sup>9</sup>

## Future Acts and ILUAs

### **CYLC processes and distributes Future Act notifications (FANs) in a timely manner**

During the Review period, CYLC received and reviewed:

- 168 FANs for various proposed Future Acts during FY2019-20.
- 124 FANs for various proposed Future Acts during FY2020-21.<sup>10</sup>
- 114 FANs for various proposed Future Acts during FY2021-22.

CYLC noted to the Review that it had been important for CYLC to support the notification response for FANs with the Cape York United #1 Claim. This included becoming more involved in supporting agreement-making through ILUAs and in cultural heritage protection and management processes associated with Future Acts.

The team at CYLC noted that they processed and distributed all FANs within set timeframes and provided support to parties as necessary to help them understand and respond to FANs. This included the right to comment, to be consulted, to have objections heard and to negotiate. Furthermore, CYLC continued to develop expertise in mapping and geographic information system (GIS) capabilities to improve advice about Future Acts to Traditional Owners.

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<sup>9</sup> CYLC (2021) Cape York Land Council Strategic Plan 2020-2026.

<sup>10</sup> The State of Queensland and Cape York RATSIB agreed to suspend all FANs between 26 March and 19 June 2020 in Queensland due to COVID-19.

**Table 1 | FANs received**

| Future Act                              | FANs received <sup>11</sup> |           |           |
|-----------------------------------------|-----------------------------|-----------|-----------|
|                                         | FY2019-20                   | FY2020-21 | FY2021-22 |
| 24HA Permits                            | 99                          | 78        | 53        |
| 24KA – Facilities for service to public | 10                          | 5         | 28        |
| S29 – EPM                               | 26                          | 21        | 23        |
| S29 – ML                                | 23                          | 10        | 2         |
| S29 – MDL                               | 3                           |           |           |
| S24GB – Future Acts primary products    | 5                           | 1         | 3         |
| 24JAA                                   |                             |           | 4         |
| Miscellaneous                           | 2                           | 9         | 1         |
| Total                                   | 168                         | 124       | 114       |

### **CYLC had a strategic focus on ILUAs**

CYLC's ILUAs have involved negotiations regarding native title consent to activities such as infrastructure construction, lease granting for home ownership, commercial operations and other matters. Managed by the CYLC's NTU, the team represented native title groups in numerous ILUA negotiations including the Toolka Land Trust ILUA, Cooktown Foreshore Infrastructure ILUA and Hopevale Congress Aboriginal Corporation registered native title bodies corporate (RNTBC) ILUA.<sup>12</sup>

CYLC currently has 105 ILUAs registered, with three of these registered with the National Native Title Tribunal (NNTT) during the Review period. This includes:

- Eastern Kuku Yalanji 2021 National Parks Land Transfer ILUA in June 2022
- *Kowanyama People Forestry Act Sales Permit* ILUA in December 2021
- Toolka Land Trust ILUA in October 2019.

CYLC supported ongoing ILUA negotiations such as the Lockhart River Township Community Development ILUA (seeking to provide simplified processes for native title consent to a broad range of Future Acts, compensation and cultural heritage protocols) and the Northern Peninsula Area Regional Council ILUA (where CYLC provided assistance to the Ipima Ikaya PBC in its responses to Proposed Activity Notices). It also supported negotiations for implemented ILUAs such as the Peninsula Developmental Road ILUA.

<sup>11</sup> CYLC (2021) Cape York Land Council Annual Report for 2019-2020, CYLC (2022) Cape York Land Council Annual Report for 2020-2021, and CYLC (2023) Data provided by CYLC directly for 2021-2022.

<sup>12</sup> CYLC (2021) Cape York Land Council Annual Report for 2019-2020.

## **Alongside ILUAs and Future Acts, CYLC also supports other legal agreements**

By the end of the Review period, CYLC had finalised another 150 matters, including conservation and Indigenous management agreements, cultural heritage agreements and mining tenement agreements. Some of these negotiations included:

- Representing Traditional Owners in mineral exploration negotiations and small-scale mining negotiations, for example, section 31 of the NTA “right to negotiate”.
- Objecting to Exploration Permits for Minerals on behalf of the Traditional Owners part of the Cape York United #1 registered native title claim (QUD674/2014).
- Coordinating cultural heritage surveys associated with Exploration Permits for minerals.
- Representing Traditional Owners in submissions made to government about environmental and cultural heritage concerns relating to mineral exploration and the grant of major mining projects.
- Refining and further developing detailed procedures and protocols for dealing with Future Act matters and assisting Traditional Owners to exercise their rights with the view to obtaining the best possible outcome for Traditional Owners.<sup>13</sup>

## **Number of claims resulting in a determination of native title or ILUA settlement as a proportion of total filed claims**

As discussed above, one claim resulted in two separate determinations that native title existed in the 2,188 square kilometres of land for the Kuuku Ya’u and Uutaalnganu people. These were the first successful determinations in the Cape York United #1 Claim and were the first successful claims in over four years.

While occurring outside of the Review period, 16 additional determinations have been made since 30 June 2022, including the successful determinations through the Cape York United #1 Claim as discussed on page 14.

## **Number of claim groups the NTRB-SP has acted for or assisted via brief out arrangements in a native title determination application during the Review period**

There were no groups in the RATSIB area that CYLC did not assist, or assisted via brief out arrangements, in native title determination application proceedings during the Review period.

## **Proportion of claimable land within the RATSIB area not subject to a registered claim or a determination**

### **As a result of recent determinations, the proportion of claimable land within the RATSIB area not subject to a registered claim or a determination is now almost zero**

All claimable land and inland waterways within the Cape York RATSIB area are now either within a previous native title determination or within the Cape York United #1 Claim, except for an area around the Weipa peninsula and offshore islands. Figure 3 illustrates the current RATSIB area, and claimed land and determinations.

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<sup>13</sup> CYLC (2021) Cape York Land Council Annual Report for 2019–2020 and CYLC (2022) Cape York Land Council Annual Report for 2020–2021.

## **Average time between filing an application for a determination of native title to the date a determination is made**

Recognising there were separate determinations within the Cape York United #1 Claim, the average time filing an application for a determination to the date a determination is made was just under seven years.

## **Number of common law native title holders RNTBCs the NTRB-SP has acted for in a native title compensation application proceeding**

### **CYLC has not yet acted for a native title compensation application proceeding**

CYLC had not been involved in any native title compensation claims. However, CYLC noted to the Review that compensation would start to be a priority going forward, with a clear strategy to “leave no group behind” and resolve all outstanding native title before moving on. The Strategic Plan 2020-2026 noted that by 2021 a strategy would be developed to pursue compensation for Acts compensable under the NTA. However, due to the impacts on timelines from the COVID-19 pandemic this has been delayed and, at the time of writing in May 2024, will be progressed in the coming couple of years.

## **5.1.2 TOR 1: External factors**

This section presents an analysis of factors that impacted on performance that were beyond CYLC's control.

### **State government policy and legislation**

#### **The Queensland Government's position had a positive impact on the CYLC's ability to achieve native title outcomes during the Review period**

The Queensland Government has expressed a position that it will consider all options to resolve native title by agreement (either through a consent determination or otherwise) prior to resorting to litigation. Historically, Queensland governments have had a less favourable position; however, the current government's formal position places importance on prioritising consent determinations. The current government has sought a more collaborative relationship, as demonstrated by its launch of “Tracks to Treaty – Reframing the relationship with Aboriginal and Torres Strait Islander Queenslanders” in July 2019, a process that culminated in the signing of Queensland's “Path to Treaty Commitment” in August 2022. The consultations leading up to this collective pledge demonstrated that there is a need for all parties to progress native title in a constructive manner with all stakeholder points of view considered.

CYLC staff supported this change in attitude, advised that the Queensland Government had not been adversarial throughout the Review period and had been very focused on supporting the progress of Cape York United #1 Claim. Furthermore, many stakeholders noted that CYLC and the Queensland Government have a very strong relationship. This has translated into a well-planned and organised approach with annual meetings to discuss the approach to progressing Cape York United #1 Claim.

It was noted that the Queensland Connection Reports Guidelines, on the Queensland Department of Resources' website, is dated November 2016 and requires a refresh to better reflect the change in attitude and developments in the jurisdiction.

Overall, the Review assessed that the Queensland Government’s policy position in response to native title claims has had a positive impact on the achievement of native title outcomes within the Review period for the CYLC. This position is based on consultations and comparisons with other jurisdictions.

**Changes to state legislation have had a range of indirect and direct impacts on native title claims for CYLC**

State legislation has had a moderate impact on CYLC’s ability to perform its functions, as described below.

**Table 2 | Relevant state legislation**

| Legislation                                                                                    | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Impact                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Aborigines and Torres Strait Islanders (Land Holding) Act 1985/Aboriginal Land Act 1991</i> | The <i>Aborigines and Torres Strait Islanders (Land Holding) Act 1985</i> was the predecessor of the <i>Aboriginal Land Act 1991</i> , which is now the principal piece of legislation that governs the transfer of certain land parcels to be held by a trustee for the use and benefit of Aboriginal people in Queensland. Under the <i>Aboriginal Land Act 1991</i> , the Minister can declare that ownership and management of land (including unclaimed native title land) can be transferred to Aboriginal and Torres Strait Islander people.                                                           | <b>Low</b> – Within CYLC’s RATSIB area, there have been a relatively high volume of <i>Aboriginal Land Act 1991</i> transfers, however, these constitute a small proportion of the overall area and have had a low direct impact on native title claims.<br><br>It is important to note that going forward compensation will be considered by the Queensland Government as a holistic package where ILUA and land transfers may be seen alongside direct native title compensation. This may increase the impact of the <i>Aboriginal Land Act 1991</i> into the future. |
| <i>Aboriginal and Torres Strait Islanders (Land Holding) Act 2013</i>                          | The <i>Aboriginal and Torres Strait Islanders (Land Holding) Act 2013</i> is a repeal of the <i>Aborigines and Torres Strait Islanders (Land Holding) Act 1985</i> . The <i>Aboriginal and Torres Strait Islanders (Land Holding) Act 2013</i> rectifies issues with the <i>Aborigines and Torres Strait Islanders (Land Holding) Act 1985</i> (for example, residential and infrastructure boundaries that were incorrectly established).                                                                                                                                                                    | <b>Low</b> – The <i>Aboriginal and Torres Strait Islanders (Land Holding) Act 2013</i> provides clarity regarding lingering ambiguity as to how the <i>Aboriginal and Torres Strait Islanders (Land Holding) Act 1985</i> and the modern <i>Aboriginal Land Act 1991</i> interact with one another.                                                                                                                                                                                                                                                                      |
| <i>Aboriginal Cultural Heritage Act 2003</i>                                                   | The <i>Aboriginal Cultural Heritage Act</i> provides for the legal protection of Aboriginal heritage in Queensland. It contains a “last man standing” rule: when an area is not subject to an active native title claim or determination, the last failed claim is deemed to be the Aboriginal party for Aboriginal heritage purposes. This can influence how claims are conducted and lead to disputes about who should administer cultural heritage work in a region.<br><br>Furthermore, CYLC receives requests for services to act for their native title clients in Aboriginal heritage related matters. | <b>Moderate</b> – The last man standing rule has led to disputes between native title groups. These tensions can cause further difficulties in discussions over who the Traditional Owners are for claims. The effect on CYLC’s ability to progress claims, however, is not significant.                                                                                                                                                                                                                                                                                 |

## Complexity of remaining claims

### **With Cape York United #1 Claim covering much of Cape York, there are limited remaining native title claims for the RATSIB area**

While the Cape York United #1 Claim has been a complex undertaking, the process for determinations within the claim has now been set. At the time of writing in May 2024, 16 determinations had been found by consent since the start of the Review period under the Cape York United #1 Claim and much of the remaining area is within the Federal Court's timetable for completion.

Furthermore, CYLC has developed the BINM process to ensure that any remaining complexities and potential disputes regarding claim boundaries and group memberships are well considered. As a result, the Review has not determined that the complexity of remaining claims will have a significant negative impact on the ability of CYLC to progress its claims effectively and efficiently.

