

# **Northern Land Council**

## **FINAL REPORT**

### **Independent review of Governance Framework Processes**

**20 March 2013**

Robert Graham  
Acting Chief Executive Officer  
Northern Land Council  
GPO Box 1222  
Darwin NT 0801

20 March 2013

Dear Robert

**Re: Independent review of Governance Framework Processes**

I refer to our recent engagement during which you have asked Deloitte Touche Tohmatsu to assist Northern Land Council in a review of its governance framework. Attached for your information please find a copy of our final report into this matter.

If you have any questions, please do not hesitate to contact me on (07) 3308 7080.

Yours sincerely



**Graham Newton**  
Partner  
Deloitte Touche Tohmatsu

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# 1. Executive Summary

## 1.1. Introduction

Northern Land Council (**NLC**) is a statutory Commonwealth authority of the Australian Government and is accountable to the Parliament and the Minister for Families, Community Services and Indigenous Affairs. As part of its function the NLC is required to comply with the requirements under the Commonwealth Authorities and Companies Act 1997 (**The CAC Act**).

Deloitte was engaged by the NLC, collaboratively with the Department of Families, Housing, Community Services and Indigenous Affairs (**FaHCSIA**), to undertake an independent review of NLC's governance framework processes, in the context of how the NLC management team functions with members of the NLC Executive Council, and provide comment on how this compares to an agreed better practice model (refer to Engagement Letter dated 2 November 2012). We have recorded our observations and recommendations for the consideration of NLC and FaHCSIA.

This report is separated into two components. The CAC Act stipulates six key operating principles to effective governance, those being - legislation, leadership, management environment, risk management, monitoring and accountability. Our observations in this regard provide comment and summary of NLC's existing governance framework in relation to these principals based primarily on interviews, discussions and the review of material and documents considered necessary.

The CAC Act also outlines a more detailed set of fourteen guidelines in relation to the Board, Strategy, Financial & Operational Reporting, Code of Conduct, Business and Community Consultation, Audit Committees and Statutory Accountability. In assessing NLC's performance in these categories we have developed scoring, comments and practical recommendations for improvement where appropriate.

It should be noted that our engagement commenced shortly after the resignation of the former Chief Executive Officer (**CEO**), Mr Kim Hill, announced on 21 September 2012, with departure on 1 October 2012. Two of NLC's Branch Managers were also already on extended leave. Whilst we have been able to speak with one of these Branch Managers, our attempts to contact and speak with the former CEO and Commercial Manager have been unsuccessful.

## 1.2. Qualifying Statement

It should be noted that the CAC Act Guidelines outline certain requirements of "Boards", in particular powers, skills and independence required of those who hold positions on Boards. The membership of the NLC Executive Council hold similar responsibilities and perform a similar function to that of a Board that may be subject to the CAC Act. We were instructed that under Section 29(1) of the Aboriginal Land Rights (Northern Territory) Act 1976 (**The ALR Act**), members of "The Council" are Aboriginals living in, or traditional owners of, the NLC's area who are chosen by their local communities.

Whilst this legislative requirement provides for the Council and Executive Council to be representative of the NLC's region, it does not ensure the presence of attributes such as independence, skills, experience and qualifications which are required to ensure good governance and probity in an organisation that performs professional functions. Those attributes, particularly professional advice, must be obtained from managerial staff (who are also subject to the CAC Act) as well as qualified

consultants. In benchmarking the NLC Executive Council to the CAC Act guidelines it should therefore be noted that some ratings will reflect a “significant gap”. Whilst such ratings may be strictly correct it should be noted that the NLC is currently not in a position to address these matters vis-a-vis the Executive Council itself as it cannot, for example, invite applicants external to NLC to apply for positions on the Executive Council as is the case for Boards of other Statutory Commonwealth Authorities.

## 1.3. Summary of Findings

### 1.3.1. CAC Act - Six Key Operating Principals

**Legislation:** The role of the Legal Branch is to, on behalf of the NLC and its Executive and Full Council, address issues of a legal nature that relate to three key pieces of legislation. When required, external and independent legal advice is also outsourced. It would appear that the Principal Legal Officer (**PLO**) and his staff have the appropriate experience and understanding of the legislation to advise on and address matters that impact the NLC’s function. There were however identified instances of Senior Managers, in particular the former CEO, making decisions and developing strategies without proper internal legal consultation.

**Leadership:** We make comments in respect of the former CEO, the role he played within NLC and working with the Executive Council. It appears there was a breakdown in trust between the former CEO and Executive Council. The general consensus of Executive Council Members was that he was regarded as intimidating and they were unable to freely express themselves. People interviewed within NLC indicated that the former CEO did not create an environment that was conducive to good governance and that he was generally lacking in deep leadership ability.

The Executive Council expressed a great deal of respect for the Chairman who was considered to be a strong representative of the culture and history of the NLC and its members. Our review did however identify instances of the Chairman consulting directly with the former CEO on matters that ought to have been raised with the Executive Council for proper consideration at the time.

This review also identified an instance of leadership breakdown between the NLC Executive Council and NLC Branch Managers, in particular the Principal Legal Officer. On 14 September 2012 the former CEO instigated an extraordinary meeting<sup>1</sup> of the NLC Executive Council during which the Executive Council resolved to dismiss the Board of the Larrakia Development Corporation (**LDC**). The NLC PLO was not advised of this meeting and as a result did not attend to ensure that matters of risk to the NLC were appropriately addressed. The resolution of the NLC Executive Council was acted on and the Board of LDC dismissed. It was later determined that the actions of the NLC Executive Council were unlawful as a result of which the LDC Board was formally reinstated.

This chain of events highlighted a fundamental breakdown in the governance framework at the NLC particularly as it relates to the function of the Executive Council, the former CEO and Branch Managers.

**Management Environment:** We comment on the NLC Branch Managers and how they support and interact with the Executive Council and NLC staff. In addition to members of the Council (including the Chairman, Deputy Chairman, and other Executive Council members), the CEO and Branch Managers are subject to the

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<sup>1</sup> 148<sup>th</sup> Special Executive Council Meeting.

probity, diligence, and good governance requirements of the CAC Act.<sup>2</sup> Staff expressed strong support for the skills and experience of the majority of Branch Managers, in particular Legal and Anthropology, as did members of the Executive Council. There were comments by the Executive Council and staff to indicate that, under the former management structure, there was a perceived division at Senior Management level. Members of the Executive Council indicated this to be a concern in that they expected all Branch Managers to work together on behalf of the NLC Executive and its members and that, increasingly; there had been inconsistency in the attendance at Executive Council meetings by all Branch Managers. Staff expressed similar comments that had resulted in the different branch functions working in silos due to a breakdown in the ability of leadership within these offices to function ‘as one’.



**Risk Management:** We noted a number of policies were in place in relation to risk management, and that the General Manager of Corporate Compliance (GMCC) was responsible for providing analysis and advice in this regard. Whilst the policies had been developed there was an inconsistency in their application across NLC and no existing program in place to identify, analyse and treat risk in an ongoing manner. A number of comments were made by Executive Council and staff that internal training opportunities within NLC were limited. This impacted the required level of skill and knowledge to perform their role appropriately.

**Monitoring and Review:** The NLC has an Audit Committee with representation from external parties, the Executive Council and NLC management. The composition appears appropriately experienced, however the functioning is ad-hoc, disorganised and lacking appropriate detail according to the Audit Committee Chair. The focus of the Audit Committee appears to be focused on external audit as compared to the risk profile and any considerations of remedies required within the NLC.

**Accountability:** Executive Council Members expressed some concern in relation to the accountability Branch Managers had to their reporting requirements. They said that on some recent occasions they may not have been appropriately briefed as a result of some Branch Managers not attending Executive Council meetings. This appears to be as a result of a perceived division at the Branch Manager level, resulting in a breakdown of communication between Branch Managers and some failing to advise others of arranged Executive Council meetings. Staff noted that the Performance Evaluation Program (PEP), which provides structure around career planning and accountabilities, was available but inconsistently applied depending on the Branch to which a person was attached.

### 1.3.2. CAC Act: 14 Guidelines – Scoring

As part of this engagement, and as previously outlined, we have developed scoring to benchmark NLC’s performance in fourteen key categories against the expected better practice guidelines of the CAC Act. In each of the fourteen categories there were a number of sub-components that were the subject of our assessment and scoring. A summary of these results appear in the table below. The scale applied to scoring is explained as follows:

-  **On track** – in line with all applicable aspects of better practice, ongoing monitoring recommended.
-  **Continuous improvement opportunity (CIO)** – some aspects of better practice may not currently be applicable to NLC and therefore not implemented however enhancement may be considered in the future.

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<sup>2</sup> Section 5 of the CAC Act defines an “officer”, in relation to a Commonwealth authority, as “a director of the authority or a senior manager of the authority”.

- **Identified gap** – in line with some aspects of better practice however some action required in order to be considered in line with all aspects of better practice.
- **Significant gap** – not in line with better practice with immediate management attention required to address identified gaps.

Elements of Better Practice of Governance Benchmark	Summary of assessment against each sub-element			
1. Definition of Roles and Powers	2	0	4	0
2. Board Skills	1	0	0	2
3. Board Appointments	1	1	2	1
4. Board Induction and Training	0	0	1	1
5. Board Independence	1	0	2	1
6. Board Meetings	1	1	2	0
7. Board Resources	1	1	2	0
8. Code of Conduct	0	0	1	1
9. Strategy Setting	0	1	1	0
10. Balancing Commercial Objectives and Community Service Obligations	0	0	2	1
11. Financial and Operational Reporting	2	3	2	2
12. Monitoring and Performance of the Board	0	0	0	2
13. Audit Committees	2	2	6	0
14. Statutory Accountability	3	0	0	0
<b>Total</b>	<b>14</b>	<b>9</b>	<b>25</b>	<b>11</b>



## 2. Terms of Reference

### 2.1. Objectives

Our objective was to examine the current governance framework in the context of how the NLC management team functions with members of the NLC Executive Council and provide comment on how this compares to an agreed better practice model.

### 2.2. Scope

We examined the current governance framework in the context of how the NLC management team functions with members of the NLC Executive Council and have provided comment on how this compares to the CAC Act. The six broad elements of The CAC Act guidelines that we will rely on are as follows:

- Legislation
- Leadership
- Management Environment
- Risk Management
- Monitoring and Review
- Accountability.

We then conducted a more detailed review by comparing against the CAC Act's set of 14 guidelines. We have provided some observations, practical recommendations and a scoring matrix to help NLC management decide upon appropriate action.

### 3. Limitations

This report is based on the information provided by NLC. Accordingly, Deloitte does not assume any responsibility for the accuracy or completeness of the information provided.

This report has been prepared exclusively for the internal use of NLC and should not be used or relied upon for any other purpose without our prior written consent and, if it is used otherwise, neither Deloitte nor its partners or employees accept any liability or responsibility for loss suffered by any party. You should not refer to or use our name or the advice for any other purpose.