## History of previous claims

### **Previous claims have not had a negative impact on the ability of CYLC to progress its claims**

In other RATSIB areas, the history of claims can have a significant impact on the NTRB-SP's ability to achieve native title outcomes over areas and in working with groups. There are no previous claims within CYLC's region that have significantly impacted on CYLC's potential to achieve positive outcomes for claims within its region, and there are no claims in the region where it was found that native title does not exist over an area.

## Complexity of land use and tenure

### **Complexity of land use and tenure causes some issues and challenges for CYLC**

Stakeholders to the Review noted that Queensland's systems and databases for capturing tenure information and land valuation data are strong. This makes compensation processes easier and faster when they occur. CYLC emphasised to the Review team, however, that while this may be the case this information is not always readily provided to Traditional Owner groups and work is required to improve the situation and process. This is something which CYLC and the Queensland Government are discussing and working together on.

While systems and databases for capturing information may be strong, the complexity of land tenure is a challenge that CYLC and all PBCs must manage, and can divert resources and attention from native title. This complexity arises from the interrelationship between Aboriginal freehold and other tenures (which the Queensland Government administers) the overlapping land trusts created under the *Aboriginal Land Act* (as mentioned above) and PBC and the complex processes between the two systems. Additionally, there is a backlog of pending land transfers by the Queensland Government including for the remaining Deed of Grant in Trust Areas, the system of community-level land trusts established in Queensland to administer former Aboriginal reserves and missions

## COVID-19

### **The COVID-19 pandemic had some impact on CYLC particularly in terms of disruptions to timeframes**

CYLC developed and implemented a COVID-19 Safety Management Plan in 2020 which outlined the organisation's approach to ensuring effective management of COVID-19 for its operations, employees and

clients. CYLC also undertook significant work to assist in the protection of Aboriginal and Torres Strait Islander peoples living in remote communities.

Many CYLC staff noted that COVID-19 allowed the organisation to incorporate technology such as videoconferencing in a positive manner. This continued beyond the pandemic related lockdowns.

Nonetheless, COVID-19 caused significant disruption. For example, outbreaks and associated restrictions prevented collection of evidence on the ground and delayed certain cases from progressing, as staff were unable to meet with Traditional Owners, and meetings and court appearances were stopped. In some instances, using emerging technology was difficult for Traditional Owners who did not have access to laptops or computers. The period also presented certain concerns for staff such as the increased uptake of sick leave and navigating an increasingly digital work environment, limiting the ability of staff to maintain workplace socialisation and connectivity.

## **Amount of funding**

### **Total funding received was comparable to other NTRB-SPs relative to size**

Funding during the Review period was fairly stable. Excluding PBC support, total funding that CYLC received for native title during the Review period was \$25.7 million. This was comparable to the total funding for similar NTRB-SPs.

With only the Cape York United #1 Claim, the Review considered funding for a number of determinations (two during the Review period and eight in the 12 months after) as a way to consider comparisons. By these claim numbers the total funding received was quite low which is likely indicative of the burden on resourcing and the claim team over the period.

## 5.2 TOR 2 | Extent to which each organisation assesses and prioritises applications for assistance in a manner that is equitable, transparent, and robust and is well publicised and understood by clients and potential clients.

### Summary

CYLC has a published and easily accessible assessment and prioritisation process that has been designed to support equity, transparency and robustness. Given the nature of the Cape York United #1 Claim, however, assessment and prioritisation of claims was not a significant issue during the Review period. It was more important for CYLC to negotiate boundaries, manage authorisation of claims and to support the intended PBC.

The BINM process that CYLC developed through the Cape York United #1 Claim received positive feedback, particularly from external stakeholders. Clients had a strong awareness of the process and while some were not satisfied with the outcomes, Court feedback would suggest that CYLC applied the process in a rigorous, effective and transparent manner. CYLC noted that native title and community relations staff worked very closely to ensure that decision making is Traditional Owner led.

### 5.2.1 TOR 2: Assessment of performance

This section presents an assessment of performance against the performance indicators for this TOR. To see the performance indicators please see Appendix A.

#### Equity, transparency and robustness of assessment and prioritisation process

##### **CYLC has an assessment and prioritisation process that is fair, well-publicised and accessible**

The assessment and prioritisation policy for CYLC is on the organisation's website with a clearly stated approach to facilitate native title matters and allocate funding based on a series of priorities including:

- (a) advances the interests of native title groups in accordance with CYLC's Operational Plan;*
- (b) enables CYLC to manage the provision of assistance to native title groups effectively;*
- (c) accords with the principles of procedural fairness;*
- (d) complies with NIAA's funding terms and conditions;*
- (e) complies with the NTA; and*
- (f) takes into account CYLC's object of facilitating the return of traditional Aboriginal land to Aboriginal people from Cape York Peninsula and to obtain secure title to that land in a way that is respectful, inclusive of and culturally sensitive to the Aboriginal peoples of Cape York Peninsula.*

The policy steps through the process, identifies the decision makers and outlines the steps a Traditional Owner should take for requesting assistance. The full policy is on the CYLC website accompanied by a simple flow diagram.

During the Review period, there were no requests for assistance for "new" claims and no requests for internal review.

## **Under the unique circumstances of the Cape York United #1 Claim, CYLC still needs to manage boundary disputes and joinder applications**

With over 95 per cent of the RATSIB area either determined or under the Cape York United #1 Claim, it is not surprising that there were no new requests for assistance. However, the reality for Cape York United #1 Claim is that there are still determinations to occur which will require confirmation and authorisation of the native title holders within the broader individual application. Across the nine regions established for anthropology research, this requires fairly substantial mediation and dispute resolution services to support the process.

With an awareness of this, CYLC established the CRDRU in May 2019 to lead CYLC's Traditional Owner engagement. Within a number of functions, specifically support for the Cape York United #1 Claim, the CRDRU assisted with managing and ensuring that decisions regarding the claim were made by the Traditional Owners and provided an intermediary role between the legal team and the Traditional Owners.<sup>14</sup>

This approach used meetings designed to bring groups together to listen and share ideas. The team also supported the BINM process that CYLC has had in place during the Review period. CYLC staff and external stakeholders referenced the importance of the BINM process in supporting CYLC's success through determinations in both the Cape York United #1 Claim and its sea claim.

## **Client and potential client awareness of the process**

### **There appears to be awareness of both the assessment and prioritisation, and BINM processes**

CYLC staff noted to the Review that the importance of their clients awareness of how they have approached boundary identification for claim authorisation and Traditional Owners themselves had been at the centre of the BINM process. Regular updates for Traditional Owners had been through the notification function in areas like Facebook, as well as on their website. While there has been feedback regarding whether all Traditional Owners knew about the process and approach, many stakeholders noted the extent of the effort CYLC has gone to in order to make sure all clients were aware of and could participate in the process.

## **Traditional Owner satisfaction with the assessment and prioritisation process and its outcome**

### **Many Traditional Owners have been satisfied with the process, though some have not been happy with either the process or the outcome**

CYLC staff and many external stakeholders highlighted that the BINM process that they have used has been highly regarded by the Federal Court, and that it has been a useful approach to supporting joinder applications and boundary negotiations. Many Traditional Owners have valued the approach.

However, the Review also heard from a few Traditional Owners who did not believe that CYLC communicated the process or the outcomes clearly enough. Some felt that CYLC did not let Traditional Owners lead in the decision-making processes for boundary identification. Some of these Traditional Owners also noted to the Review that they submitted formal complaints or gave informal feedback to CYLC. This is discussed further under TOR 3.

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<sup>14</sup> CYLC (2021) Cape York Land Council Annual Report for 2019-2020.

The Review team notes that it is on record that Mortimer J believed that CYLC had taken all reasonable steps to support all Traditional Owners to be involved in the process both for authorisation and agreement of PBC representations.<sup>15</sup> The Review appreciates that CYLC undertook extensive engagement to be guided by Traditional Owners in all its work and have Traditional Owner decision making front and centre in the processes of native title.

## 5.2.2 TOR 2: External factors

This section presents an analysis of factors that impacted on performance that were beyond CYLC's control.

### Number of claims relative to NTRB-SP size and resourcing

#### **There have been a significant number of claims to progress within the Cape York United #1 Claim**

The majority of resourcing for claims over the Review period went to Cape York United #1 Claim. However, given it has a significant number of authorisations and determinations within the Cape York United #1 Claim, this presents significant pressure on CYLC's resourcing. Furthermore, as noted several times by CYLC staff, the Federal Court has set a very fast timeframe for progressing the remaining determinations within Cape York United #1 Claim.

This pace has put pressure on CYLC at times to make sure that the proceedings for individual determinations within the Cape York United #1 Claim are representative of all groups and that all relevant potential Traditional Owners have been engaged. If this is progressed too quickly, this will create potential issues later on during the PBC stage for Future Acts, ILUAs and compensation-relevant activities.

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<sup>15</sup> Mortimer J, Order QUD 673 of 2021. Accessed at <https://www.cylc.org.au/wp-content/uploads/2021/11/ross-obo-cyu1-claim-group-v-queensland-2021-fca-1463.pdf> in July 2023.

### 5.3 TOR 3 | Extent to which each organisation deals respectfully, equitably, transparently and in a culturally appropriate manner with persons who hold or may hold native title in its region, including by adequately investigating and resolving complaints.

#### Summary

Since the previous Review, CYLC saw a marked improvement in their community relations model with the creation of a Traditional Owner led community relations team. The team played a direct role in strengthening the relationships between CYLC and Traditional Owners as well as supporting CYLC staff to work in a respectful and culturally appropriate manner, including through training. CYLC did not receive any formal complaints nor any requests for internal review during the Review period.

Opportunities to continue to strengthen CYLC's engagement include:

- Having greater connection with local communities in the RATSIB area through on the ground presence with local staff or through more regional staff working in Cairns to increase the representation of regionally based community members and improve connectivity with Traditional Owners.
- Improving digital and written communications so that Traditional Owners can follow the activities of CYLC and any organisational changes
- Seeking more client feedback through formal and informal complaints to understand the concerns of the community.

#### 5.3.1 TOR 3: Assessment of performance

This section presents an assessment of performance against the performance indicators for this TOR. To see the performance indicators please see Appendix A.

#### Respectful and transparent engagement

##### **CYLC has seen marked improvement in the relations between Traditional Owners and CYLC**

Since the previous Review, CYLC has established a Traditional Owner led CRDRU, now known as the Community Relations Unit (CRU). The CRDRU has been utilised effectively in leading communications with Traditional Owners and playing a liaison role between Traditional Owners and the other units in CYLC. Clients have indicated there has been a significant improvement in the respectful engagement of CYLC as a result. The Review notes that the Strategic Plan 2020-2026 sets out that by 2021 a stakeholder engagement and communications strategy would be developed, though CYLC staff have indicated that this document is yet to be completed.

Clients indicated an improvement in the willingness of CYLC to incorporate their views throughout the Review period. While the Review heard complaints of mixed experiences of respectful engagement, the Review accepts CYLC's advice that these complaints likely refer to experiences that occurred prior to the Review period. For example, with respect to decision making, some clients reported feeling side-lined as proposed approaches to native title claims were initially progressed prior to the Review period with minimal input from clients through pre-set agendas, with suggestions to deviate from such agendas met with resistance from CYLC.

Some clients additionally reported mixed experiences in the appropriate representation of Traditional Owners, suggesting that some family groups appear to have stronger voices in negotiating boundaries compared to others. CYLC noted to the Review team that it is often Traditional Owners with cultural authority that have stronger voices in these contexts.

### **CYLC has opportunities to improve their online engagement**

CYLC has made significant improvements in its online engagement. CYLC has updated its website, provided more information online, provided regular updates on its Facebook page and communicates the new and upcoming determinations and schedule. CYLC also seeks further opportunities to improve the transparency of its processes and progress to its clients. To do this CYLC could improve their digital communications by sharing more information regarding the native title processes and PBC engagement schedule. Clients have indicated that in areas with poor internet access they would like to see more information communicated through mailing lists.

Shortly after the commencement of the Review period, the COVID-19 pandemic restricted the ability of CYLC to engage with clients in face-to-face settings, given the heightened risk of spreading illness in communities. CYLC encouraged digital communications throughout these restricted periods with relative success, enabling a continuation of activities. A return to face-to-face conversations as COVID-19 restrictions eased was the focus for the CRDRU, enabling them to visit each community in the RATSIB area and continue to engage communities regarding the Cape York United #1 Claim.