For the purposes of preparing this report, reliance has been placed upon the external documents, representations, information and instructions provided to us by NLC. Original documentation has not been examined (unless otherwise stated) and no audit or examination of the validity of the documentation, representations, information and instructions provided has been undertaken, except where it is expressly stated to have been done.

We reserve the right to alter the conclusions reached in this report should information that is relevant to our conclusions become available after the date of this report.

## 4. Methodology

### Approach

NLC is a statutory authority of the Australian Government and is accountable to the Parliament and the Minister for Families, Housing, Community Services and Indigenous Affairs (**FaHCSIA**).

For the purposes of this engagement FaHCSIA has asked that this independent review of NLC's management and their governance arrangements be compared against the better practice guidelines expected under the Commonwealth Authorities and Companies Act 1997 (**The CAC Act**).

We approached our review as follows:

1. Collation and review of relevant NLC documentation related to governance practices (refer to 'Documents Reviewed' heading below for a list of key documents reviewed)
2. Discussions with key personnel responsible for governance (refer to 'Discussions Held' heading below for a list of personnel interviewed)
3. A 'snapshot' of the existing effectiveness of the NLC governance framework with respect to the six overarching principles identified in The CAC Act
4. A comparison of the observations from our discussions against the 14 better practices elements identified in The CAC Act, and documentation of any identified gaps or improvement opportunities.

### Documents reviewed

We were provided with a range of documents which we considered to gain perspective and understanding of NLC's structure, governance environment and strategic objectives. Key documents included:

- *Aboriginal Land Rights (Northern Territory) Act 1976*
- *Native Title Act 1993*
- *Commonwealth Authorities and Companies Act 1997*
- *Aboriginal and Torres Strait Islander Act 2005*
- Full Council Members Induction Book 2011-2013
- Sample NLC communications to the Minister, media and staff
- NLC Financial Instructions Booklet
- NLC 2004-2007 Elections Booklet
- NLC IT Strategic Plan and Disaster Recovery Plan 2009-2014
- NLC Management Plan & Estimates 2011/2012
- NLC Human Resource Manual
- NLC Policies and Procedures Manual
- NLC Human Resource Management Instructions
- NLC Section 19 Policy

- NLC Emergency Procedures for Building, Structures and Workplaces
- NLC Information and Security Policy
- NLC Safety at Sea Policy
- NLC Accounting Procedures and Policy Manual
- NLC Enterprise Agreement 2011
- Various NLC Executive Council & Full Council Agenda's and Minutes
- Various NLC employment job descriptions and contracts
- Various NLC Correspondence, including emails and employment contracts
- NLC Audit Committee Charter 2010
- 2010-2011 NLC Annual Report.

### Discussions held

During the course of our review we held discussions with members of the Executive, Management, Committees, employees and consultants as follows:

- Wali Wunungmurra, Chairman
- Samuel Bush-Blanasi, Deputy Chairman
- Bill Risk, Executive Council Member
- Galaminda, Executive Council Member
- Dhuwarrwarr Marika, Executive Council Member
- Helen Lee, Executive Council Member
- Peter Lansen, Executive Council Member
- George King, Executive Council Member
- Leonard Norman, Executive Council Member
- Syd Sterling, Senior Policy Officer
- Ron Levy, Principal Legal Officer
- Robert Graham, Acting Chief Executive Officer
- Suzanne Archbold, Independent Audit Committee member
- Raelene Webb, Audit Committee Chairperson
- Steven Shepherd, General Manager of Corporate Compliance
- Teik Oh, Director, OTS Management Pty Ltd
- Steven Lawrence, Finance Manager
- Syd Laker, Ranger Coordinator
- Keith Cavalli, Ranger Coordinator
- Alison Thatcher, Anthropology Department
- Robert Dalton, Policy & Research Advisor
- Robert Gosford, Legal
- Jonathan Kneebone, Legal

- Shanti Rama, Legal
- Pamela Dickenson, Borroloola Regional Office
- Carole Christophersen, Acting Manager Anthropology Branch
- John Hofmeyer, Aboriginal Investment Group
- Rebecca Sirilas, HR Coordinator.

## 5. Background

NLC is an independent statutory authority of the Commonwealth, responsible for assisting Aboriginal people to acquire and manage their traditional lands and seas. Many major resource developments are taking place on Aboriginal land, subject to native title rights and interests. The challenge for NLC is to ensure the social, economic and cultural benefits flow to Aboriginal people from these developments.

As part of its function the NLC must operate in accordance with the requirements of the Commonwealth Authorities and Companies Act 1997 (**The CAC Act**). Accordingly, directors of the CAC Act bodies are subject to duties imposed by the CAC Act. These include the duty to act with reasonable care and diligence in the best interests of the CAC Act body<sup>3</sup>.

The key constituents of NLC are the 83 Council Members that are nominated by and represent the traditional owners and Aboriginal residents of the region.

Under Section 29 of The Aboriginal Land Rights (Northern Territory) Act 1976 (**The ALR Act**), the Minister has approved 83 Council Members, including the qualifications and method of choice. The NLC has organised the 83 Council Members into seven Regional Land Councils which have delegated powers under Section 28(1) of The ALR Act.

The seven NLC regions cover the Northern Part of Northern Territory (**NT**) consisting of Darwin/Daly, West Arnhem, East Arnhem, Katherine, Victoria River District, Ngukurr and Borroloola/Barkly.

An Executive Council has been formed from the 83 members to in effect act as a 'Board' by providing oversight of the NLC and its operations. It must, however, be noted that they are representatives elected by their community and do not necessarily have the skills and expertise of a traditional private commercial board. The Executive Council consists of nine members, one from each region, plus the Chairperson and Deputy Chairperson. All are elected by the Council Members at the first meeting of the Full Council.

Regional, Full and Executive Council meetings take place throughout the year. Full and Regional Council meetings are where the 83 Council Members convene. We refer to these meetings in the content of our report. For the purpose of the CAC Act guidelines, the main focus of our assessment is on the Executive Council whose role is to ensure that all responsibilities of NLC are fully discharged in accordance with The ALR Act.

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<sup>3</sup> Section 22 of the CAC Act.

## 6. Governance Observations

### Legislation

The nature of the work performed at NLC requires constant application to and reliance on three fundamental pieces of legislation those being:

- *Aboriginal Land Rights (Northern Territory) Act 1976 (The ALR Act)*
- *Native Title Act 1993 (The NTA Act)*
- *Commonwealth Authorities and Companies Act 1997 (The CAC Act).*

The role of the Legal Branch is to, on behalf of the NLC and its Executive Council, address issues of a legal nature that relate to the legislation outlined above. During discussions with the Principal Legal Officer (PLO) and other Legal Branch staff members, it became apparent of their strong understanding of the legal framework within which NLC operates. This understanding is important in an organisation such as NLC where its operations of negotiating and managing development agreements, and claiming land and native title, is solely driven by the legislation.

Whilst the PLO and Legal branch have the appropriate experience and understanding of the legislation, there have been identified instances of Senior Management, in particular the former CEO, apparently making decisions without appropriate legal consultation internally. A recent example highlighted was the dismissal of all Directors of the Larrakia Development Corporation, an organisation owned by NLC. This appeared to take place without proper legal consultation internally or externally.

We also understand that the former CEO authorised the creation of a commercial entity without notifying (and consulting with) the Minister as required by s 15(1) of the CAC Act. Further, the ALR Act stipulates that NLC can own commercial organisations, but not those that would “*cause the Land Council to incur financial liability or enable financial benefit*”. The wording of a proposed five-yearly strategic plan however suggests this may have been the stated desire. Once again these circumstances appear to have been undertaken without appropriate legal consultation.

### Leadership

We make comments in respect of the former CEO, the role he played within NLC and working with the Executive Council. We also provide comment on the Chairman and his role as a leader and representative of the seven regions and their members. In addition to members of the Council (including the Chairman, Deputy Chairman, and other Executive Council members), the CEO and Branch Managers are subject to the probity, diligence, and good governance requirements of the CAC Act.<sup>4</sup> Whilst the role of the Executive Council, and in particular that of the Chairman, is strictly guided by the provisions of the CAC Act the present practical application to this role appears to have focused primarily on representing the community and its members on matters under the charter of the NLC.

It appears there was a breakdown in trust between the former CEO and Executive Council. The general consensus of Executive Council Members was that he was regarded as intimidating and they were unable to freely express themselves. Those people we interviewed within NLC indicated that the former CEO did not create an environment that

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<sup>4</sup> Section 5 of the CAC Act defines an “officer”, in relation to a Commonwealth authority, as “*a director of the authority or a senior manager of the authority*”.

was conducive to good governance and that he was generally lacking in deep leadership ability.

The Executive Council also felt that the role and responsibility of the former CEO was unclear in that his influence at Executive Council meetings had, on occasions, overridden the views of Executive Council Members. The lines of responsibility in terms of the former CEO's role had therefore become blurred because of these actions.

Discussions with staff and management at NLC was consistent with the views held by the Executive Council in that the former CEO was broadly described as a leader who was divisive and created an environment that was not conducive to a sound governance and ethical culture. There appeared to be a split in management, which resulted in branches operating in silos. The tone set by the CEO also appeared to lead to a lack of confidence shown in him by staff members. A common view was that people feared reporting concerns because of distrust, and a belief that appropriate action would not be taken. We were advised on a number of occasions that the former CEO had, on occasion, directed staff to perform tasks that were perceived to be ethically questionable e.g. allocation of expenses to incorrect project codes.

The Executive Council expressed a great deal of respect for the Chairman who was considered to be a strong representative of the culture and history of the NLC and its members. Our review did however identify instances of the Chairman consulting directly with the former CEO on matters that ought to have been raised with the Executive Council for proper consideration at the time.

This review also identified an instance of leadership breakdown between the NLC Executive Council and NLC Branch Managers, in particular the Principal Legal Officer. On 14 September 2012 the former CEO instigated an extraordinary meeting<sup>5</sup> of the NLC Executive Council during which the Executive Council resolved to dismiss the Board of the Larrakia Development Corporation (**LDC**). The NLC PLO was not advised of this meeting and as a result did not attend to ensure that matters of risk to the NLC were appropriately addressed. The resolution of the NLC Executive Council was acted on and the Board of LDC dismissed. It was later determined that the actions of the NLC Executive Council were unlawful as a result of which the LDC Board was formally reinstated.

This chain of events highlighted a fundamental breakdown in the governance framework at the NLC particularly as it relates to the function of the Executive Council, the former CEO and Branch Managers.

## Management Environment

We comment on the NLC Branch Managers and how they support and interact with the Executive Council and NLC staff. We were instructed by FaHCSIA that, according to the CAC Act, Branch Managers are employees of the NLC and therefore they are not held as Officers<sup>6</sup> of a corporation.

Staff expressed strong support for the skills and experience of most Branch Managers, in particular Legal and Anthropology, as did members of the Executive Council. There were however comments made by the Executive Council and staff, that indicated, that under the former management structure there was a perceived division at Senior Management level.

Members of the Executive Council all noted that they expected to receive expertise and guidance from the NLC management team to enable them to perform their roles, particularly

<sup>5</sup> 148<sup>th</sup> Special Executive Council Meeting.

<sup>6</sup> Section 5 of the CAC Act defines an "officer", in relation to a Commonwealth authority, as "a director of the authority or a senior manager of the authority."



in relation to legal, anthropological, policy advice and financial issues. There was a consistent view that the management team had, over time, become divided and was working in silos which had impacted directly on the ability for the Executive Council to receive the support it needed.

Members of the Executive Council indicated this to be a concern in that they expected all Branch Managers to work together on behalf of the NLC Executive and its members and that, increasingly; there had been inconsistency in the attendance at Executive Council meetings by all Branch Managers. Staff expressed similar comments that had resulted in the different branch functions working in silos due to a breakdown in the ability of leadership within these offices to function 'as one'.

Staff members interviewed indicated that, whilst the respective Branches had appropriate levels of expertise and experience, there was a general lack of collaboration between branches, particularly at the management level. There was also a feeling that the Commercial Branch Manager lacked an appreciation and understanding for the roles being performed by Rangers in remote locations and that the processes put in place to control such things as local travel requirements and nominal expense use were impractical and had a direct and negative impact on their ability to perform their roles.

### Risk management

We note that NLC have a series of policies that address particular areas of risk notably the following:

- Risk Management Policy
- Human Resource (employee risk) Policy
- Occupational Health & Safety Policy
- Procurement Policy.

We note that the role of General Manager of Corporate Compliance (**GMCC**) has particular responsibility for high-level analysis and advice on the management of risk within NLC. Whilst the policies had been developed there was an inconsistency in their application across NLC and no existing program in place to identify, analyse and treat risk in an ongoing manner.

Members of the Executive Council and a number of staff said there was a need to provide greater opportunities for internal training and courses that would improve individual skill levels and understanding of particular areas of risk e.g. Indigenous Governance Program facilitated by the Australian Institute of Company Directors (**AICD**) is a three day training program designed to develop skills and improve the quality of governance for directors, senior executives and leaders of Indigenous organisations.

Without a program in place to identify, analyse and treat the above risks it is difficult to quantify the effect this is having on NLC achieving its business objectives. We comment on the role of the audit committee and internal audit later in this report, however we note that a proper risk function would, by nature, fall within the function of an internal audit program that is currently not in place.

### Monitoring and Review

As outlined earlier in this report we have noted that NLC does not have a program to monitor risk. As a result, there is no existing program to identify and test controls associated with risks. In our discussions with staff it was apparent that the NLC did not have an ethical

framework within which matters could be reported and addressed. Staff seemed reluctant to report due to a perception that there would be an inadequate response.

There also appears to be a lack of continuous improvement tools which may enable the organisation to benchmark performance of itself against better practice. An example was a lack of clear financial and operational performance measurements which would be expected to be seen through corporate and branch business plans.

We understand that an Audit Committee is currently functioning with representation from the following

- Galaminda (Executive Council)
- Suzanne Archbold (External)
- Raelene Webb (External)
- Stephen Shepherd (NLC).

In our discussions with Mr Shepherd he stated that he was responsible for the function of this group and that meetings were convened each quarter with agendas to address a range of issues relating to finance and the wider business. Ms Archbold stated that the meetings were ad hoc, disorganised with inadequate levels of information and detail provided. Ms Archbold also stated that the focus of the meetings was generally of an external audit nature with little attention on risk management and internal controls. NLC external auditors often attended these meetings.

Ms Webb said that the Audit Committee needed to be convened on a more regular basis, with more emphasis on risk management and internal audit. Ms Webb also acknowledged that she needed to attend Executive Council meetings, at least twice a year to improve connectivity between the two committees. The Audit Committee also had a responsibility to be more proactive in its approach with NLC, as they had become reliant on NLC staff raising important issues for consideration, which was not occurring.

Galaminda said that he attended the meetings as a representative of the Executive Council but that he was unable to provide direct input into the function due to the communication and understanding of his role and that of the Audit Committee being unclear.

## Accountability

The CEO and Branch Managers have a responsibility to the Executive Council to provide skills and expertise in support of the responsibility the Executive Council has to its members. Executive Council Members expressed some concerns in relation to the accountability Branch Managers had to their reporting requirements. They said that on some recent occasions they may not have been appropriately briefed because of Branch Managers not attending Executive Council meetings. This appears to be as of the perceived division at the Branch Manager level which had resulted in a breakdown of communication across Branch Managers, and some failing to advise others of arranged Executive Council meetings.

There were a number of comments received from staff and NLC Rangers indicating that the accountability and connectivity NLC and its Executive Council had to the regions needed to be improved. Over time it appears that the contribution from the regions into the strategic direction of NLC has become less.

In 2009/2010 delegations of the CEO were discussed with the Executive Council and a special resolution passed to provide more authority to the CEO in relation to recruitment decisions. This new resolution allowed the CEO to have control over employment decisions of all staff other than Branch Managers (and the CEO position), and accorded with the practical reality of NLC operations. This has provided a more balanced level of





accountability with respect to recruitment decisions. However actions in recent years by the CEO in negotiating and executing certain contracts of employment has raised further concerns about the application of this process. This could be explained by a lack of personal accountabilities at Branch Manager and CEO level.

The PEP program provides a structure within which personal accountabilities can be measured in annual reviews of performance. It also shows a commitment on the part of NLC to the career development of staff members. There is a perceived lack of consistent application across NLC to this fundamental program of documented accountabilities and measurement. Staff commented that it reflects a lack of commitment from management and leadership to employees and their career opportunities.

# 7. Assessment against better practice guidelines

## 7.1. Detailed assessment of NLC governance against better practice elements

The following 14 tables provide a description of the better practice recommendations, our observations from interviews and any recommendations for improvement. Our recommendations have been categorised according to the following benchmarks. These were developed from previous experience, and in consultation with NLC.

- Key:
-  **On track** – in line with all applicable aspects of better practice, ongoing monitoring recommended.
  -  **Continuous improvement opportunity** – some aspects of better practice may not currently be applicable to NLC and therefore not implemented however enhancement may be considered in the future.
  -  **Identified gap** – in line with most aspects of better practice however some action may be required in order to be considered in line with all aspects of better practice.
  -  **Significant gap** – not in line with better practice with immediate management attention required to address identified gaps.

Tables:

- |   |   |
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| 1. Definition of Roles and Powers       | 2. Board Skills   |
| 3. Board Appointments                   | 4. Board Induction & Training   |
| 5. Board Independence                   | 6. Board Meetings   |
| 7. Board Resources                      | 8. Code of Conduct  |
| 9. Strategy Setting                     | 10. Balancing Commercial Objectives and Community Service Obligations |
| 11. Financial and Operational Reporting | 12. Monitoring and Performance of the Board                           |
| 13. Audit Committees                    | 14. Statutory Accountability  |

**Element 1: Definition of Roles and Powers**

Better Practice	Observations	Recommendations	Category
<p>1.1 There should be clear identification of the powers, roles, responsibilities and accountabilities between the Minister, Executive Council and CEO.</p>	<p>The roles of the Executive Council and CEO are defined within a document titled ‘NLC Full Council Members Induction Book 2011-2013’ (NLC Induction Book). All key roles are included within the Induction document and provide a breakdown of specific duties and responsibilities for each position.</p> <p>However there is no linkage of key roles to the specific parts of the legislation. This appears particularly relevant, considering the recent issue of appropriate use and understanding of delegated powers. For example, in the case of the dismissal of LDC directors by way of Executive Council’s resolution, we were advised by the NLC PLO that there is no power under Section 250D (1) (c) of the Corporations Act for the Full Council to delegate or appoint a group of individuals, such as the Executive Council, to act on behalf of a shareholder. I.e. the Full Council had never delegated any power to the Executive Council to appoint or dismiss directors of corporation owned by the NLC.</p> <p>There is also no clear connection to Full Council and Regional Council Members and how the groups represent the communities.</p> <p>There is no document that outlines the relationship between the NLC, the Minister and Department of Families, Housing, Community and Indigenous Affairs (FaHCSIA).</p>	<p>NLC to consider developing an Executive Council Charter that clearly defines the following:</p> <ul style="list-style-type: none"> <li>- The responsibilities and obligations of the Chairperson and the Executive Council Members</li> <li>- The responsibilities of all Council Members and NLC to the community and its members/stakeholders</li> <li>- Relevant legislation that is linked to the defined roles and responsibilities of key personnel</li> <li>- The role of the Executive Council, Full Council and Regional Council Members and how they interact with each other and the NLC</li> <li>- The relationship between NLC, the Minister and FaHCSIA.</li> </ul> <p>NLC may also want to reconsider developing a Statement of Expectations. This would come from the Minister and outline a number of required outcomes expected of NLC to successfully achieve the Statement. This could include the following:</p> <ul style="list-style-type: none"> <li>- Continuing to operate in accordance with the legislation</li> <li>- Maintaining best practice standards of Corporate Governance</li> <li>- Outlining NLC’s strategic objectives.</li> </ul> <p>NLC may want to consider communicating this</p>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>

Better Practice	Observations	Recommendations	Category
		<p>throughout the business, through platforms such as the internet, intranet, posters and any other appropriate channels.</p> <p>NLC may also want to consider developing an official document that clearly outlines delegated powers under the ALR Act, or incorporating it into the above.</p>	
<p>1.2 The terms of the relationships between the key participants, including those with Parliament and/or Government, should be formally recorded.</p>	<p>The role of key participants is outlined in the NLC Induction Book, and also explained in the ‘Our Council’ section of the NLC 2011 Annual Report.</p> <p>There is however limited information on the relationships between key NLC participants, the Minister and FaHCSIA.</p>	<p>As outlined in section 1.1 NLC may want to consider developing an Executive Council Charter that more clearly defines the relationships between the Minister, FaHCSIA and key NLC participants.</p>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>
<p>1.3 The respective lines of responsibility and accountability between the major participants should be ‘mapped’ to promote mutual understanding of rights and obligations.</p>	<p>NLC’s 2011 Annual Report includes a section titled ‘Governance’ which stipulates <i>that the management of risk is everyone’s business, and work has been undertaken to instil a risk management culture at all levels of the organisation.</i></p> <p>The NLC Induction Booklet also outlines the governance principals that Council Members should adhere to.</p> <p>There is no ‘mapping’ of responsibilities and accountabilities across the broader structure of the NLC and its Council participants.</p>	<p>In the development of the Executive Council Charter consideration should be given to clearly defining the responsibilities and accountabilities the NLC and the Executive Council have to themselves and also the Full Council and Regional Council Members and management. The Charter should incorporate the governance requirements and obligations and ‘map’ these to illustrate the direct connections and accountabilities across all parties/stakeholders.</p>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>
<p>1.4 The role of the Executive Council should be clearly documented in an Executive Council Charter.</p>	<p>The role of the Executive Council is defined within the NLC Induction Booklet. It outlines their roles and responsibilities. This document could be enhanced by providing guidance in respect of the purpose and objectives of the NLC Executive Council.</p>	<p>Refer previous recommendations 1.1 – 1.3.</p> <p>To ensure that Executive Council Members remember their obligations and actively participate in meetings, their purpose and objective should be outlined at the commencement of each meeting</p>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>