## **Culturally appropriate engagement**

### **CYLC has improved its ability to engage with clients, largely through the CRDRU**

CYLC had made efforts to increase the number of First Nations staff, in particular Traditional Owners of the RATSIB area, to improve the cultural appropriateness of engagement. A formal hiring policy that addresses culturally appropriate engagement of candidates during hiring is not currently available. The CRDRU provided mandatory cultural competence training for new and existing staff and CYLC continued to build on its approach to engaging in a culturally safe manner.

Engagements with clients were generally opened by the CRDRU, who participated to ensure that engagements were conducted in a culturally appropriate manner. However, clients noted that the process of delivering the Cape York United #1 Claim often did not follow appropriate cultural protocol with varying levels of engagement based on the perceived position of Traditional Owner families. Some clients also said that at times, Elders with limited knowledge of native title issues were engaged.

Clients and Traditional Owners indicated a desire to see increased on-the-ground presence of CYLC staff, which was made difficult due to the size and type of RATSIB area. CYLC has not had outposted staff since 2015 and noted that it was concentrating engagement across areas subject to claim rather than areas already determined. Limited PBC support was provided by the CRDRU, limiting the connectivity of CYLC with Traditional Owners and PBCs.

## **Complaints**

### **CYLC had a clear complaints policy, publicly available on their website**

CYLC had a plain-English complaints policy, available at the bottom of its website, outlining what kind of complaints the policy applies to and how to make a complaint. Most staff indicated they were familiar with the complaints policy. CYLC indicated that it took complaints seriously. Depending on the nature of the complaint, the person receiving the complaint would attempt to resolve it. If this was unsuccessful, it was

escalated to the executive. CYLC indicated on its website that complaints could be escalated directly to the Chair for their consideration if they did not received an appropriate response.

### **CYLC received no formal complaints throughout the Review period**

CYLC did not receive any formal complaints throughout the Review period.

Clients who had positive relationships with CYLC advised the Review that they raised concerns with ease, while a few others indicated a reluctance due to a concern they might not be heard fairly or in case it might lead to reduced support from CYLC. CYLC staff noted that there had been an improvement in the response to informal complaints made by clients and Traditional Owners with the change in leadership post-Review. This leadership change meant that the CEO is a Traditional Owner and more integrated within the community, leading to an improvement in navigating community satisfaction in a culturally appropriate manner.

## **Internal review**

### **CYLC conducted no internal reviews from a request over the Review period**

CYLC is responsible for providing and publicising a process for native title holders to request an internal review of decision-making undertaken by the CYLC as a representative body under the NTA.<sup>16</sup> CYLC fulfils this obligation as outlined on its website. Internal review processes in NTRB-SPs are usually carried out by a person within the organisation not involved in the original decision. If none are available, an external party can carry out the review. CYLC reported no internal review requests over the Review period.

## **Use of cultural materials**

### **CYLC has indicated a strong commitment to holding cultural materials in appropriate ways**

The CYLC Strategic Plan 2020-2026 indicates that CYLC will hold and manage anthropological, genealogical and ethnohistorical information in trust for Traditional Owners in secure and culturally appropriate ways but does not indicate how this will be achieved.

The CYLC Strategic Plan 2020-2026 indicates that CYLC will measure success by:

- 2021 – processes and criteria will be developed for the sharing of anthropological, genealogical and ethnohistorical materials and information held by CYLC with communities of provenance, and by 2023 sharing processes will have commenced and will be ongoing.
- 2022 – processes and criteria for Service Agreements will be developed. By 2025 CYLC will be recognised as the primary authority and go to agency for Cape York Aboriginal peoples' anthropological research and information services.
- 2025 – a secure and best practice Cape York Aboriginal genealogical database, register of culturally significant sites and catalogue of anthropological materials will be established. Data entry will be ongoing to maintain currency of the data set.

CYLC noted to the Review team that the finalisation of these processes in the first two bullet points had been delayed. The organisation aims to finalise the Cape York United #1 Claim by 2025 and then commence the return of materials post-determination. Traditional Owners have indicated that prior to the

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<sup>16</sup> Section 203BI of the NTA.

Review period cultural materials were obtained by CYLC without being returned, but no occurrences of this have been noted during the Review period.

### 5.3.2 TOR 3: External factors

No external factors have been identified for TOR 3.

### 5.3.3 TOR 3: Recommendations

#### RECOMMENDATION

1

Increase connection with local communities in the RATSIB area through:

- identifying ways to enhance on the ground presence of local staff, or
- identifying opportunities to increase the number of client groups represented in CYLC's staff based in Cairns (appreciating that this needs to be considered alongside the relevant skills required for roles).

#### RECOMMENDATION

2

Improve digital and written communications through:

- improved communication including varied modes for notification of meetings and up-to-date information provided through newsletters and on digital platforms such as their website or Facebook.
- updating the CYLC website to capture more clearly the current activities and organisational information.

#### RECOMMENDATION

3

Seek more client feedback; not just rely on the formal complaints process.

## 5.4 TOR 4 | Extent to which each organisation performs its functions in a cost-effective manner, including by identifying the key cost drivers for the organisation.

### Summary

CYLC had a strong focus on performing its functions in a cost-effective manner during the Review period. This was within a difficult context recognising that the full RATSIB area of Cape York is remote with limited commercial travel options. During the Review period, CYLC had been cost conscious around travel and drew on the opportunity presented by the COVID-19 pandemic to explore virtual engagement when appropriate.

Salaries were commensurate with other similar organisations and the organisation effectively engaged external consultants, particularly consultant anthropologists who worked on the original research for the Cape York United #1 Claim. The finances of CYLC were managed directly by the Chief Financial Officer, with individual units not managing their own budgets.

Stakeholders indicated opportunities to improve the efficiency of spending through greater investment in digital systems, particularly in the human resources (HR) and finance space, and by developing and implementing travel guidelines with tightened accountability for all travel across the organisation.

### 5.4.1 TOR 4: Assessment of performance

This section presents an assessment of performance against the performance indicators for this TOR. To see the performance indicators please see Appendix A.

#### **Expenditure on salaries (legal, anthropological, Board, CEO, HR, etc.), operations (travel, legal, offices, etc.) or other relevant items**

#### **CYLC saw a reduction in total staff expenditure during the Review period**

CYLC saw a reduction in the total expenditure on staff salaries during the Review period, as indicated in Table 3. As of June 2022, CYLC had 35 staff (24 female, 11 male, 11 total First Nations) dedicated to the delivery of native title functions.

CYLC staff indicated difficulties in recruiting and retaining staff. This is a common challenge within the broader NTRB-SP network, particularly for legal and anthropological staff. While COVID-19 has had some impact on these shortages, there were comments made to the Review regarding national shortages and the need for greater training and development to build a pipeline of staff across the network.

**Table 3 | Staff expenditure<sup>17</sup>**

| Financial year | Total expenditure on staff salaries | Variation to the year prior |
|----------------|-------------------------------------|-----------------------------|
| 2019-20        | \$4,505,277                         | -3%                         |
| 2020-21        | \$4,395,973                         | -2.48%                      |

<sup>17</sup> CYLC (2020) Financial Report July 2019 – June 2020, CYLC (2021) Financial Report July 2020 – June 2021 and CYLC (2022) Financial Report July 2021 – June 2022.

| Financial year | Total expenditure on staff salaries | Variation to the year prior |
|----------------|-------------------------------------|-----------------------------|
| 2021-22        | \$4,182,010                         | -5.61%                      |

### **CYLC can be clearer with respect to funding allocations per operational unit and for roles with time split between organisations**

CYLC staff conveyed to the Review team that there was an opportunity for the organisation to improve funding transparency. CYLC staff highlighted the need for management of each operational unit to receive clearer and earlier insight into their annual unit budget. This would allow unit management more time to plan for the year's operations accurately and cost-effectively.

Some CYLC staff raised that a number of their colleagues, notably those in legal roles, divided their time between the CYLC and Balkanu. As a result, these staff raised that it would be ideal if hours worked for roles split between these entities could be defined more clearly, which could be addressed in an MOU between these organisations (discussed further under TOR 5). The Review was of the view that clarity on the hours worked for CYLC and Balkanu for these staff would ensure accurate salary expenditure, preventing potential overpayment. CYLC has advised that since the Review period, there is no longer any secondment arrangement with Balkanu Aboriginal Corporation.

### **Cost-saving actions, strategies and/or discussions**

#### **CYLC implemented a number of cost-saving actions, strategies and/or discussions**

CYLC staff advised that a number of policies were implemented to improve the performance of CYLC without putting additional pressure on available funding, in particular around travel (explored further below). These new policies were noted to the Review team.

The Review notes that strategies for cost consciousness are limited by the structure of the funding cycle, with CYLC staff indicating funding is received bi-annually, typically in November and May. CYLC staff advised that budgets were established in each function area, with expenditure signed off by the CEO.

#### **CYLC had opportunities to improve its cost efficiency through increased digitalisation**

While CYLC improved its cost efficiency over the Review period, stakeholders indicated there were opportunities to improve the efficiency of spending through greater investment in digital systems, particularly in HR and finance domains. CYLC staff indicated that invoicing systems and recording of hours worked was still paper based, creating inefficiency for staff within the organisation. The usage of paper-based invoicing and recording of hours worked presents inefficiencies as it requires additional staffing to maintain as compared to modern digitalised systems. The Review considered that digitalisation of the Finance and HR systems would improve their cost-effectiveness and outputs.

The Review notes that since the Review period, CYLC has digitised a majority of its HR and Finance systems and has an implementation plan for remaining paper-based systems, including time sheeting.

### **Appropriate processes for claim group meetings**

#### **Claim group meeting processes are improving, but can be improved further**

Claim group meetings are attended by Traditional Owners, the CRDRU, the legal staff of the NTU, and anthropologists and consultants where required. As indicated under TOR 3, the CRDRU led these engagements and distilled the technical information so that it was well-understood by Traditional Owners,

with NTU lawyers providing specific insight at particular points throughout the meeting. With recent leadership changes in the CRDRU, there is a view held within CYLC that the general approach to claim group meetings has improved and will continue to do so.

Consulted Traditional Owners suggested that claim group meetings could be further improved by:

- Allowing for Traditional Owners to have more time, including by returning at a later date, to consider information presented at claim group meetings and provide meeting information to any of their Elders who were absent and have cultural authority to make decisions.
- Sharing meeting minutes with Traditional Owners after meetings and allow for Traditional Owners to capture their own meeting minutes.
- Ensuring that meeting recruitment processes allow for the appropriate cultural authorities connected to the Clans/families in the claim to be present at the meeting.

CYLC staff advised the Review that they provide regular opportunities for people to attend meetings and feedback information, that Traditional Owners are in no way restricted from taking their own notes and that meeting recruitment processes allow for the appropriate cultural authorities connected to the Clans/families in the claim to be present at meetings.

## Annual yearly expenditure per claimant group

### Authorisation, determination and claim group meetings are a considerable expense for CYLC

Costs for claim group participation in relevant meetings were largely influenced by the remoteness and size of Cape York, the number of participants and the type of meeting. The COVID-19 pandemic influenced the ability of CYLC to hold meetings in person. Specifically, this resulted in the rescheduling of meetings to a later time until they could take place in person, notably for meetings set to occur in FY2019-20 which were deferred to FY2020-21. Relatedly, the CYLC undertook relatively more virtual meetings in FY2019-20 compared to FY2020-21, with virtual meetings inexpensive relative to in-person meetings. Altogether, this explains why there was an increase in meeting expenditure between FY2019-20 and FY2020-21, as shown in Table 4.

**Table 4 | FY2019-20 and FY2020-21 total claimant meeting costs for CYLC's native title function<sup>18</sup>**

| Meeting type         | FY2019-20 | FY2020-21 |
|----------------------|-----------|-----------|
| Claimants (meetings) | \$178,355 | \$359,288 |
| Claimants (travel)   | \$167,609 | \$391,494 |

## Travel assistance policies for claim group meetings

### CYLC had effectively implemented measures to improve the efficiency of travel spending

CYLC had introduced several strategies to reduce its travel expenditure while maintaining safety standards, such as:

- Utilising an in-house travel team that manages booking and reduces the costs of additional fees incurred through travel agents.