Better Practice	Observations	Recommendations	Category
1.5 The Executive Council should have the legislative power to achieve NLC's objectives.	The Executive Council has the legislative powers to discharge its duties under the ALR Act.	This approach is appropriate.	<b>On track/in line with better practice.</b>
1.6 The Executive Council should select the CEO.	We note that the former CEO was hired at the direction of the Executive Council and that FaHCSIA was also involved in the selection process.	This approach is appropriate.	<b>On track/in line with better practice.</b>

## Element 2: Board Skills

Better Practice	Observations	Recommendations	Category
<p>2.1 The Executive Council collectively should have a mix of the following skills, knowledge and experience:</p> <ul style="list-style-type: none"> <li>- Operational or technical expertise relevant to the operation of the CAC</li> <li>- Financial</li> <li>- Legal</li> <li>- Knowledge of government and regulatory requirements.</li> </ul>	<p>The 83 member Full Council is a unique group, in that it represents the communities of the regions covered by the NLC, as does the nine member Executive Council. However the legislation means that these same people have the role and powers similar to a board.</p> <p>The Executive Council members have the appropriate knowledge of land council rights and experience of the traditional owners cultural needs, often being traditional owners themselves.</p> <p>The Executive Council members do not have the collective mix of legal, financial and regulatory skills. Instead they rely on the senior management team or external experts for advice and support to make appropriate decisions for NLC. This approach is reasonable and provides the appropriate mix of technical and management support required.</p> <p>Comments were made by Executive Council Members to indicate they would appreciate some form of</p>	<p>To assist the Executive Council fulfil their role the NLC may want to consider training for Executive Council Members through courses facilitated by bodies such as the AICD's Indigenous Governance Program that provides a three day course designed specifically for the directors, senior executives and leaders of Indigenous organisations. Whilst this course is structured to satisfy the responsibilities of directors and boards, the content may be of value to the NLC in that the approach to good governance should draw on these concepts and requirements. The course can provide training on the following:</p> <ul style="list-style-type: none"> <li>- Procedures and processes that help achieve good governance</li> <li>- Learn how to read and interpret financial statements</li> <li>- Understand how a board contributes to</li> </ul>	<b>Significant gap - immediate management attention required.</b>

Better Practice	Observations	Recommendations	Category
	<p>external training to assist them perform their roles with greater understanding of financial, governance and strategic responsibilities.</p>	<p>strategic planning</p> <ul style="list-style-type: none"> <li>- Know your own personal risk appetite and how this relates to your role as a director</li> <li>- Identify exactly what directors do and how they add value to the organisation</li> <li>- Legal roles and responsibilities as a director.</li> </ul> <p>Another organisation that provides training to Directors of indigenous corporations is the Office of Registrar of Indigenous Corporations (ORIC). NLC may also want to consider using this program.</p> <p>Where possible the objective of this training should take account of traditional and cultural traits of Executive Council members and how these may be in direct conflict with the principles of independence and conflicts of interest i.e. ‘kinship’.</p>	
<p>2.2 Where the small size of a CAC body precludes the above outcome, the Executive Council should make arrangements for ready access to such skills where they are not available.</p>	<p>The day to day function of the Executive Council is heavily reliant on the skills of either Branch Managers or external experts in providing the appropriate advice to enable them to make informed decisions.</p> <p>This function has, in the past, not operated as appropriately as might be expected. On one particular occasion the Principal Legal Officer was not advised or invited to an NLC Executive Council meeting that resolved to dismiss the members of LDC. This breakdown highlighted significant risk in matters where the Executive Council have a need to rely heavily on internal expertise and advice, but overlooked the same.</p>	<p>To complement this current structure it would be of benefit to the NLC to identify training opportunities that can assist in raising the knowledge of Executive Council members on key areas such as finance, governance, leadership and management.</p> <p>Refer recommendation in 2.1 in relation to training</p>	<p><b>Significant gap - immediate management attention required.</b></p>



Better Practice	Observations	Recommendations	Category
2.3 The Executive Council should be given regular updates of the prevailing circumstances impacting on organisations to ensure they are familiar with related industry developments and issues as well as changes in government policy and legislation.	<p>The Executive Council relies on the management and individual Executive Council members to keep abreast of any relevant developments, including legislative or other industry matters.</p> <p>From memoranda reviewed, we identified evidence of media reports and legislative updates being provided to the Executive Council.</p>	The approach appears consistent with better practice.	<b>On track/in line with better practice.</b>

### Element 3: Board Appointments

Better Practice	Observations	Recommendations	Category
3.1 Appointment processes should ensure that all statutory and administrative requirements are met and a wide range of people are considered. Decisions should be adequately documented.	<p>The appointment of Council Members falls under section 29 of The ALR Act. The Minister approves the number of NLC members and methods by which they are chosen.</p> <p>The appointment of the Executive Council is determined by the Full Council at the first meeting of the new Full Council.</p> <p>The appointment of the Chairperson and the Deputy Chairperson of the Executive Council falls under section 30 of The ALR Act. Both are elected every three years by the new Full Council.</p> <p>Under the ALR Act members are Aboriginals living in, or traditional owners of, the NLC's area who are chosen by their local communities.</p> <p>We also sighted an 'NLC Elections 2004-2007' document evidencing the formal process NLC follows for Council Member appointments. This process appears in line with how a 'Committee' is elected</p>	<p>NLC may want to consider reviewing the NLC Nominations 2004-2007 document, and incorporating some of the key components into the proposed Executive Council Charter document.</p> <p>It would be beneficial to the NLC to have a broad representation of individuals, male and female, across all regions with an interest in being members of the Full Council and potentially the Executive Council.</p> <p>In preparation for the Council elections and nominations for 2013, the NLC should ensure that information and education is provided to NLC members. This should outline the opportunities to contribute to the strategy and objectives of NLC by nominating for Full Council representation.</p> <p>This process, including the information and education provided to all community members, should be appropriately monitored or overseen by representatives of the Australian Electoral Commission (AEC),</p>	<b>Identified Gap – Action required to achieve better practice.</b>

Better Practice	Observations	Recommendations	Category
	<p>under the legislation.</p> <p>The current Executive Council is comprised of regional leaders who have a mix of experience representing this, and other Councils or Boards. November 2013 is scheduled to be when Full Council and Executive Council representatives are nominated and/or elected to these positions.</p> <p>As already outlined in this report, the NLC Executive Council is meeting its representative that obligations according to the ALR Act, however that does not ensure the presence of attributes such as independence, skills, experience and qualifications which are required to ensure good governance which are required to ensure good governance in an organisation that performs professional functions. Those attributes, particularly professional advice, must be obtained from the managerial staff (who are also subject to the CAC Act) as well as qualified consultants.</p>	<p>FaHCSIA and/or an independent firm.</p>	
<p>3.2 Consideration should be given to the skill requirements of the Executive Council, and appointments made accordingly. The Executive Council should be consulted on the skills and experience it needs when new members are being considered for appointment.</p>	<p>The ALR Act states that to qualify as a Council Member, you have to be an Aboriginal resident living in the area of the Land Council or on the register of traditional Aboriginal owners of Aboriginal land within the Land Council.</p> <p>Each Executive Councilmember at NLC represents a different region of the Land Council. The process for considering an appropriate appointment involves the following:</p> <ul style="list-style-type: none"> <li>- That all people in their communities have an opportunity to have their say over who the member should be</li> <li>- That the nominated member can represent all</li> </ul>	<p>This approach appears appropriate to the unique nature of Land Councils. As previously outlined in this report Executive Council Members identified a lack of training delivered by NLC in the preceding three years.</p> <p>We would recommend the NLC identify appropriate training courses (AICD) that may be delivered to Executive Council Members on matters relating to finance, governance, conflict of interests, management and leadership.</p>	<p><b>Significant gap - immediate management attention required.</b></p>

Better Practice	Observations	Recommendations	Category
	<p>parts of the community</p> <ul style="list-style-type: none"> <li>- That the member has a good knowledge of community and Land Rights matters.</li> </ul>		
<p>3.3 Executive Council Members should be subject to regular renomination, say every three years.</p>	<p>As outlined in section 30 of the ALR Act, the Land Council’s Chairperson and Deputy Chairperson are subject to renomination, at least every three years.</p> <p>The NLC Induction Book also stipulates that Council Members are subject to renomination every three years.</p> <p>November 2013 is to be the next round of nominations and elections to Full and Executive Council.</p>	<p>As outlined previously in Section 3.1, we would recommend that the delivery of information and education to NLC Regional Members relating to the election be provided in advance. This will help identify all people who wish to participate and contribute to the future objectives of the NLC.</p>	<p><b>On track/in line with better practice.</b></p>
<p>3.4 All new Executive Council Members should be provided with a letter of appointment setting out their duties and responsibilities.</p>	<p>Executive Council Members are not provided with a letter of appointment. The NLC Induction Book outlines Executive Councilmembers’ duties and responsibilities, and is provided to all Council Members on appointment.</p> <p>Management also commented that the process for nomination is conducted in an open and transparent process through Full Council meetings. Therefore there is not a need to further document this through an official letter of appointment.</p>	<p>This approach appears appropriate to the unique nature of Land Councils. Note however the need to consider training for Executive Council Members which would be of particular importance to newly elected Members of the Executive Council.</p>	<p><b>Continuous improvement opportunity identified to maintain better practice.</b></p>
<p>3.5 Re-election should follow an agreed process to review the performance of Executive Council Members.</p>	<p>Based on our discussions with the Executive Council and Management, the process for reappointment of existing Council Members is similar to newly appointed members, done through Full Council meetings every three years.</p> <p>The legislation also stipulates that changes can be made at any time through a Special Full Council meeting.</p> <p>We understand that previous elections have been</p>	<p>There is currently no formal process that provides a review of the current Executive Council Members. Whilst this report has identified some areas for improvement on the Executive Council it has not sought to review or assess the performance of each individual Executive Council member.</p> <p>We recommend a form of review, inviting confidential feedback and comment from regional members on the performance of the CEO, Chair and positions held by</p>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>