<sup>18</sup> CYLC (2020) Financial Report July 2019 – June 2020 and CYLC (2021) Financial Report July 2020 – June 2021.

- An improved internal travel policy that utilises flexible flights where possible, although much of the travel in the region requires chartered flights, and reducing the amount of additional travel incurred through the rebooking of flights missed by Traditional Owners.
- Timing of travel to ensure that as many issues and tasks can be completed when on trips.

In the previous Review, CYLC advised that it had put in place a practice of staff travelling more by car, to increase staff presence on the ground in light of the decision to cut regionally posted staff in 2015. CYLC staff advised that they were balancing the costs of maintaining vehicles and salary costs of driving with the expensive charter flight costs that are characteristic of the region. The Review considers that negotiating partnerships with the companies that operate flight services in the region could reduce the costs of flights in the medium-term through the bulk purchase of tickets leading to discounted prices and increased number of services across the region.

## Appropriate rationale for use of external consultants

### CYLC utilises external consultants effectively to support native title service delivery

Between FY2019-20 and FY2020-21, CYLC utilised the services of consultants, including legal, anthropological, land management and planning consultants to provide expert services and advice in relation to NTRB-SP functions that were not otherwise available from CYLC staff.

CYLC had indicated that the CEO and Principal Legal Officer (PLO) approved the engagement of all consultants for native title work to ensure appropriate standards were maintained, that consultants' service costs were within the budget and that they represented good value for money, with copies retained of all contract records for each consultant engaged.

The Review notes that professional consultants, particularly anthropologists, with knowledge and expertise in a geographic area or in relation to a claimant group, were engaged directly and tenders were not called. Consultant performance was monitored by the PLO and the CEO who reported on the effectiveness of consultancies to the Board of Directors. Under the Program Funding Agreement, CYLC was required to advertise annually for consultants and maintain a consultants' register. CYLC engaged the services of 33 consultants on projects to a total value of \$1,758,873 over FY2019-20 and \$1,402,193 over FY2020-21, indicating a reduction in the total cost of engaging consultants over the two-year period.

**Table 5 | FY2019-20 and FY2020-21 consultant costs<sup>19</sup>**

| Payment range      | FY2019-20 number of contracts | FY2019-20 total cost | FY2020-21 number of contracts | FY2020-21 total cost | Variance total cost |
|--------------------|-------------------------------|----------------------|-------------------------------|----------------------|---------------------|
| Less than \$30,000 | 16                            | \$362,298            | 26                            | \$289,821            | \$72,477            |
| More than \$30,000 | 17                            | \$1,396,575          | 12                            | \$1,112,372          | \$284,203           |
| Total              | 33                            | \$1,758,873          | 38                            | \$1,402,193          | \$356,680           |

<sup>19</sup> CYLC (2021) Consultant Listing July 2019 - June 2020 and CYLC (2022) Consultant Listing July 2020 - June 2021.

## 5.4.2 TOR 4: External factors

This section presents an analysis of factors that impacted on performance that were beyond CYLC's control.

### Size and remoteness of RATSIB area

#### **CYLC services a large, remote RATSIB area with relatively poor travel infrastructure**

The CYLC covers a RATSIB area of over 128,401 square kilometres. The Australian Bureau of Statistics classifies most of CYLC's RATSIB area as "very remote", the highest level of remoteness. Cape York is one of the most remote areas in Australia, with a total estimated population of 16,929 people, of whom 9,453 (56 per cent) identify as Aboriginal or Torres Strait Islander.<sup>20</sup> With few major population centres and limited service availability, remoteness had a significant impact on organisational cost-effectiveness. There are only two roads that pass from north to south through the Cape York Peninsula to Cape York, and this impacted on CYLC's ability to travel safely and quickly to more remote parts of its RATSIB area. This made field costs (for example, travel, accommodation, food, first aid) high.

The Review considers the remoteness and location of CYLC's region is likely to have an impact on efficiency, and that travel and accommodation costs for the organisation's staff would naturally be high in this environment. The geographic location of the area is prone to flooding during the wet season (December to April), forcing road closures and this impacts on the ability of CYLC to travel to remote locations during these months. Chartered flights during the wet season can be the only option open to the organisation if it needs to visit these parts of the RATSIB area.

### Average number of people within a claim group

#### **CYLC serviced over 30 native title groups with varying numbers of individuals in each claim group**

While the CYLC recorded the number of claim groups involved in a native title claim process, the number of individuals within each claim group can vary significantly, particularly given that levels of involvement fluctuate over the course of the native title process (and beyond). This makes it very difficult to accurately estimate the exact number of people across multiple communities that form part of a claim group.

There are over 30 native title groups in the region, with a large number of sub-groups and families. With over 9,450 Aboriginal and Torres Strait Islanders living in the region and many more living outside of the region, there are a relatively large number of Traditional Owners in each native title group. This presented challenges for CYLC as it was difficult to consult fluctuating numbers of Traditional Owners across engagements.

### Interpreters

#### **Interpreter services were provided where required**

CYLC staff indicated that a majority of Traditional Owners living within the RATSIB may not speak English as a first language. Where necessary, CYLC staff engaged interpreters to ensure that Traditional Owners were properly consulted and informed. Traditional Owners indicated satisfaction with the use of interpreters where necessary. Traditional Owners noted that while the utilisation of First Nations staff has improved, First Nations staff were often not Traditional Owners of the areas being visited, which

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<sup>20</sup> 2016 Census.

Traditional Owners suggested would be preferred where possible for a deeper understanding of local issues.

5.4.3 TOR 4: Recommendations

|                                                                                                                                                                                                                                  |   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| RECOMMENDATION                                                                                                                                                                                                                   | 4 |
| Implement the newly developed policies, including travel, and communicate them to all staff and Board members.                                                                                                                   |   |
| RECOMMENDATION                                                                                                                                                                                                                   | 5 |
| Indicate clear funding allocations for each unique operational unit, with clear allocation of funding for individual units and for split roles, allowing for greater accountability of function leads in managing unit finances. |   |

## 5.5 TOR 5 | Extent to which each organisation has governance and management structures, and organisational policies and an organisational culture that support efficient and effective project delivery.

### Summary

CYLC had a clearly defined set of responsibilities for decision making at the Board, CEO, and senior staff levels with the delineation of responsibilities between the Board and Executive consistent with other organisations. Conflict of interest protocols were well considered but could be improved by being better articulated and aligned to the core functions of CYLC in native title.

There was some uncertainty raised about responsibilities and functions, particularly by external stakeholders, where functions overlap with CYLC's sister organisations, Balkanu Cape York Development Corporation, and CYP. The Review found that there was an opportunity to clarify roles between CYLC and its sister organisations potentially through the development and implementation of MOUs. An MOU could clarify the roles of each organisation, enabling a clear path toward the achievement of outcomes each organisation seeks to achieve as a regional network seeking to empower Traditional Owners within the Cape.

Many staff noted that CYLC is a good place to work with a commitment to professional development and training, and rigorous financial management. The Review made some suggestions to support CYLC to continue to operate as a high-performing and productive organisation.

### 5.5.1 TOR 5: Assessment of performance

This section presents an assessment of performance against the performance indicators for this TOR. To see the performance indicators please see Appendix A.

#### Breakdown of roles, responsibilities and decision making between the organisation's Board, Chairperson, CEO and senior staff

##### **There were clearly defined roles and responsibilities for decision making at CYLC**

CYLC is incorporated under the CATSI Act with its constitution, or consolidated rule book, registered with the Office of the Registrar of Indigenous Corporations (ORIC). There are 17 communities within the Cape York RATSIB area and a representative from each community is elected as a Director to sit on the CYLC Board of Directors.

As guided by the CYLC Rule Book, the Board of Directors has responsibility for:

- receiving and considering reports from the CEO and other members of the senior management team regarding CYLC operations
- monitoring the financial position of CYLC
- allocation of resources to projects
- setting policy
- dealing with complaints and other functions as accepted from time to time.<sup>21</sup>

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<sup>21</sup> CYLC (2017) Rule Book for Cape York Land Council Aboriginal Corporation.

The CYLC Rule Book sets the organisation's strategic direction and monitors the operations.

The CEO is appointed by the Board to manage the day-to-day business of the organisation. As noted in the CYLC Rule Book, the CEO is responsible for the day-to-day operations of the organisation including:

- all matters related to staff employment
- day-to-day control of the organisation's finances
- representing CYLC in all matters affecting the organisation.<sup>22</sup>

CYLC noted that the organisation achieved good corporate governance through "strong working relationships and the separation of powers between CYLC's elected arm – the Board of Directors and CYLC's executive arm – CYLC employees."<sup>23</sup> This was in addition to clearly defined roles and responsibility, and well-structured reporting between the elected and executive teams.

Some stakeholder feedback provided to the Review noted that at times there was not always a clear separation between the Board and management in practice (despite this being clearly outlined in relevant documents). An example often cited was that the Chair, who has an office within the building, was seen to be involved in operational aspects of the business. This perception may have resulted from the Chair's active involvement in a range of matters affecting Cape York (for which he is paid a salary by an external organisation). CYLC staff consulted by the Review did not express any concerns about the separation of powers.

CYLC had a clearly defined approach to risk management for the organisation, as illustrated in Figure 4. This approach was considered during the COVID-19 pandemic, with additional policies specifically relating to managing the risks COVID-19 presented.

**Figure 4 | CYLC's risk management approach<sup>24</sup>**

|                                |                                                                                                                                                      |
|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CYLC Board of Directors</b> | <i>Provides policy, oversight and review of risk management.</i>                                                                                     |
| <b>Chief Executive Officer</b> | <i>Drives culture of risk management and signs off on annual risk attestation.</i>                                                                   |
| <b>HR/WH&amp;S</b>             | <i>Continuously improving risk management policy, strategy and supporting framework.</i>                                                             |
| <b>Managers</b>                | <i>Ensure staff in their business units comply with the risk management policy and foster a culture where risks can be identified and escalated.</i> |
| <b>Staff</b>                   | <i>Comply with risk management policies and procedures.</i>                                                                                          |

Our risk management system is regularly reviewed to:

- ensure that it is being applied across all levels, serving as an influence on all decisions on operations, service delivery and service development.
- ensure compliance to our legal and corporate obligations. These include reporting, accounting, licensing, workplace relations, work health and safety activities and corporate and legal obligations.
- ensure that the framework continues to provide a strong foundation from which we can successfully deliver our strategic priorities.

<sup>22</sup> CYLC (2017) Rule Book for Cape York Land Council Aboriginal Corporation.

<sup>23</sup> CYLC (2021) Cape York Land Council Annual Report for 2019-2020.

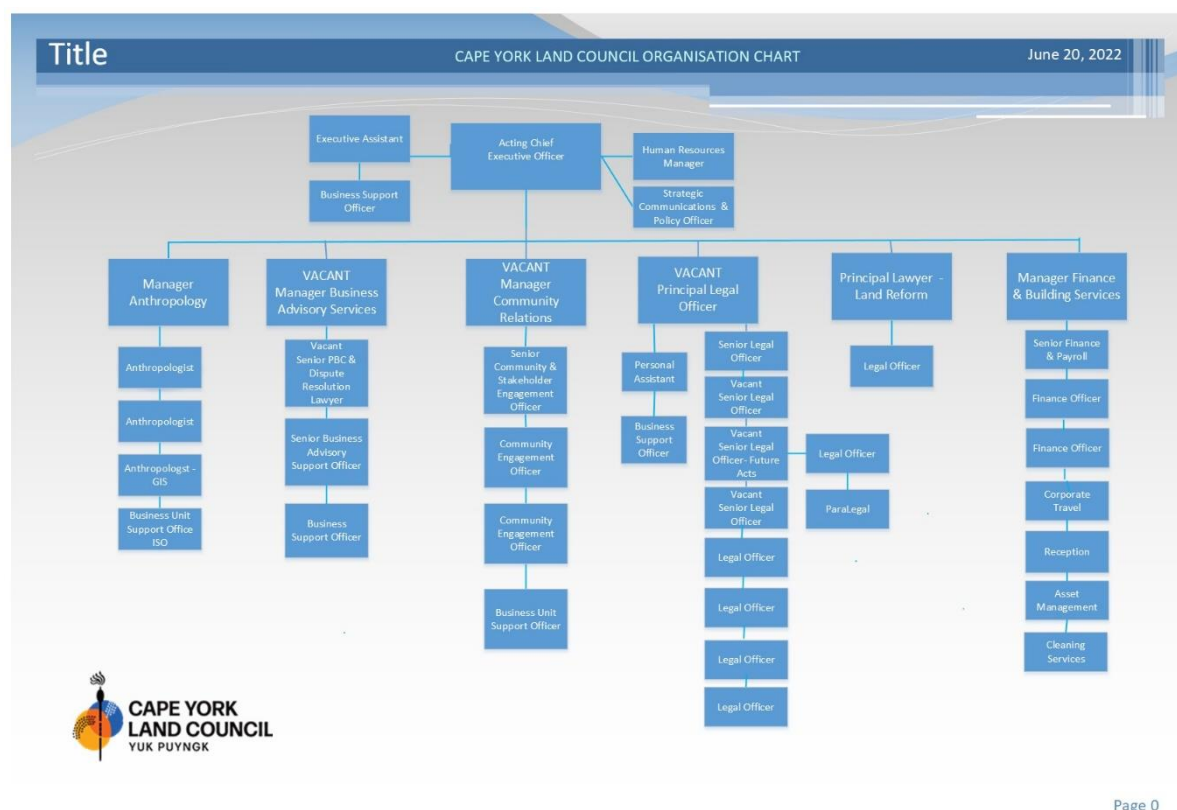
<sup>24</sup> CYLC (2022) Cape York Land Council Annual Report for 2020-2021.

The FY2019-20 Annual Report for CYLC noted that a Special General meeting was called in March 2019 to consider major changes to the CYLC's Constitution. An application for an injunction was served on CYLC seeking to postpone the meeting until there had been additional consultation. The matter was settled in December 2019. The Annual Report stated that governance reform would be a matter for consideration going forward. The Review, however, was not made aware of any substantial changes to the Constitution and the current published Rule Book was last updated in 2017.

### **CYLC was structured to ensure that all functions were carried out with clear demarcation between roles and responsibilities**

CYLC had six work units, as illustrated in the Figure 5. This structure had been in place since May 2019 when the organisation went through an internal restructure to improve delivery of agreed outcomes. CYLC staff consulted by the Review noted that roles were clearly defined with positive working relationships between the different units. The management team at CYLC met weekly and staff noted that there was effective management of all service delivery to achieve the Strategic Plan 2020-2026 and operational goals.

Figure 5 | CYLC organisational structure<sup>25</sup>



### **There would be value in having a MOU between CYLC and other Cape York community organisations**

As noted in the recent CYLC Annual Reports, CYLC is a key part of a network of community-based organisations representing the interests of Cape York Aboriginal and Torres Strait Islander people. CYLC

<sup>25</sup> CYLC (2022) Annual Report for 2020-2021.

plays a critical role in delivering outcomes for Traditional Owners relating to their land and sea rights and interests. Alongside CYLC sits Balkanu Cape York Development as well as CYP (as the umbrella organisation for entities including Cape York Employment and Cape York Institute). Working together, these three organisations have significant roles to play in achieving improved economic and social outcomes alongside preserving and celebrating heritage and culture.

The Review received feedback from some stakeholders that there was not always transparency and clarity about what role each of the regional corporations played in achieving these outcomes. This was particularly where CYLC staff (such as in the Land Reform Unit) or Board members worked across two or more of the regional organisations, or where there were activities that had overlap such as in the areas of land rights and capability building.

To strengthen the outcomes, and see greater complementarity between the organisations, there could be value in having one (or more) MOUs developed. These would create a framework for collaboration between the organisations against these common outcomes and commitments to the Cape York people. This could then be communicated on each organisation's website and in any service agreements.

## **Board integrity and capability**

### **CYLC's Board of Directors are supported to fulfil their fiduciary duties**

As documented in the FY2019-20 and FY2020-21 Annual Reports, CYLC's Board of Directors is required to respond and meet expectations regarding regulatory and government policy requirements and standards.<sup>26</sup> To understand their legal requirements under the NTA, the CATSI Act, the CYLC Rule Book and Code of Conduct (as per Figure 6) as well as the principles of good governance, CYLC's Board of Directors received regular training. For example, following the annual general meeting (AGM) in 2020, 23 of the 31 directors and alternate directors participated in a one-day workshop facilitated by the Australian Indigenous Governance Institute.

As outlined in the current organisational Strategic Plan 2020-2026, the capability of its Board Directors is one of the organisation's highest strategic priorities. CYLC noted in the FY2020-2021 Annual Report that "the success of the CYLC Board of Directors has been due to their collective capability. That being the combination of Board members' individual knowledge, skills, attitudes and competence."<sup>27</sup>

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<sup>26</sup> CYLC (2021) Cape York Land Council Annual Report for 2019-2020 and CYLC (2022) Cape York Land Council Annual Report for 2020-2021.

<sup>27</sup> CYLC (2022) Cape York Land Council Annual Report for 2020-2021.

Figure 6 | CYLC's Code of Conduct for Ethical Standards<sup>28</sup>



## Conflicts of interest

### **CYLC has a documented policy and approach to managing conflict of interest for Directors of the Board and staff**

Conflict of interest (or disclosure of material interest) for Directors of the Board is outlined within rule 10.2 of the CYLC Consolidated Rule Book, regarding their duty to disclose material personal interests. This requires a Director who has a material personal interest in a matter that relates to the affairs of the corporation to disclose the interest to other Directors (unless under rule 10.B it says otherwise).<sup>29</sup> The policy is clearly stated setting out the reasons for disclosure and approach for making a disclosure.

A new conflict resolution policy for staff was published after the Review period in May 2023 (with the previous process for managing conflict of interest for staff sitting within CYLC's Code of Conduct). The policy outlines what a conflict of interest involves, approaches to managing conflict of interest and what is expected of employees. The form and register for managing conflicts of interest provided to the Review appeared sound. During the Review it was also noted by staff that identified conflicts are well-understood and managed to a high standard.

There could be an opportunity to improve both staff and Board policies. The policies could more clearly identify the types of conflicts that may arise in an Indigenous organisation where First Nations employees and Board members can be both clients to the organisation (as native title claimants, Traditional Owners and/or PBC members or Board members) as well as working for the organisation. The policy, as it is currently written, does not capture this at all. Having this more clearly identified would support greater monitoring and managing of such a conflict if, and when, it arises.

<sup>28</sup> CYLC (2021) Cape York Land Council Strategic Plan 2020 to 2026.

<sup>29</sup> CYLC (2017) Rule Book for Cape York Land Council Aboriginal Corporation.

## Culture and values

### **CYLC was regarded as having a good organisational culture, with significant improvements since the Review period**

Many of the CYLC staff who spoke with the Review team commented on the strong, positive culture within the workplace. CYLC staff noted that there was a collective commitment to undertaking good work that has a positive outcome for the communities of Cape York and achieves the organisation's mission:

*Through our consultation, engagement, advocacy, and leadership, CYLC will empower Cape York Aboriginal people to assert, establish and manage their rights and interests in land and sea to produce social, cultural, and economic benefits.<sup>30</sup>*

Staff also noted the importance of living the organisation's values in their day-to-day work:

- Honesty, integrity and fairness in dealings with Cape York Aboriginal people and other stakeholders.
- Determination to drive reform through innovative delivery of services.
- Respect for the people and culture that we represent.
- Protection of Aboriginal cultural heritage rights and interests.

Many CYLC staff who engaged with the Review felt supported by their managers and were positive about their experience working within the organisation. Where CYLC staff had a less positive experience this was linked to having a directional rather than collaborative leadership approach to managing staff and manual paper-based Finance systems (such as payroll, reimbursements and leave forms) which caused inefficiencies and impacted staff productivity. As noted in TOR 4, CYLC has digitised a majority of their Finance and HR systems, with a plan to digitise remaining systems in the coming months.

## Financial management

### **CYLC has a rigorous financial management approach though there are some opportunities for improvement**

CYLC complies with all legislated financial requirements and has a strategic and rigorous approach to financial management with routine financial updates provided to the Board of Directors by the CEO and Finance Manager. This strong financial management was demonstrated through its successful passing of compliance audits across all years during the Review period.

The Review noted that while the Financial Statements for FY2021-22 had been prepared, the 2021-22 Annual Report had not been published at the time of the Review. CYLC advised that it was subsequently published. With the new CEO nine months into the role (at the time of writing in May 2024), this would be expected to be published soon. While CYLC often has grant funding underspent at the end of each financial year, this was noted by CYLC to be a factor of when the grant funding is paid, rather than because of not meeting financial milestones.

There were recommendations made to the Review regarding opportunities to improve efficiency and effectiveness of CYLC's financial management. These were as follows:

- Move from a paper-based payroll and timesheet system to an electronic system which would save time and minimise the chance of error in manual inputs.

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<sup>30</sup> CYLC (2021) Cape York Land Council Strategic Plan 2020 to 2026.

- Move from a paper-based invoice and purchase order system to an electronic system which would minimise the chance of error in manual inputs and create a system that supports easier approvals and tracking of spending.

### Training and professional development

#### CYLC reported a strong commitment to staff professional development

It was recognised during the Review that training and professional development was important to support staff performance and their ability to contribute effectively to the success of the organisation. During the Review period, CYLC staff attended training seminars, conferences and workshops. CYLC also focused training on building its internal capability in areas of need such as PBC support and conflict resolution or mediation. Many staff who participated in relevant training organised by CYLC commented on its usefulness to their roles. The organisation also supported its staff, where relevant, in areas of continuing professional development.

One area where some CYLC staff noted there was a gap in training and support for professional development was at the Executive level. Recognising it is outside the Review period, it was highlighted as particularly important for the new CEO. With leadership playing a critical role in supporting high-performing organisations, it was emphasised that having the leadership supported in their role and duties around service delivery, financial management and grant acquittal is key. The Review was made aware that NIAA has previously run CEO training in the past which could be considered again where NTRB-SPs have new CEOs or as a refresher for other CEOs.

Alongside training and professional development, CYLC reported it had a clear focus on performance and used annual performance reviews to inform the training activities they would undertake for the next year. Staff recognised the way in which performance reviews were used to identify their goals and the training or learning opportunities required to achieve those goals.

### Level of staff turnover

#### An increase in the level of turnover across the Review period could be mostly attributed to increasing leadership and compensation uncertainty

Turnover increased year on year during the Review period as illustrated in Table 6. While this reflects some of the broader instability across the sector in the job market, it also likely reflects some of the organisational culture the Review heard about that has since improved with the change in leadership.

Numerous CYLC staff referenced the difficulties for organisational culture during the Review period. These difficulties were due to uncertainty created by CEO changes and enterprise bargaining agreement negotiations, which were underway and only finalised just after the Review concluded. Much of this was noted by stakeholders as now resolved and staff commented on it being a good place to work.

**Table 6 | FY2019-20 to FY2021-22 staff turnover<sup>31</sup>**

| Financial year | Turnover of staff | Variation to the year prior |
|----------------|-------------------|-----------------------------|
| 2019-20        | 17%               | N/A                         |
| 2020-21        | 27%               | 10%                         |

<sup>31</sup> CYLC (2023) Data provided by CYLC directly for July 2019 – June 2022.

| Financial year | Turnover of staff | Variation to the year prior |
|----------------|-------------------|-----------------------------|
| 2021-22        | 34%               | 7%                          |

Many of the staff, at all levels, commented on the poor quality of the CYLC office and how much it impacted on their engagement and satisfaction at work. This was regarding the age and quality of the facilities, the split-level building and limited space. This is something that CYLC staff noted they were discussing with NIAA and seeking to improve imminently.

The Review notes that CYLC did not have any formal way of tracking staff satisfaction and engagement. There could be value for the organisation in designing a short anonymous survey that could be run every couple of months. A staff survey would enable CYLC to better understand their staff engagement, provide staff with an avenue for offering feedback and identifying opportunities for improvement.