Better Practice	Observations	Recommendations	Category
	observed by FaHCSIA officers.	<p>non-Aboriginal persons.</p> <p>This could be provided by representatives of each NLC Branch and Regional representatives on the individual performance of NLC Executive Council.</p> <p>This would provide valuable learning for the Executive Council on their performance and possible areas for improvement whilst also showing the regions that the NLC and its Executive Council value the input that they can provide.</p> <p>As outlined in this report the process of 2013 elections should be appropriately monitored by FaHCSIA or The AEC with a focus on the process leading to these being one of education and awareness that provides opportunity for others to contribute to NLC Councils.</p>	

#### Element 4: Board Induction Training

Better Practice	Observations	Recommendations	Category
4.1 Executive Council should undertake appropriate induction training on appointment.	An induction pack is currently in place to provide assistance to Executive Council Members upon election.	<p>Refer to our recommendation at Part 2 of this report. NLC should consider updating and revising the induction material to address the particular roles, responsibilities, requirements and expectations of Executive Council Members.</p> <p>Executive Council Members should then be provided with appropriate training and awareness to enable them to carry out their duties in accordance with legislative and policy requirements. This could be partly in the form of a 'buddy' system to ensure that any new members are guided by more experienced members.</p>	<b>Identified Gap – Action required to achieve better practice.</b>
4.2 Continuing education and	The Executive Council commented in discussions that	Refer to our recommendation at Part 2.1 of this report.	<b>Significant</b>

Better Practice	Observations	Recommendations	Category
<p>professional development programs should be made available to Executive Council Members as necessary.</p>	<p>they had not received any form of induction, or ongoing training since the previous CEO commenced in his role at NLC in 2008.</p>	<p>The Indigenous Governance Program facilitated by the AICD is an example of one training program that provides a three day course designed specifically for the directors, senior executives and leaders of Indigenous organisations. Whilst this course is structured to satisfy the responsibilities of directors and boards the content may be of value to the NLC in that the approach to good governance should draw on these concepts and requirements. The course can provide training on the following:</p> <ul style="list-style-type: none"> <li>- Procedures and processes that help achieve good governance</li> <li>- Learn how to read and interpret financial statements</li> <li>- Understand how a board contributes to strategic planning</li> <li>- Know your own personal risk appetite and how this relates to your role as a director</li> <li>- Identify exactly what directors do and how they add value to the organisation</li> <li>- Legal roles and responsibilities as a director.</li> </ul> <p>Where possible the objective of this training should take account of traditional and cultural traits of Executive Council Members and how these may be in direct conflict with the principles of independence and conflicts of interest i.e. ‘kinship’.</p>	<p><b>gap - immediate management attention required.</b></p>

### Element 5: Board Independence

Better Practice	Observations	Recommendations	Category
<p>5.1 The majority of the Executive Council Members should be independent of both the management team and any commercial dealings with NLC.</p>	<p>NLC is dealing with a relatively small community and each Executive Council member represents a different land region within NLC’s boundaries.</p> <p>Due to the unique nature of Land Councils and their role in negotiating land rights on behalf of their members, there may be potential conflicts in dealings undertaken by NLC.</p> <p>We acknowledge that the concept of “kinship” may influence the approach taken by Executive Council members in seeking to address issues of independence and potential conflicts.</p>	<p>As outlined previously in this report, the NLC should put in place appropriate frameworks designed to improve issues of good governance, understanding and importance of independence and conflicts of interest.</p> <p>Components incorporating this will likely include an updated Executive Council Charter and training to Executive Council members on matters involving independence.</p> <p>Due to the unique nature of the NLC Executive Council it may benefit a person with the right skills, experience and an indigenous background to be involved in the delivery of the training. This process may also be enhanced by the trainer having a greater level of appreciation for the traditional and cultural traits.</p>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>
<p>5.2 Where an Executive Council Member finds that there is a personal conflict, that member should formally declare the conflict and abstain from voting on the issue giving rise to the conflict. The Executive Council Charter should have clear procedures for dealing with these circumstances.</p>	<p>Current policy and process does not provide a clear details and instructions on how the Executive Council Members should address conflict of interest.</p> <p>Executive Council Members sit on a number of other boards, committees or independent bodies which may create conflict with the interests of NLC and its objectives e.g. Larakia Development Corporation has representation from the NLC Executive Council.</p> <p>The Members code of conduct outlined in the NLC Induction Book stipulates the words ‘To avoid a conflict of interest (COI) you should speak up about your interests. You may need to leave the meeting and not vote.’</p> <p>It appears in minutes reviewed that a potential COI was raised by an Executive Council Member in April 2012. Discussions took place without the Executive Council</p>	<p>A more defined process of how COI’s are addressed should be considered by NLC. It should include the following:</p> <ul style="list-style-type: none"> <li>- Draft Executive Council agendas being circulated to Executive Councilmembers prior to meetings to allow members the opportunity to notify the Chairperson and the CEO of any material personal interest in matters to be discussed</li> <li>- NLC to have a standing Agenda item on material personal interests at the commencement of meetings during which the Executive Council decides whether a declared personal interest is material and whether the Executive Council Member should participate</li> </ul>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>

Better Practice	Observations	Recommendations	Category
	<p>Member present. It was decided that no COI existed. No detail regarding what the potential COI entailed was provided in the minutes.</p> <p>Management also commented that Traditional Owners in a cultural sense don't normally 'speak for other people's land'. This therefore in theory reduces the risk of potential COI's. Although they accepted that there are still risks with other commercial interests that NLC undertakes.</p> <p>Management felt that any potential COI's should always be handled with a legal officer present.</p>	<p>or vote on the matter</p> <ul style="list-style-type: none"> <li>- The declaration of any personal interests, the detail and management of those interests are then recorded in the minutes of the meeting</li> <li>- To develop a register that records the other boards, committees and independent bodies that Executive Council members sit on</li> <li>- To ensure the PLO is present throughout the above process.</li> </ul>	
<p>5.3 Executive Council should be actively involved in the development of the agenda for Board meetings, not just management and the CEO.</p>	<p>The Executive Council agenda is only seen and reviewed by the Executive Council Members on the day of the meeting. They have no involvement in the preparation of the document, and are not afforded an opportunity to view supporting documents before the meeting, to enable more informed decisions.</p> <p>E.g. In the case of the special Executive Council meeting where the LDC's directors were dismissed, the agenda pack was prepared by the manager for Commercial Project and Development and provided to the Executive Council Members at the meeting.</p>	<p>NLC management should consider developing an agenda and meeting pack and forwarding to Executive Council Members approximately seven days before each meeting for review and comment on the proposed agenda and also the completeness and accuracy of minutes taken from the preceding Executive or Full Council meeting.</p> <p>Information considered to be highly confidential or sensitive in nature should not be included where there is a risk that the delivery of this information could be compromised.</p>	<p><b>Significant gap - immediate management attention required.</b></p>
<p>5.4 The Executive Council should meet separately of the CEO and Executive Directors periodically.</p>	<p>The Executive Council conducts informal discussions amongst themselves at every Executive Council meeting, and in between meetings. Members of NLC's management team are then invited to join the meeting by the Chair as per relevant items on the agenda.</p>	<p>This approach is appropriate.</p>	<p><b>On track/in line with better practice.</b></p>

**Element 6: Board Meetings**

Better Practice	Observations	Recommendations	Category
<p>6.1 The Executive Council should meet regularly; say at least every two months.</p>	<p>The NLC Induction Book stipulates that the Executive Council meetings are held around six times per year.</p> <p>From the minutes reviewed, we observed that the recommended frequency of Executive Council meetings is adhered to.</p>	<p>This approach is appropriate.</p>	<p><b>On track/in line with better practice.</b></p>
<p>6.2 Executive Council Members should be given adequate notice of meetings.</p>	<p>The Executive Council are normally given adequate notice of meetings, although it was commented that they are normally ad-hoc.</p> <p>In the case of the special Executive Council meeting where the LDC’s directors were dismissed, the Executive Council Members were provided with a very short notice of the meeting. E.g. meeting invitation was circulated to the Executive Members less than two days from the scheduled meeting date.</p>	<p>In the event meeting is required to be rescheduled or special meeting is required to be held, NLC should provide the Executive Council members with a reasonable notice of meeting.</p>	<p><b>Continuous improvement opportunity identified to maintain better practice.</b></p>
<p>6.3 Agenda items, including availability of discussion material, should be provided prior to Executive Council meetings to enable informed discussion by Executive Council Members.</p>	<p>An agenda is developed, but is only seen by Executive Council Members on the day of the meeting. E.g. In the case of the special Executive Council meeting where the LDC’s directors were dismissed, the agenda pack was provided to the Executive Council Members at the meeting.</p> <p>The agenda pack also includes a copy of previous minutes and relevant branch reports such as Legal, Anthropology and Human Resource.</p>	<p>As previously outlined at Section 5.3 of this report NLC management should consider developing an agenda and meeting pack and forwarding to Executive Council Members approximately seven days before each meeting for review and comment on the proposed agenda. This will also ensure completeness and accuracy of minutes taken from the preceding Executive or Full Council meeting.</p> <p>Information considered to be highly confidential or sensitive in nature should not be included where there is a risk that the delivery of this information could be compromised.</p> <p>The Executive Council Members should be made aware of expectations around confidentiality in relation to any sensitive information disclosed to them before</p>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>



Better Practice	Observations	Recommendations	Category
		the meeting.	
<p>6.4 Minutes of meetings should accurately record decisions taken by the Executive Council.</p>	<p>The Senior Policy Advisor is currently responsible for the recording of minutes.</p> <p>We reviewed minutes from both Full Council and Executive Council meetings, containing a record of agenda items discussed and decisions made.</p> <p>The outcomes of the decisions are listed in a separate column, and the action officer is also listed.</p> <p>Some comments were made that questioned the accuracy and level of detail of previous minutes taken. E.g. Based on the statement prepared by Shelly Priori, PA to the Senior Policy Officer, on 19 February 2013, the minute for 148th Special Executive Council meeting in relation to the dismissal of LDC directors was prepared prior to the meeting by the former manager for Commercial Project and Development.</p> <p>Management also commented that on previous occasions some Executive Council and Full Council meetings had been taped and transcribed, but this process was inconsistently applied.</p>	<p>NLC should ensure that all Executive Council meetings are recorded and transcribed with appropriate minutes documented from these recordings to ensure accuracy.</p> <p>The tapes from these meetings should be appropriately noted in a register and secured in a locked receptacle under the direct supervision of the Senior Policy Advisor.</p>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>