## 5.5.2 TOR 5: External factors

No external factors were identified for TOR 5.

## 5.5.3 TOR 5: Recommendations

### RECOMMENDATION

6

Work with the relevant regional organisations – Balkanu and CYP – to develop an MOU that supports greater collaboration in achieving outcomes for the Cape York people.

### RECOMMENDATION

7

Review and update relevant HR policies to be more clearly aligned to the strategic and operational business of CYLC, for example, demonstrating examples of the types of conflict of interest that may arise in native title to explicitly demonstrate CYLC's approach.

### RECOMMENDATION

8

Implement a short staff survey to understand CYLC's staff experience and engagement, provide staff with an avenue for offering feedback and identify opportunities for improvement.

### RECOMMENDATION

9

Make changes to CYLC's financial management systems to:

- move from a paper-based payroll and timesheet system to an electronic system which would save time and minimise the chance of error in manual inputs.
- move from a paper-based invoice and purchase order system to an electronic system which would minimise the chance of error in manual inputs and create a system that supports easier approvals and tracking of spending (noting that the current process involves the CEO approving expenses after they have already been paid).

## RECOMMENDATION

10

Invest in professional development opportunities for executive staff – noting the CEO being new to the role – recognising the importance of the leadership for high-performing organisations.

## 5.6 TOR 6 | Extent to which each organisation is adequately supporting Prescribed Body Corporates towards self-sufficiency.

**Summary**

CYLC supported 15 PBCs in the Cape York RATSIB area during the Review period. Areas of support included compliance and training, financial management support and legal advice. While many clients found the support valuable, the progress towards self-sufficiency was hampered by limited resources available in the PBC Support Unit and the extent to which self-sufficiency is achievable for PBCs in the region. Some PBC stakeholders were looking for greater clarity on the scope of CYLC’s services and the funding available to them either through CYLC or that they could access directly.

CYLC had an established process for the return of cultural materials but Traditional Owners indicated that relationships between CYLC and Traditional Owners would be improved through greater visibility and communication of return timelines.

There would be value in CYLC having service agreements with all client PBCs going forward so that there is greater understanding about the support CYLC can provide. With the determinations achieved following the Review period this will be even more important as the number of PBCs had already increased to over 20 and there will likely be another ten more through the progress of the Cape York United #1 Claim.

### 5.6.1 TOR 6: Assessment of performance

This section presents an assessment of performance against the performance indicators for this TOR. To see the performance indicators please see Appendix A.

#### Satisfaction of PBCs/RNTBCs supported by the NTRB-SP

**Overall, satisfaction of supported PBCs could be improved**

PBC representatives gave feedback to the Review that there were opportunities for improvement to PBC support services. Table 7 details the areas for improvement.

Table 7 | PBC support opportunities for improvement

| PBC support area     | Improvement opportunity detail                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Financial management | <ul style="list-style-type: none"><li>Some PBC representatives believed that financial management was controlled too strictly by CYLC, resulting in difficulties accessing funding and an inability to direct funding to areas that PBC Boards believed should have been further financed (for example, spending in areas outside of governance/admin/office).</li><li>Some PBCs representatives noted that they were unable to access financial support when wanting to access funds for legal representation for purposes that conflicted with work undertaken by CYLC (that is, wanting to do things differently to CYLC). This was in contrast to what CYLC and other external stakeholders noted where they provided relevant funds for legal representation when requested.</li></ul> |
| Capability building  | <ul style="list-style-type: none"><li>Though training through an external provider was regularly arranged for PBCs by CYLC at no cost in relation to time spent by PBC Support Unit staff, many Traditional Owners that spoke to the Review noted that they wanted to have training more often and delivered in a</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

| PBC support area                       | Improvement opportunity detail                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                        | manner that better supported them in understand their governance and compliance requirements as well as utilise their native title.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Inadequate representation              | <ul style="list-style-type: none"> <li>Some stakeholders noted that they were interested in understanding how they could be better engaged through the PBC with CYLC and the potential support CYLC could provide to them.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Communication clarity and engagement   | <ul style="list-style-type: none"> <li>At times, CYLC staff were perceived to use language that was difficult to understand for some members of PBC Boards, causing challenges in making informed decisions about what was communicated.</li> <li>Communication mediums used to provide notice of meetings and other activities were indicated by some stakeholders as inappropriate in that they were unlikely to be accessed by many members in the community (for example, notices in newspapers when the area has low levels of literacy attainment or website posts being used when difficulties existed accessing the internet). CYLC noted that notices must be sent in accordance with the PBC rule book.</li> <li>Some PBC representatives expressed that seeing more of CYLC “on the ground” in their communities would allow for better understanding of their communities, with the opportunity to engage grassroots people and hear their views.</li> </ul> |
| Inadequate post-determination planning | <ul style="list-style-type: none"> <li>There is uncertainty surrounding the extent of support provided and what this will look like for PBCs as CYLC moves towards completion of the Cape York United of #1 Claim.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

Despite these difficulties, engagement with the BASU staff members was recognised as being very favourable. This recognition was consistent, regardless of issues that some stakeholders had against other parts of the broader organisation. Post-Review period, this satisfaction with PBC Support Unit has continued. In addition, there was the promise that the new organisation leadership would address some of these outlined causes of dissatisfaction and lead to better outcomes for communities and the organisation.

## Percentage of PBCs/RNTBCs supported by the NTRB-SP who have had intervention from ORIC or other regulator

### Compliance notices were issued for two PBCs

The PBC Support Unit worked hard to support 22 PBCs during the Review period to varying degrees, including by helping to establish two PBCs, ensuring client PBC compliance and holding Directors’ Meetings and AGMs for applicable PBCs. CYLC noted to the Review team that ORIC issued compliance notices to Hopevale Congress Aboriginal Corporation RNTBC and Mowkiri Aboriginal Corporation RNTBC, however neither had entered into formal special administration. There were no other regulator interventions during the Review period.

In the immediate post-Review period, the managerial vacancy and absence of legal professionals within the BASU was addressed. At the time of writing in May 2024, the unit currently comprises a Manager and Principal Lawyer, Legal Officer, Senior Business Support Officer and two Business Support Officers.

In addition, since the Review concluded, a consistent strategy for PBC development had been indicated for the PBC Support Unit, underpinned by two main pillars:

1. Advocating for PBCs to access applicable funding measures (for example, PBC capacity building funding, grants and an increase in basic support funding).
2. Exploring compensation avenues for PBCs.

The Lana Traineeship program supplements these two pillars.

In September 2020, CYLC established the Lana Traineeship program to assist efforts to develop PBC self-sufficiency. The program, using funding derived from a \$555,000 grant through NIAA, sees two participants, aged 18 to 21 and endorsed by their respective PBCs in the Cape York RATSIB area, relocate to Cairns for 12 months to complete a Certificate III in Business Administration that includes modules concerning the land management of native title land.<sup>32</sup>

CYLC views this initiative as a means to develop long-term capability in the next generation of Indigenous youth, with the trainees using accrued skills to aid in the achievement of self-sufficiency in their respective PBCs and uplift their broader community. With several cohorts of Lana Trainees, the program is viewed as a considerable accomplishment within CYLC and there is recognition that the program will achieve its intended objective in driving improvements in the self-sufficiency of PBCs across the Cape York region.<sup>33</sup> The Review notes that the Lana Traineeship program is grant dependant and not ongoing, which may impact achieving its intended objectives in driving improvements in the self-sufficiency of PBCs.

## **Progress towards self-sufficiency for PBCs/RNTBCs supported by the NTRB-SP**

### **CYLC supported 15 PBCs in the Cape York RATSIB area during the Review period**

In May 2019, CYLC underwent an organisational restructure to better support the native title holders and Indigenous Land Holding Bodies that it represented. This included an expanded suite of services to be provided by the BASU (subsequently re-named as the PBC Support Unit) and a separate unit called the Land Reform Unit which acted for Land Trusts and Aboriginal Corporations that were not PBCs.

The PBC Support Unit conducted these services across three main categories – compliance and training, financial management support, and legal advice and service delivery – and includes activities such as:

- governance and financial management training
- assistance with day-to-day financial management and auditing
- assistance with compliance
- notification of funding and economic development opportunities
- access to legal and other accredited advisors
- mediation
- legal representation.

### **CYLC experienced difficulty applying a consistent strategy for PBC self-sufficiency development**

CYLC, particularly the BASU, which is responsible for the development of client PBCs, was limited in its ability to advance the internal capabilities of the PBCs it supported. This was largely due to the PBC Support Unit being without a formal manager throughout the majority of the Review period and managerial oversight was conducted in a limited capacity by the broader CYLC leadership (for example,

<sup>32</sup> CYLC (2022) Cape York Land Council Annual Report for 2020-2021.

<sup>33</sup> CYLC (2022) Cape York Land Council Annual Report for 2020-2021.

the Acting CEO). The absence of active leadership impeded the BASU’s ability to develop client PBCs towards a state of self-sufficiency.

This absence of management was compounded by a lack of legal professionals within the PBC Support Unit across the period, reducing the range of services (for example, legal support for post-determination) that could be delivered to PBCs, which are services important for PBC autonomy. There was a shortage of lawyers with experience in native title, which made hiring to those roles difficult.

**PBC outsourcing of responsibilities varies significantly across PBCs in the Cape York region**

A PBC’s self-sufficiency and its related need to outsource responsibilities to service providers ranges from low to high depending on the level of revenue, potential for economic development, ability to engage staff and the capabilities within the PBC. Insights from the Review on self-sufficiency and corresponding outsourcing needs are listed in Table 8.

**Table 8 | PBC self-sufficiency assessment**

| Category of self-sufficiency                                                                                        | Assessment of abilities                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Financial:</b> the ability of PBCs to manage its own financial affairs and contract the services it needs.       | <ul style="list-style-type: none"> <li>Depending on the level of financial capability of the PBC, CYLC undertook its role in the auspice of basic support funding and asked for invoices to be sent through if reimbursement was required. This was to correlate with CYLC’s own accounting and auditing standards.</li> <li>Some PBCs had budgets which they managed on their own, with the Basic Support Funding still administered through CYLC.</li> <li>Some PBCs noted difficulties accessing their own funding through CYLC and there was a belief that notification of available funding could be improved. Many PBCs were not clear on how they could transition to have more control over their finances and more broadly towards self-sufficiency.</li> </ul> |
| <b>Stable governance:</b> exemplified through the existence of a stable Board and the absence of internal disputes. | <ul style="list-style-type: none"> <li>Turnover on PBC Boards, due to a range of factors, could result in challenges in upskilling new Board members and ensuring sound governance practices.</li> <li>A representative model could result in Board membership comprising community Elders, as opposed to membership with required skills or experience to conduct activities necessary for PBC self-sufficiency. CYLC indicated to the Review that this is a matter for the PBCs.</li> </ul>                                                                                                                                                                                                                                                                            |
| <b>Compliance:</b> best-practice compliance with the CATSI Act, NTA and the PBC rule book.                          | <ul style="list-style-type: none"> <li>Most PBCs relied heavily on external parties for compliance support, although a small number are self-sufficient in this respect.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Future Acts:</b> the ability to attend to Future Act matters without CYLC’s assistance.                          | <ul style="list-style-type: none"> <li>PBCs required assistance to attend to Future Act matters.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

**Client PBC awareness of responsibilities was generally adequate, with CYLC awareness that more action needed to be taken in specific areas**

PBC Directors were broadly cognisant of responsibilities in their capacity as Board Directors of their respective PBCs; however, members of CYLC staff identified that awareness could have been improved during the period when nominations of PBC Board Directors were occurring. Additionally, establishing earlier and more frequent communication between the NTU and the PBC Support Unit (as the BASU is

now named) about the status of claim group progress had also been raised by some CYLC stakeholders as a suggestion to develop responsibility awareness sooner.

Since Australian Government changes to the CATSI Act and NTA in March of 2021, minimal progress had been made on required rule book amendments during the Review period. However, with internal legal expertise deficiencies resolved, the unit increased the number of amended rule books from one to seven and this continues to be a focus area for CYLC in the future. As the time of writing in May 2024, all except one PBC rule book is compliant with the 2021 legislative amendments.