**Element 7: Board Resources**

Better Practice	Observations	Recommendations	Category
<p>7.1 Executive Council resources should include an Audit Committee (which is compulsory under CAC legislation) and a company secretary with the primary role of supporting the Executive Council and the Chair.</p>	<p>The NLC Audit Committee Charter (dated 21 September 2010) states the Audit Committee will hold at least three regular meetings per year. An Executive Council member also attends Audit Committee meetings.</p> <p>The GMCC attended all Audit Committee meetings and acted as ‘company secretary’ by providing agendas and transcribing minutes.</p> <p>The Audit Committee has representation from appropriately qualified people.</p> <p>Ms Archbold said that Audit Committee meetings were ad hoc and that the focus was generally of an external audit nature with little attention on risk management and internal controls. NLC external auditors often attended.</p> <p>Ms Webb said that the Audit Committee needed to be convened on a more regular basis, with more emphasis on risk management and internal audit. Ms Webb also acknowledged that she needed to attend Executive Council meetings, at least twice a year to improve connectivity between the two committees. The Audit Committee also had a responsibility to be more proactive in its approach with NLC, as they had become reliant on NLC staff raising important issues for consideration, which was not occurring.</p> <p>Galaminda said that he attended the meetings as a representative of the Executive Council but that he was unable to provide direct input into the function due to the communication and understanding of his role and that of the Audit Committee being unclear.</p>	<p>We comment in detail on the recommendations regarding the function of the Audit Committee in Section 13 of this report.</p> <p>The Audit Committee has appropriate representation but is lacking in organisation and appropriate focus to ensure it addresses matters of risk to the NLC.</p> <p>The representation of an NLC Executive Council Member on this committee requires further support to enable this position to better understand the role of the Audit Committee and that of NLC Executive Council.</p> <p>The NLC should review the position of ‘company secretary’ and ensure that the current position of General Manager of Corporate Compliance has the appropriate qualifications and experience to perform this role.</p>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>
<p>7.2 A corporate governance</p>	<p>From our review of documents and discussions with</p>	<p>We acknowledge that the size of NLC Executive</p>	<p><b>Continuous</b></p>

Better Practice	Observations	Recommendations	Category
committee may be appropriate in larger organisations.	<p>Management, there is currently no separate governance committee at NLC.</p> <p>Feedback received from people interviewed is that the size and composition of NLC does not require an additional committee to address corporate governance.</p>	Council does not require a corporate governance Committee however annual training and awareness on corporate governance to Executive Council Members is highly recommended.	<b>improvement opportunity identified to maintain better practice.</b>
7.3 Executive Council Members should have reasonable access to independent consultants for investigation and advice. These resources should be provided to Executive Council Members at no cost to individual members.	Although not defined in any document, Executive Council Members may obtain independent professional advice if they believe it is necessary in fulfilling their due diligence responsibilities. We note that the Executive Council considered and endorsed the need to engage Deloitte for this independent review.	This approach is appropriate.	<b>On track/in line with better practice.</b>
7.4 The costs of supporting the Executive Council should be transparent and reported.	<p>The NLC Induction Book outlines that Council Members are entitled to remuneration and travel allowance in accordance with a determination by the Remuneration Tribunal. Council members are also entitled to other out-of-pocket expenses.</p> <p>It was noted that the separate recording of expenses associated with the support of Executive Council was not clear and/ or transparent.</p>	<p>NLC to consider developing a standing agenda item at every Executive Council meeting. This could be incorporated into the Finance Report, but focused on a summary of travel, other allowances and expenditure. Could include the following:</p> <ul style="list-style-type: none"> <li>- Summary of expenditure for the period</li> <li>- Comparison to previous period.</li> </ul>	<b>Identified Gap – Action required to achieve better practice.</b>

**Element 8: Code of Conduct**

Better Practice	Observations	Recommendations	Category
<p>8.1 The Executive Council should approve a written Code of Conduct setting out ethical and behavioural expectations for both Council Members and employees. It is critical that both the Executive Council and Senior Management team demonstrate, through their words and actions, an absolute commitment to the code. Only in this manner can a culture of good governance be established within the organisation.</p>	<p>The NLC Induction Book outlines the Council Members Code of Conduct, Values and Behaviours which apply to all members of NLC.</p> <p>It also outlines a number of behaviours that Council Members must abide by. These include avoiding conflicts of interest, gifts and benefits and keeping council business confidential.</p> <p>Section 7 of the Human Resources Manual sets out the NLC employees Code of Conduct. This is similar in structure and content to the above.</p> <p>From discussions undertaken, we understand that there have been limited training and awareness initiatives provided to the Executive Council in recent years in relations to ethical and behavioural expectations.</p>	<p>In addition to the Code of Conduct the NLC should facilitate an appropriate annual awareness session to help promote the expected behaviours of NLC. This content should include the following:</p> <ul style="list-style-type: none"> <li>- The roles and responsibilities and expected behaviour of Executive Council members and staff</li> <li>- Independence and conflict of interest</li> <li>- Awareness to Code of Conduct and other relevant policies</li> <li>- Reporting channels in place to raise concerns of ethical nature.</li> </ul>	<p><b>Significant gap - immediate management attention required.</b></p>
<p>8.2 Adherence to the code of conduct should be periodically evaluated and intermediate action taken where necessary.</p>	<p>The NLC Induction Book was developed in 2011. The Human Resources Manual was developed in September 2011 and includes a current Code of Conduct. We also reviewed the previous Code of Conduct that was developed initially in 2009.</p> <p>We conducted a benchmarking exercise against the Australian Standard Code of Conduct. We identified a number of appropriate operational elements that were incorporated into the existing employee Code of Conduct. These include gifts and benefits, conflicts of interests and proper use of confidential information. The Executive Council Code of Conduct in the NLC Induction Book does not appear to provide the same level of detail.</p>	<p>Incorporated into the NLC’s governance initiatives should be an annual declaration of compliance completed by all staff and NLC Executive Council Members.</p> <p>Assessments of each staff member’s performance throughout the year, as part of the PEP program could also include a self-management assessment of staff member’s performance and adherence to a Code of Conduct and other policies reflecting ethics and good governance.</p> <p>The overall responsibility for this initiative should be within the remit of a Human Resources Officer or equivalent at an appropriately qualified and senior level. This position should have the ability to act on</p>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>

Better Practice	Observations	Recommendations	Category
	We note that NLC does have a HR Coordinator although the responsibilities of this position do not include the responsibility for managing issues of ethics and compliance to a Code of Conduct.	<p>behalf of all staff and management and report directly to the CEO in addressing issues of an ethical or Code of Conduct nature.</p> <p>The structural elements of both codes could also be improved by creating a culture of increased familiarity by:</p> <ul style="list-style-type: none"> <li>- Ensuring there is a Commitment from Executive Council of the code being adhered to</li> <li>- Having a management position responsible for ensuring the Code is a living document, is monitored and updated</li> <li>- Ongoing training provided to all individuals at all levels of the organisation.</li> </ul>	

### Element 9: Strategy Setting

Better Practice	Observations	Recommendations	Category
9.1 The objectives of NLC need to be clearly documented in a long term (three year minimum, updated annually) annual business plan together with achievable and measurable performance targets and milestones.	<p>NLC’s previous year strategic plan covered the period 2007-2011. For 2007/2008, there was also a corporate plan, and a number of group business plans.</p> <p>The NLC’s business plan was not updated annually.</p> <p>A new draft five year strategic plan for the NLC was completed in September 2012 however this document did not incorporate consultation from all Branch Managers and relevant stakeholders including Regional Members.</p>	<p>NLC should review the draft five year Strategic Plan and ensure the following has been incorporated:</p> <ul style="list-style-type: none"> <li>- Consultation with Regional Members to incorporate the fundamental concerns and requirements of the NLC into a strategic plan</li> <li>- Further consultation with all relevant sources, including Executive and Full Council Members, The Minister and staff/management attached to NLC</li> <li>- Whilst a ‘vision’ statement is important the plan should be a document that categorises the objectives of the NLC currently and into the</li> </ul>	<b>Identified Gap – Action required to achieve better practice.</b>

Better Practice	Observations	Recommendations	Category
		<p>foreseeable future</p> <ul style="list-style-type: none"> <li>- The objectives should align with the overall objective of the NLC as a Statutory Authority</li> <li>- The objectives of the NLC Business Plan should filter through to the PEP objectives of each Branch Manager and staff member of the NLC to ensure consistency in approach and measurability to the overall objectives.</li> </ul>	
9.2 The Executive Council should be responsible for approving or rejecting the budget developed by management to achieve the agreed strategy.	The annual budget cycle is undertaken by Finance, with Executive Council approving the end process before submission to the Minister.	<ul style="list-style-type: none"> <li>- As previously outlined in this report the skills and experience of the NLC Executive Council in relation to financial reporting and budgeting are limited. Attendance at appropriately identified training will provide greater opportunity for the Executive Council to query, provide input and ultimately approve the budget in an informed manner.</li> </ul>	<b>Continuous improvement opportunity identified to maintain better practice.</b>

### Element 10: Balancing Commercial Objectives and Community Service Obligations

Better Practice	Observations	Recommendations	Category
10.1 Commercial objectives and community service obligations should be clearly documented and approved by both the Minister and the Executive Council.	<p>Both commercial and community service obligations are outlined in NLC's five year Draft Strategic Plan.</p> <p>It was noted that some of the objectives are inconsistent with NLC's legislative requirements as Commonwealth Statutory Authority e.g.</p> <p>The Vision Statement within The Draft Strategic Plan states: <i>1) Funding sources will be largely or completely under the control, and a future fund will have been established. 2) NLC will have a strong balance sheet having invested in sustainable investments and businesses to create an independent</i></p>	<p>NLC should review and consider carefully the content, objectives and implications of the NLC's five year Draft Strategic Plan and ensure that any imitative or objectives that are to be agreed before finalising are not in conflict with the NLC's requirements regarding commercialisation of entities.</p> <p>As previously outlined in this report the NLC should ensure that proper consultation with the regional NLC members is undertaken as part of the strategic and business planning process to ensure the community service obligations are properly considered.</p>	<b>Significant gap - immediate management attention required.</b>