## **NTRB-SP's progress in returning cultural materials to PBCs/RNTBCs and Traditional Owners**

### **Return of cultural materials has been protracted**

CYLC's progress in returning cultural materials had been limited, influenced by turnover in relevant parts of the organisation, time needed for transition to a new storing and cataloguing system for ethnohistorical materials, no formal policy regarding returning cultural materials and a large focus on meeting the demands of expeditious Cape York United #1 Claim proceedings. CYLC noted to the Review team that while there was no formal policy, wherever possible and upon request CYLC would return cultural materials to the relevant PBC post-determination, subject to whether the PBC was able to appropriately manage these materials. For example, a copy of all connection materials CYLC held was returned to the Hope Vale Congress of Clans RNTBC post-determination following their request for this material.

In contrast to CYLC's stated position on the return of cultural materials occurring wherever possible and upon request, a number of Traditional Owners consulted during the Review advised that this was not reflective of their experience. These Traditional Owners indicated that some or all provided cultural materials had yet to be returned to them, even after repeated requests and a long time lag since their determination. These Traditional Owners also noted that communication about the timelines concerning the return of materials had not been sufficient in their view. CYLC had indicated that it was not uncommon for people to seek materials that they have no right to receive.

Post-Review period, members of CYLC leadership indicated the importance of turning their focus as an organisation on the return of cultural materials, including through the establishment of a role with responsibility to examine (culturally relevant) multimedia in CYLC's possession.

Further detail on the return of cultural materials is covered under TOR 3.

## **Percentage of PBCs/RNTBCs supported by NTRB-SP with formal service agreements in place with NTRB-SP**

### **Formal service agreements did not exist between CYLC and client PBCs during the Review period**

A lack of formal service agreements caused some difficulty in understanding the responsibilities of CYLC as they related to their client PBCs. The Review was advised that a draft service agreement was developed after the Review period, in early 2023. The draft service agreement ensures that:

- the services which CYLC are funded for are clearly defined
- additional services can be offered, subject to completion of a request for assistance form and agreement to perform those services
- the expectations of PBCs are articulated, and

- the agreement could be terminated.

CYLC noted that early feedback on the draft agreements had indicated that PBCs required more legal advice from CYLC than was provided for in the funding. This would require additional funding and staff to achieve relevant outcomes.

Going forward, CYLC sees formalising service agreements between CYLC and PBCs as a high priority. As of August 2023, CYLC noted to the Review team that the draft agreement would be presented to every PBC in CYLC's RATSIB area at Directors' Meetings after the 2023 AGM (with the first meeting scheduled for late August 2023).

### **Satisfaction of PBCs/RNTBCs with the process of negotiating service agreements between the NTRB-SP and the PBC/RNTBC**

Given that Service Agreements were only at a draft stage during the Review period, this performance indicator could not be measured.

## **5.6.2 TOR 6: External factors**

This section presents an analysis of factors that impacted on performance that were beyond CYLC's control.

### **Extent to which self-sufficiency for PBCs/RNTBCs is achievable**

#### **Level and nature of industry activity vary between PBC areas**

Level and nature of industry activity in a given RATSIB area is a significant determinant of the extent to which self-sufficiency is achievable. Compensation derived from the available natural resources and associated industry activity poses strong potential financial benefits for PBCs. However, while there is some mining activity in the Cape York region, this is relatively minimal in comparison to many other Queensland and Western Australian RATSIB areas.

Limited economic development is related to limited mining exploration capacity and the number of national parks throughout Cape York. As a result, there are fewer opportunities for industry activity to provide additional sources of revenue to PBCs in CYLC's RATSIB area and instead there are more opportunities for land-management and tourism related work.

#### **The socio-economic profile of the PBC's within the Cape York RATSIB area was generally low**

The socio-economic profile of CYLC's RATSIB area was generally low among Aboriginal and Torres Strait Islander people, with high unemployment and low education attainment compared to other regions of Queensland and the non-Indigenous population of CYLC's RATSIB area.

Low education and employment skills had prevented engagement in the economy and access to employment opportunities. The Review notes that there was a significant social and political trend across Cape York towards supporting Aboriginal people to engage in Australia's mainstream economy as reflected in the Pama Futures initiative and related Summit, and continued focus of CYLC and PBCs of harnessing economic opportunities within the RATSIB.

The extremely low Index of Relative Socio-economic Disadvantage levels across all parts of Cape York (excluding some tourism areas and mining area around Weipa) indicated that CYLC engaged

with stakeholders from mostly socio-economic disadvantaged backgrounds.<sup>34</sup> This impacted the ability of CYLC to develop self-sufficient PBCs in parts of their RATSIB area.

### 5.6.3 TOR 6: Recommendations

#### RECOMMENDATION

11

Implement service agreements with all client PBCs to strengthen the relationship between CYLC and PBCs, and:

- enable CYLC to actively seek feedback from client PBCs on the type and quality of support provided
- allow CYLC to better understand PBC needs and refine services to address the identified needs and improve satisfaction.

#### RECOMMENDATION

12

Formalise policy for the return of cultural materials to Traditional Owners after claim determination, with policy emphasis on increasing visibility and communication of return timelines.

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<sup>34</sup> Australian Bureau of Statistics (2023). SEIFA by local government area.

## 5.7 TOR 7 | Extent to which each organisation has developed its planning for a post-determination environment.

### Summary

With 45 per cent of the RATSIB area determined prior to the Review period, CYLC's focus was largely on the Cape York United #1 Claim during the Review period. Given that 95 per cent of the Cape York RATSIB area is expected to be determined in the next few years (at the time of writing in May 2024), this significant shift will require CYLC's focus to pivot towards a post-determination environment. While the Strategic Plan 2020-2026 provides a high-level set of indicators and early planning for post-determination, there needs to be greater focus in the next Strategic Plan on how to take this forward.

A best-practice approach in developing a post-determination strategy would see CYLC engage closely with all relevant stakeholders, most importantly with Traditional Owners. The strategy should consider how CYLC can best support Traditional Owners with their land rights aspirations and native title into the future, including through PBC support and compensation claims.

### 5.7.1 TOR 7: Assessment of performance

This section presents an assessment of performance against the performance indicators for this TOR. To see the performance indicators please see Appendix A.

#### Adequacy of post-determination strategic planning

##### **Post-determination planning is moderate yet understandable in the context of the past few years**

The main guide for CYLC's post-determination planning during the Review period has been the CYLC Strategic Plan 2020-2026. The Strategic Plan 2020-2026 is a high-level document that sets out CYLC's strategic priorities. It recognises the foundational steps for a post-determination environment, and considers further changes required of the organisation for the post-determination landscape. The Strategic Plan 2020-2026 signals that land determinations in Cape York should be subject to determination by 2025, with sea claims following suit by 2030.

In addition to Strategic Plan 2020-2026, CYLC established BASU to provide dedicated support to PBCs in the post-determination environment.<sup>35</sup> This change was part of a larger organisational restructure, informed by consultation with Traditional Owners, that sought to shift the organisation to accommodate the requirements of PBCs while simultaneously progressing remaining claims. The Lana Traineeship program was also created in anticipation of post-determination support needs. The program centres on equipping the next generation of the Aboriginal residents of Cape York with useful skills to support PBC internal capability and uplift their wider community. More detail on both the BASU and the Lana Traineeship program was provided under TOR 6.

The reason for the moderate level of post-determination planning has been due to the significant resources and time CYLC has required to progress the Cape York United #1 Claim. Furthermore, with an acting CEO in place for a proportion of the Review period, it was likely that there was not the mandate to focus on the organisation's future strategic direction rather than operational business.

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<sup>35</sup> CYLC (2018) Cape York Land Council (CYLC) Strategic Plan 2020-2026.

### **A plan for compensation claims has been designated**

While compensation for Traditional Owners has been progressed through mechanisms such as ILUAs, there have not been any dedicated compensation claims in CYLC's RATSIB area. This has been a deliberate decision. A compensation claim strategy was identified in the Plan for completion in 2021. As noted earlier under TOR 1, however, CYLC has since decided to leave no group behind and progress to the completion of the Cape York United #1 Claim before turning its attention to compensation.

Post-Review period, the PBC Support Unit has indicated that compensation claims will take on a growing role in PBC support operations. However, like other parts of the current post-determination planning efforts, this is yet to be integrated into a dedicated post-determination plan.

### **A key focus for the organisation going forward is post-determination**

CYLC stakeholders noted to the Review team that a key focus for the new CEO is the post-determination environment. The CYLC executive have come together recently to explore the post-determination content, noting that the final set of determinations will be the focus in the next 12 to 18 months.

There is recognition within the organisation that formalising this planning and articulating the details of the changes should be a priority, given the scale of the fast-approaching transformation that will need to occur. It will assist those non-executive staff who have not been involved in any strategic planning and have expressed uncertainty regarding their role in the organisation going forward. In addition, it would inform the PBCs that CYLC supports, who should be part of a post-determination co-design process and currently have limited awareness of the possible future direction.

## **5.7.2 TOR 7: External factors**

This section presents an analysis of factors that impacted on performance that were beyond CYLC's control.

### **Progress towards a post-determination environment**

#### **The region's progress towards a post-determination environment depends on the outcome of the Cape York United #1 Claim**

The Cape York United #1 Claim is expected to be finalised by 2025, thereby resulting in 95 per cent of claimable Cape York land being determined. CYLC's intense focus on progressing the Cape York United #1 Claim during the Review period, and in line with court timeframes, has impeded the level of post-determination planning.

## **5.7.3 TOR 7: Recommendations**

### **RECOMMENDATION**

13

Develop a formal, detailed post-determination strategy based on extensive consultation with Traditional Owners in the Cape York RATSIB area and CYLC staff, executive and Board.

# Appendix A Project Terms of Reference and performance indicators for individual reports

The methodology for the Review was developed by Nous against the TORs, as discussed in the Scope of the Review, see section 2. For each TOR the methodology listed a number of performance indicators and external factors to ensure a consistent approach across all the NTRB-SP reviews and to enable a comparison of performance. The TOR and associated performance indicators and external factors are listed below.

1. Focussing on the period 1 July 2019 to 30 June 2022 and addressing developments since the previous Review of each organisation the Service Provider will:

- a. Review and assess the extent to which each organisation:

- i. Has achieved positive native title outcomes for persons who hold or may hold native title in its region taking account, where relevant, of disruptions caused by COVID-19.

## Performance indicators:

- Native title outcomes including from facilitation and assistance, certification, notification, dispute resolution and other relevant functions.
- Anthropological research.
- Future Acts and ILUAs.
- Number of claims resulting in a determination of native title or ILUA settlement as a proportion of total filed claims.
- Number of claim groups the NTRB-SP has acted for or assisted via brief out arrangements in a native title determination application during the Review period.
- Proportion of claimable land within the RATSIB area not subject to a registered claim or a determination.
- Average time between filing an application for a determination of native title to the date a determination is made.
- Number of common law native title holders/RNTBCs the NTRB-SP has acted for in a native title compensation application proceeding.

## External factors:

- State government policy and legislation.
- Complexity of remaining claims.
- History of previous claims.
- Complexity of land use and tenure.
- COVID-19.
- Amount of funding.

- ii. Assesses and prioritises applications for assistance in a manner that is equitable, transparent and robust and is well publicised and understood by clients and potential clients.

**Performance indicators:**

- Equity, transparency and robustness of assessment and prioritisation process.
- Client and potential client awareness of the process.
- Traditional Owner satisfaction with the assessment and prioritisation process and its outcome.

**External factors:**

- Number of claims relative to NTRB-SP size and resourcing.

- iii. Deals respectfully, equitably, transparently and in a culturally appropriate manner with persons who hold or may hold native title in its region, including by adequately investigating and resolving complaints.

**Performance indicators:**

- Respectful and transparent engagement.
- Culturally appropriate engagement.
- Complaints.
- Internal review.
- Use of cultural materials.

**External factors:**

No external factors have been identified for TOR 3.

- iv. Performs its functions in a cost-effective manner, including by identifying the key cost drivers for the organisation.