Better Practice	Observations	Recommendations	Category
	<p><i>income stream</i></p> <p>These statements appear to suggest that organisations will be set-up, with the objective of making a profit. Those initiatives were to be put in place to establish organisations that were to make a profit.</p> <p>Legislation provides for the structure of commercial organisations but not those that would cause the NLC to incur financial liability or enable financial benefit.</p> <p>We are aware that the former CEO had registered a company, which he and other NLC Branch Managers were officeholders in. This was later deregistered without proper consultation.</p> <p>Interviews with the consultants that were engaged to develop the Strategic Plan indicate the objectives relating to sustainable investments related to a desire for the NLC to become financially independent.</p>	<p>The contribution from Regional Members should form the fundamental platform upon which NLC objectives are developed. One of the core functions of NLC is to appropriately support the regions.</p>	
<p>10.2 All stakeholders need to be consulted and informed about strategies to overcome any tensions that may arise between commercial objectives and government requirements, such as community service obligations.</p>	<p>Management, Council Members and consultants all agreed that communication and consultation with NLC’s stakeholders could be improved.</p> <p>A common observation was that NLC manages its core responsibility well i.e. securing development agreements and prosecuting land/native title claimants.</p> <p>A further observation was that the consultation process between NLC and its communities when conducting the above agreements has become disconnected in that the role and contribution of Regional Members had become less and less over time. This was further explained in comments received from some Ranger Coordinators who felt that Management had restricted their own ability to perform their day to day tasks for the community members by imposing unreasonable internal processes and restrictions e.g. authorisations</p>	<p>NLC should consider and develop a number of formal and informal mechanisms to improve communication, consultation and coordination with key stakeholders.</p> <p>Whilst we acknowledge that the Full Council and Executive Council represent the regions and their members the NLC should increase the formal and informal lines of communication between the NLC and Regional Members to ensure their views and input are taken into account.</p> <p>The processes that provide guidance to regional NLC staff including Rangers should be reviewed to ensure that the function of these policies is balanced and ensures appropriate consideration of risk management whilst not unreasonably restricting the ability to engage with community members in the performance of their role.</p>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>

Better Practice	Observations	Recommendations	Category
	<p>required from GMCC for nominal expenditure and travel beyond 50 kms.</p> <p>We were advised in interviews that within the NLC Darwin office there was a lack of communication, consultation and coordination across branches and that this impacted the ability to service the needs of external stakeholders such as traditional land owners.</p>		
<p>10.3 The Executive Council should monitor the extent to which tensions are being managed using techniques such as independent surveys, feedback mechanisms and liaison with community or business groups.</p>	<p>The awareness to tensions or issues that may arise is currently being identified and addressed informally by way of traditional relationships and communication. The formalised structure of Regional, Full and Executive Council meetings provide opportunities for all members to raise concerns and have these properly addressed by the nine Executive Council Members should it requires particular intervention.</p> <p>Executive Council Members noted that communication between NLC staff, management and the regional communities could be improved.</p> <p>The 2012 NLC Draft Strategic Plan noted that regional consultations undertaken revealed an overall feeling that the Darwin head office staff were somewhat '<i>removed</i>' from regional concerns.</p> <p>We did not observe any regular business wide techniques aimed at obtaining independent feedback from NLC's community and business groups.</p>	<p>In addition to the mechanisms that are currently in place the NLC should consider the benefit of further measures to encourage the reporting of these matters including the following:</p> <ul style="list-style-type: none"> <li>- Development and implementation of a survey that will provide opportunity for NLC Regional Members to provide independent feedback on the performance of the Full Council, Executive Council and NLC</li> <li>- Consider the set-up of an ongoing hotline that provides opportunity for Regional Members and NLC staff working in remote locations to raise concerns in a confidential environment</li> <li>- If a hotline is set up, put in place a reporting framework that outlines how issues, complaints and/or concerns are addressed to provide assurance on how the issues will be responded to</li> <li>- Allocate responsibility of this initiative to a position within NLC with reporting responsibilities to Executive and Full Council on the frequency of calls, nature of issues and outcomes of action taken.</li> </ul>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>



### Element 11: Financial and Operational Reporting

Better Practice	Observations	Recommendations	Category
<p>11.1 Appropriate and clearly defined performance measures, financial and non-financial, should be established which enable the efficiency and effectiveness of the organisation to be assessed.</p>	<p>Performance measures are not clearly articulated in NLC’s 2012 Draft Strategic plan. The draft Strategic Plan states <i>it is not a business plan, which is a formal statement of financial and operational goals derived from strategy, and the detailed actions to achieve the goals. While a strategic business plan is used by the CEO and the Board to direct the organisation, a business plan is used by management to implement that strategy and carry out that strategy and function to each level of the organisation.</i></p> <p>The consultants responsible for developing the 2012 Draft Strategic Plan stated that it was not designed to be a business plan and that it was the responsibility of management to use this document as a platform to develop one.</p> <p>We noted that the NLC had a staff and management PEP that includes key performance indicators and measurements, although we understand the application to this process was inconsistent across the different Branches.</p> <p>The NLC provides regular reports, as a Statutory Authority, to government on its performance in relation to Native Title Land Claims, negotiations and agreements finalised.</p>	<p>NLC should review the current performance plan framework (PEP) currently in place for staff and management and in particular the manner in which it is being applied across NLC.</p> <p>NLC should ensure that the current performance measurement process (PEP) is consistently applied across all Branches and is appropriately connected to the objectives of the NLC to ensure an ‘as one’ approach to objective setting and assessment.</p> <p>As outlined previously in this report the NLC should review the five year Draft Strategic Plan and ensure that any performance measures included are not in conflict with the NLC’s objectives as a Statutory Authority and that the setting of financial and non-financial performance measures are developed in consultation with appropriately experienced NLC staff operating in remote locations to take account of the needs and objectives of Regional Members.</p>	<p><b>Significant gap - immediate management attention required.</b></p>
<p>11.2 The reports must be sufficient to communicate the required information but not as extensive and detailed as to hamper comprehension of the key issues. Where possible, information should be provided in tabular form and/or</p>	<p>The internal reporting mechanisms within NLC and the way they are delivered to Executive Council are structured according to particular issues that require attention.</p> <p>At each Executive Council meeting there is a Finance Report although it was noted that this report was up to 80 pages in length and too detailed for some Executive</p>	<p>NLC should consider revising the manner in which financial information is reported to the Executive Council to enable Executive Council Members to understand key financial metrics in a manner that is able to be clearly understood. E.g. one page dashboard. This should use illustrations and symbols to make the messaging as simple as possible.</p>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>

Better Practice	Observations	Recommendations	Category
<p>graphical presentations to aid comprehension.</p>	<p>Council Members to review and/or understand.</p> <p>Non-financial information is reported to Executive Council members via Branch Managers although it was noted that information relating to Human Resources (HR) and staffing was not reported in a manner that may provide sufficient information to understand trends or issues that require attention.</p> <p>As a result, they were unable to seek clarification or feedback on issues that they may need to have understood.</p> <p>In addition to internal reporting, we reviewed the 2010-2011 Annual Report. The NLC 2009-2010 Annual Report received a Gold Award at The Australasian Reporting Awards. This was for the following reasons:</p> <ul style="list-style-type: none"> <li>- Providing high-quality coverage of most aspects of the ARA Criteria</li> <li>- Provide full disclosure of key aspects of its core business</li> <li>- Address current legislative and regulatory requirements</li> <li>- Be a model for other peer reports.</li> </ul>	<p>Non-financial matters should be more comprehensively addressed in reports to the Executive Council. A summary of ‘people’ issues could include such things as staff turnover, exit interview information, HR complaints, promotions, transfers and new appointments. The report could also include how these issues are being addressed.</p> <p>In support of this simplified reporting template, NLC should ensure that representatives from each Branch, including a HR representative, are in attendance at each Executive Council meeting to answer any questions to be raised by the Executive Council.</p>	
<p>11.3 Financial information should be prepared using accrual accounting and should include year to date actual and budget, full year budget and full year forecast. Written explanation should be provided for material variances to budget.</p>	<p>Note 1 on page 176 of NLC’s 2010-11 Annual Report outlines the basis of the preparation of the financial report as on an accrual basis in accordance with historical cost convention.</p> <p>The Finance team are responsible for the yearly budgeting process. They conduct a bottom up process by asking Branch Managers to submit a yearly project level budget. This is then collated into a consolidated NLC budget for submission to the Minister for funding.</p> <p>Some management noted there to be a lack of</p>	<p>The annual budgeting process is consistent with accounting requirements. To monitor financial performance and budget allocation throughout the year, the Finance Manager should schedule quarterly meetings with Branch Managers or nominated representatives to discuss matters for each respective Branch including:</p> <ul style="list-style-type: none"> <li>- Forecasts and budgets to date</li> <li>- Financial performance to date against budget</li> </ul>	<p><b>Continuous improvement opportunity identified to maintain better practice.</b></p>

Better Practice	Observations	Recommendations	Category
	consultation involving finance department either through the year or as part of the full year budget process.	- Adjustments or financial demands not previously factored into the budget.	
11.4 Such reports should be provided for each Executive Council meeting and, at a minimum, quarterly.	The Executive Council sits at least six times per year. The GMCC also has a standing agenda item at each Executive Council meeting to present a monthly financial report in addition to the budget report that is provided in March each year.	This approach is appropriate.	<b>On track/in line with better practice.</b>
11.5 Reports should be available to Executive Council Members in sufficient time to allow informed decisions. Management reporting should be provided monthly.	<p>An NLC Agenda pack is prepared for each Executive Council meeting and distributed to all Executive Council Members; however it is only distributed on the day of the meeting.</p> <p>This pack includes an agenda, minutes from the previous Executive Council meeting and all supporting material needed to help the Executive Council make decisions. Branch Managers also meet on a weekly basis.</p> <p>Executive Council Members commented that it would help if information was provided in advance to help them make more informed decisions.</p>	<p>As outlined previously in this report NLC should consider developing an agenda and meeting pack and forwarding to Executive Council Members approximately seven days before each meeting for review and comment.</p> <p>Information considered to be highly confidential or sensitive in nature should not be included where there is a risk that the delivery of this information could be compromised.</p>	<b>Identified Gap – Action required to achieve better practice.</b>
11.6 In addition to the formal meeting reports, the Council should be briefed regularly by the Management team who should also be available for any questions that arise.	<p>Both Executive Council Members and Management noted that regular and informal discussions and meetings occurred between the Executive Council and Management.</p> <p>Although informal, the unique culture of NLC, and geographical location of Executive Council Members make this the most pragmatic outcome.</p>	This approach is appropriate.	<b>On track/in line with better practice.</b>
11.7 An environment of open communication in which good and bad news is readily shared with the Executive Council and	The common observation from Executive Council Members and Management was that communication within NLC could be improved.	To encourage and promote an environment that is conducive to open and honest communication the NLC should consider a range of strategies and initiatives designed to establish a strong ethical framework	<b>Significant gap - immediate management</b>