**Performance indicators:**

- Expenditure on salaries (legal, anthropological, Board, CEO, HR, etc.), operations (travel, legal, offices, etc.) or other relevant items.
- Cost-saving actions, strategies and/or discussions.
- Appropriate processes for claim group meetings.
- Annual yearly expenditure per claimant group.
- Travel assistance policies for claim group meetings.
- Appropriate rationale for use of external consultants.

**External factors:**

- Size of RATSIB area.
- Remoteness of RATSIB area.
- Average number of people within a claim group.
- Interpreters.

- v. Has governance and management structures, and organisational policies and an organisational culture that support efficient and effective project delivery.

**Performance indicators:**

- Breakdown of roles, responsibilities and decision making between the organisation's Board, Chairperson, CEO and senior staff.
- Board integrity and capability.

- Conflicts of interest.
- Culture and values.
- Financial management.
- Training and professional development.
- Level of staff turnover.

**External factors:**

No external factors have been identified for TOR 5.

- vi. Is adequately supporting Prescribed Body Corporates towards self-sufficiency.

**Performance indicators:**

- Satisfaction of PBCs/RNTBCs supported by the NTRB-SP.
- Percentage of PBCs/RNTBCs supported by the NTRB-SP who have had intervention from ORIC or other regulator.
- Progress towards self-sufficiency for PBCs/RNTBCs supported by the NTRB-SP.
- NTRB-SP's progress in returning cultural materials to PBCs/RNTBCs and Traditional Owners.
- Percentage of PBCs/RNTBCs supported by NTRB-SP with formal service agreements in place with NTRB-SP.
- Satisfaction of PBCs/RNTBCs with the process of negotiating service agreements between the NTRB-SP and the PBC/RNTBC.

**External factors:**

- Extent to which self-sufficiency for PBCs/RNTBCs is achievable.

- vii. Has developed its planning for a post-determination environment.

**Performance indicators:**

- Adequacy of post-determination strategic planning.

**External factors:**

- Progress towards a post-determination environment.

- 2. The Service Provider will provide the following reports, reflecting the Service Provider's independent views, to assist with Agency decision-making:
  - a. An individual report for each organisation reviewed, including recommendations on what changes, if any, the organisation could make to improve its performance against each of the criteria listed in 1(a) above.

## Appendix B Stakeholders consulted

The Review held consultations in person and virtually with a range of stakeholders in relation to CYLC's performance. The Review's approach to consultations was documented in the Consultation Plan, provided to all NTRB-SPs in advance of the Review. Nous used various approaches to engage with stakeholders who might wish to be involved with the Review. Surveys were distributed on behalf of the Review by CYLC to all staff and to Traditional Owners. Where feasible, notices were placed in relevant newspapers and other media to inform Traditional Owners of the opportunity to speak to the Review.

Face-to-face consultations took place in the week commencing 22 May 2023. All consultations were conducted in confidence and with the full consent of participants.

Those consulted included:

- fifteen groups of multiple Traditional Owners including:
  - clients who had been represented by CYLC (including members of PBCs)
  - potential clients in CYLC's RATSIB area
- the Federal Court of Australia
- NIAA
- representatives of the Queensland Government
- CYLC staff and contractors, including:
  - barristers
  - anthropologists
  - CYLC CEO and executive
  - CYLC Board Directors, and
  - current and former CYLC staff (that is, former staff who worked at CYLC during the Review period).

## Appendix C Documents reviewed

| Category                                         | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Annual reports                                   | CYLC Annual Report 2019/20<br>CYLC Annual Report 2020/21                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Financial, operational and performance documents | Financial statements July 2019 – June 2020<br>Financial statements July 2020 – June 2021<br>CYLC Statement of grant acquittals 2020 FY<br>CYLC Statement of grant acquittals 2021 FY<br>CYLC Statement of grant acquittals 2022 FY<br>Financial Report July 2019 – June 2020<br>Financial Report July 2020 – June 2021<br>Financial Report July 2021 – June 2022<br>Operational Milestone Report July 2019 – June 2020<br>Operational Milestone Report July 2020 – June 2021<br>Operational Milestone Report July 2021 – June 2022<br>Consultant Listing July 2019 - June 2020<br>Consultant Listing July 2020 – June 2021<br>Basic employment data July 2020 – June 2021 |
| COVID-19                                         | Form – Staff Health check Sept 2020<br>COVID-19 Safe Plan 2020                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Other                                            | CYLC Strategic Plan 2020-2026<br>Conflict-of-Interest-Declaration Form<br>Sample 2021 Conflict of Interest Register<br>CYLC Code of Conduct<br>Legal Officer Native Title Unit Position Description<br>Senior Legal Officer Native Title Unit Position Description                                                                                                                                                                                                                                                                                                                                                                                                        |

## Appendix D Glossary

Throughout this document, the following terms have the meaning prescribed in Table 9.

Table 9 | Glossary

| Term                                                                                       | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Applicant                                                                                  | Any person or persons who have been authorised as the selected representative(s) of a native title claim group in native title or determination proceedings.                                                                                                                                                                                                                                                                                      |
| Client                                                                                     | Any individual or group being provided assistance by a Native Title Representative Body and Service Provider (including assistance with claims, research and/or PBC support).                                                                                                                                                                                                                                                                     |
| Connection evidence                                                                        | Evidence to establish connection of the native title group to the area over which they have lodged a claim. This evidence must demonstrate that the group have continued to observe and acknowledge, in a substantially uninterrupted way, the traditional laws and customs that give rise to their connection with the claim area, from the time of the proclamation of sovereignty to the present day.                                          |
| <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) (the CATSI Act)</i> | The <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)</i> is the law that establishes the role of the Registrar of Indigenous Corporations and enables Aboriginal and Torres Strait Islander groups to form Aboriginal and Torres Strait Islander corporations.                                                                                                                                                              |
| Determination                                                                              | <p>A decision by the Federal Court or High Court of Australia. A determination is made either when parties have reached an agreement (consent determination) or following a trial process (litigated determination).</p> <p>In the context of the Review, a “positive” determination is where the court finds that native title exists and a “negative” determination is a finding that native title has been extinguished or does not exist.</p> |
| Extinguishment                                                                             | Occurs over a defined area when Australian law does not recognise the existence of native title rights and interests because of legislation or common law precedent. Extinguishment can be whole or partial.                                                                                                                                                                                                                                      |
| Future Act                                                                                 | A legislative or non-legislative act in relation to land or waters that may impact on the ability of native title holders to exercise native title rights; either through extinguishment or creating interests that are wholly or partly inconsistent with the continued existence of native title.                                                                                                                                               |
| Indigenous Land Use Agreement (ILUA)                                                       | A voluntary, legally binding agreement governing the use and management of land or waters over which native title exists or might exist. The conditions of each Indigenous Land Use Agreement are determined by way of negotiations between native title holders and other interest holders (such as a state or mining company). These negotiations are often facilitated by Native Title Representative Bodies and Service Providers.            |
| National Native Title Tribunal (NNTT)                                                      | <p>An independent statutory body established under section 107 of the <i>Native Title Act 1993 (Cth)</i> to assist people in resolving native title issues by:</p> <p>a) mediating between the parties to native title applications at the direction of the Federal Court</p>                                                                                                                                                                     |

| Term                                                                | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                     | <p>b) acting as an arbitrator in situations where the people cannot reach agreement about certain Future Acts</p> <p>c) helping people to negotiate Indigenous Land Use Agreements.</p> <p>The National Native Title Tribunal maintains three registers relating to native title applications, determinations and Indigenous Land Use Agreements. It also maintains databases regarding Future Act matters and geospatial tools.</p>                                                                               |
| Native title                                                        | The communal, group or individual rights and interests of Aboriginal peoples and Torres Strait Islanders in relation to land and waters, possessed under traditional law and custom, by which those people have a connection with an area which is recognised under Australian law (section 223 of the <i>Native Title Act 1993</i> (Cth)).                                                                                                                                                                        |
| <i>Native Title Act 1993</i> (Cth) (the NTA)                        | The <i>Native Title Act 1993</i> (Cth) established the procedure for making native title claims and is the primary piece of Australian Government legislation allowing Indigenous Australians to seek rights over land and waters arising from their original ownership under traditional law and custom.                                                                                                                                                                                                          |
| Native Title Representative Body (NTRB)                             | Recognised organisations which are funded by the Australian Government to perform functions to assist native title groups in a specific region, according to the provisions in Part 11 of the <i>Native Title Act 1993</i> (Cth).                                                                                                                                                                                                                                                                                  |
| Native Title Service Provider (NTSP)                                | Organisations funded by the Australian Government to perform all or some of the same functions as Native Title Representative Bodies in areas where Native Title Representative Bodies and Service Providers have not been recognised in law.                                                                                                                                                                                                                                                                      |
| Native Title Representative Bodies and Service Providers (NTRB-SPs) | Native Title Representative Bodies and Service Providers refers to the cohort of Native Title Representative Bodies and Native Title Service Providers that are being evaluated by the Review.                                                                                                                                                                                                                                                                                                                     |
| Non-claimant application                                            | An application made by a person who does not claim to have native title but who seeks a determination that native title does or does not exist.                                                                                                                                                                                                                                                                                                                                                                    |
| Pastoral leases                                                     | A pastoral lease is a title issued for the lease of an area of Crown land to use for the limited purpose of grazing of stock and associated activities. It is a limited property right and does not provide the leaseholder with all the rights that attach to freehold land. Native title rights often co-exist with pastoral lease rights.                                                                                                                                                                       |
| Post-determination                                                  | At a claim level, refers to the period following a determination that native title exists. At a Native Title Representative Body and Service Provider life cycle level, refers to the period following the resolution of all active applications within a Representative Aboriginal/Torres Strait Islander Body area.                                                                                                                                                                                              |
| Prescribed Body Corporate (PBC)                                     | A body, established under the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth), nominated by native title holders which will manage their native title rights and interests once a determination that native title exists has been made.                                                                                                                                                                                                                                                 |
| Registration test                                                   | The registration test is a set of conditions applied to the claims made in native title determination applications. The Native Title Registrar, or the Registrar's delegate, applies the test. If a claim satisfies the conditions of the registration test, details of the application are entered on to the Register of Native Title Claims. Once an application is registered, applicants can exercise the procedural rights stipulated in the Future Act provisions of the <i>Native Title Act 1993</i> (Cth). |

| Term                                                                | Meaning                                                                                                                                                                     |
|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Representative Aboriginal/Torres Strait Islander Body (RATSIB) area | The area over which a Native Title Representative Body and Service Provider holds jurisdiction.                                                                             |
| Terms of Reference (TOR)                                            | Refers to the Terms of Reference provided by the National Indigenous Australians Agency which govern the scope of the project. These can be found in Appendix A.            |
| Traditional Owners                                                  | Individuals of Aboriginal and/or Torres Strait Islander descent who identify as being a descendant of persons that occupied a particular area prior to European settlement. |

This document refers to the functions of NTRB-SPs outlined under the NTA and captured in Table 10.

**Table 10 | NTRB functions under the NTA**

| Reference | Function                                                                                | Detail                                                                                                                                                                                                  |
|-----------|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| s203BB    | Facilitation and assistance                                                             | NTRB-SPs provide assistance to native title interest holders in relation to native title applications, Future Acts, agreements, rights of access and other matters.                                     |
| s203BF    | Certification                                                                           | NTRB-SPs certify applications for native title determinations and certify the registration of ILUAs.                                                                                                    |
| s203BF    | Dispute resolution                                                                      | NTRB-SPs promote agreement and mediate disputes between native title groups.                                                                                                                            |
| s203BG    | Notification                                                                            | NTRB-SPs ensure that people with a possible native title interest are informed of other claims and of Future Acts and the time limits for responding to these.                                          |
| s203BH    | Agreement making                                                                        | NTRB-SPs can be a party to ILUAs or other agreements.                                                                                                                                                   |
| s203BI    | Internal review                                                                         | NTRB-SPs have a process by which clients can seek a review of decisions and actions they have made and promote access to this process for clients.                                                      |
| s203BJ    | Other functions conferred by the <i>Native Title Act 1993</i> (Cth) or by any other law | These are largely concerned with cooperation between NTRB-SPs, consulting with Aboriginal and Torres Strait Islander communities, and providing education to these communities on native title matters. |



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