Better Practice	Observations	Recommendations	Category
<p>Senior Management should be encouraged.</p>	<p>Council Members felt that divisions within the Branch Management team had impacted directly on the support required for them to perform their duties.</p> <p>Staff commented that fundamental differences had resulted in a division between Branch Managers which had led to the branches operating in silos. There also appeared to be a division between the former CEO and certain Branch Managers.</p>	<p>including the following:</p> <ul style="list-style-type: none"> <li>- Development and implementation of a framework that enables reporting of issues or concerns. This could include a hotline that is promoted throughout the NLC</li> <li>- The appointment of a person to the position of HR Manager or equivalent with the mandate of implementing and monitoring the matters to be reported to the Executive Council</li> </ul> <p>The development and rollout of a series of awareness sessions aimed at promoting a strong ethical culture that encourages reporting of concerns via a structured process. This should be delivered to also promote policies and procedures that guide the ethical and transparent structure of the NLC.</p>	<p><b>attention required.</b></p>
<p>11.8 Reporting should include implementation status reports to monitor the progress of all significant Executive Council approved initiatives and compliance with legislative requirements.</p>	<p>The Induction Book &amp; the Audit Committee Charter defines whether the Executive Council or Audit Committee has responsibility for oversight of implementation of major initiatives. Key information on initiatives are provided in the minutes and decided by the Executive Council.</p>	<p>As outlined in this report there is a process that reports to the Executive Council on certain matters that may fall within the remit of the respective Branch Managers.</p> <p>This process could be enhanced with additional reporting requirements e.g. HR and improvements on enhancing current reporting requirements e.g. Financial.</p>	<p><b>Continuous improvement opportunity identified to maintain better practice.</b></p>
<p>11.9 As with the private sector, the person with strategic financial responsibility should be included in the top management team of the organisation and have a direct reporting line through to the Executive Council. This approach should ensure</p>	<p>The GMCC is part of the Senior Management team and has a standing agenda item at Executive Council meetings where he provides a monthly financial report to the Executive Council. The GMCC has several business units under his control, including Payroll, HR and Finance.</p> <p>The Executive Council noted that the level of detail in the monthly report was excessive and not able to be readily understood. This was impacting their ability to</p>	<p>NLC should review the structure and content of the monthly finance reports being produced to the Executive Council and consider revising the structure and layout to be in a manner that is able to be clearly understood by Executive Council members. E.g. one page dashboard.</p> <p>The Chair of the Audit Committee should attend Executive Council meetings quarterly to ensure that the financial and non-financial information reported is of a</p>	<p><b>Continuous improvement opportunity identified to maintain better practice.</b></p>

Better Practice	Observations	Recommendations	Category
effective financial management practices, including the provision of high quality information and advice, to assist the Executive Council's decision making progress.	question the information supplied and make decisions in relation to it.	high quality and appropriate to addressing the risk profile of the NLC.	

### Element 12: Monitoring the performance of the Executive Council

Better Practice	Observations	Recommendations	Category
12.1 The collective performance of the Executive Council and of individual directors where feasible, should be periodically assessed. This could be done using key performance indicators developed for this purpose but may also include Ministerial and/or peer reviews.	<p>There is no formal mechanism in place for Executive Council Members to be periodically assessed.</p> <p>They are chosen by their regions every three years, ensuring that traditional owners of the Land have the final say in who represents them. It is also possible if under-performing, to be removed through a special Full Council Meeting.</p>	<p>As outlined previously in this report there is currently no formal process that provides a review of the current Executive Council Members. Whilst this report has identified some areas for improvement on the Executive Council it has not sought to review or assess the performance of each individual Executive Council Member.</p> <p>We recommend a form of review inviting confidential feedback and comment from regional members and, where appropriate, Ministerial representation, on the performance of the Executive Council. This could take the form of facilitated 360 degree feedback that may also involve representatives of each NLC Branch and Regional representatives on the individual performance of the NLC Executive Council.</p> <p>This would provide valuable learning for the Executive Council on their performance and possible areas for improvement whilst also showing the regions that the NLC and its Executive Council value the input that they can provide.</p>	<b>Significant gap - immediate management attention required.</b>
12.2 The Executive Council should establish an appropriate	As outlined previously there is no formal mechanism by which the performance of the Executive Council is	As outlined at 12.1 the appropriate mechanism should incorporate feedback and input from regional members,	<b>Significant gap -</b>

Better Practice	Observations	Recommendations	Category
mechanism for reporting the results of Executive Council assessments.	assessed and results reported.	NLC management and, where appropriate, Ministerial representation. The format could be confidential in the form of 360 degree peer feedback with structured categories of comment that properly incorporate the objectives of the NLC and its Executive Council and how the performance is measured against these.	<b>immediate management attention required.</b>

### Element 13: Audit Committee

Better Practice	Observations	Recommendations	Category
<p>13.1 The Audit Committee should have a charter, approved by the Full Council, which sets out its responsibilities, including:</p> <ul style="list-style-type: none"> <li>- Management and Financial Reporting</li> <li>- Compliance with laws and regulations</li> <li>- Maintenance of an effective audit function</li> <li>- A suitable risk management and internal control framework</li> <li>- Membership</li> <li>- Meeting frequency and core agenda</li> <li>- Committee authority and reporting</li> </ul>	<p>The NLC Audit Committee Charter was revised in September 2010, and sets out the following areas of responsibilities:</p> <ul style="list-style-type: none"> <li>- Determining and reporting to the Full Council on NLC’s financial information, the systems of internal controls and the audit process</li> <li>- Acting as a forum for communication between the Full Council, management and external auditors</li> <li>- To undertake compliance with other laws and regulations not stipulated in the charter</li> <li>- To meet at least three times per year.</li> </ul> <p>From discussions held and documents reviewed, there appear to be limited formal communication between the Audit Committee, Executive Council and Full Council.</p> <p>We note there have been only two occasions since October 2011 when the Audit Committee has met. These meetings addressed budget and end of year financial performance but did not address issues relating to internal controls, governance and risk</p>	<p>NLC should consider incorporating a risk and internal audit function throughout NLC that can address appropriate programs of risk management as discussed and agreed by the Audit Committee.</p> <p>This program should focus on prioritised areas of internal risk and financial reporting obligations and report results to the Audit Committee and the Executive Council.</p> <p>The NLC should nominate and/or appoint an internal audit or risk role within NLC as the point of connection and responsibility between the Audit Committee and the NLC. Considerations should be given to an initial operational risk assessment or controls review that will provide a report on the current status prior to any program being put in place.</p> <p>Audit Committee meetings should be scheduled four times a year with information packs outlining the status and results of programed pieces of work forwarded to Audit Committee Members at least fourteen days prior to the meeting.</p> <p>Representation from those people responsible for undertaking the agreed tasks should be in attendance at</p>	<b>Identified Gap – Action required to achieve better practice.</b>

Better Practice	Observations	Recommendations	Category
obligations.	management.	<p>Audit Committee meetings to enable discussion and question on the results and risks identified and/or addressed.</p> <p>The NLC Audit Committee should meet quarterly and report to the Executive and Full Council on the status of the agreed program being undertaken</p> <p>The NLC should provide adequate training and education to the nominated Executive Council Member to enable this person to contribute to the function of the Audit Committee on behalf of the Executive and Full Council and Regional Members.</p>	
13.2 The Audit Committee should comprise of one Executive Council member (not including the Chairman), with the remainder and majority being independent of management.	<p>The Audit Committee consists of three members, one being drawn from the Executive Council (not including the Chairman) and the others being external to NLC.</p> <p>From our review of the current members of the Committee, all are independent and do not have management roles at NLC.</p>	This approach is appropriate.	<b>On track/in line with better practice.</b>
13.3 Members of the Audit Committee should preferably have financial and accounting expertise.	<p>The Audit Committee Charter stipulates that one member of the committee should have a background in financial reporting, accounting or auditing. Further, each member should be able to read and understand fundamental financial statements.</p> <p>It was confirmed through discussions with personnel on the committee that at least one person has a background in financial reporting, accounting or auditing.</p> <p>As previously outlined in this report we note that Executive Council representation on the Audit Committee does not have financial experience or training.</p>	<p>As outlined previously the Audit Committee has appropriate representation, externally and internally, with qualifications and experience to contribute to the function of the Audit Committee.</p> <p>Additional training should be afforded to the NLC Executive Council member representing the Audit Committee to enable this position to understand the roles and responsibilities and to make appropriate contribution to the function.</p>	<b>Continuous improvement opportunity identified to maintain better practice.</b>

Better Practice	Observations	Recommendations	Category
<p>13.4 Members of the Audit Committee should have unlimited access to both internal and external auditors and to senior management and all employees.</p>	<p>The Audit Committee Charter stipulates that the CEO, GMCC, Finance Manager, external auditor and other management representatives as required will normally be expected to attend audit committee meetings.</p> <p>Based on discussions with Audit Committee members, there is no current internal audit process, due to funding constraints. There is also no barrier to seeking input from employees.</p>	<p>The Audit Committee has access to external auditors who attend Audit Committee meetings. There is no internal audit function that can support an Audit Committee objective focusing on risk.</p> <p>NLC should create a function that supports a proper internal audit role that can provide support to the Audit Committee on matters of identified risk and how they are being assessed and managed.</p>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>
<p>13.5 Meeting frequency should usually be quarterly but can be more frequent in some circumstances.</p>	<p>The Audit Committee Charter stipulates that the Committee meet at least three times per year.</p> <p>From discussions and minutes reviewed, they have only met twice in the last thirteen months. Management commented that the committee should meet quarterly.</p>	<p>The Audit Committee should convene quarterly meetings and provide appropriate reporting to the Executive and Full Council and CEO on the results of the internal audit program.</p>	<p><b>Continuous improvement opportunity identified to maintain better practice.</b></p>
<p>13.6 The Audit Committee should have direct access to the CEO, CFO, external audit and internal audit.</p>	<p>The AC Charter stipulates that the CEO, GMCC, Finance Manager, external audit and other management representatives as required will normally attend all Audit Committee meetings. We observed through minutes reviewed of this being adhered to.</p>	<p>As outlined, the Audit Committee has access to external auditors who attend Audit Committee meetings. The GMCC has assumed the role of CFO and is a member of the Audit Committee. The CEO is also accessible to the Audit Committee.</p> <p>There is no internal audit function that can support an Audit Committee objective focusing also on risk.</p> <p>As outlined previously NLC should create a function that supports a proper internal audit role that can provide support to the Audit Committee on matters of identified risk and how they are being assessed and managed.</p>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>
<p>13.7 The committee should approve and monitor policies for reporting, risk management and internal controls.</p>	<p>The Audit Committee Charter stipulates that the Committee is to review and consider risk management with the management team. In relation to NLC’s internal control framework, the Audit Committee</p>	<p>The current suite of policies focusing on risk in NLC should be reviewed by the Audit Committee and consider their appropriateness in their current form. These should include:</p>	<p><b>Identified Gap – Action required to achieve better</b></p>



Better Practice	Observations	Recommendations	Category
	<p>Charter stipulates it should be considered with management, the external auditors and the risk management function.</p> <p>Whilst there are a number of policies in place that relate to risk function, it appears there is no internal audit or risk management program in place at NLC nor has the Audit Committee been involved in the approval or monitoring of these policies.</p>	<ul style="list-style-type: none"> <li>- Risk Management Policy</li> <li>- Record retention Policy</li> <li>- Credit Card Policy</li> <li>- Fraud Protection and Control Plan</li> <li>- Procurement Policy</li> <li>- Investment Policy</li> <li>- Travel Policy</li> <li>- Motor Vehicle Policy</li> <li>- Computer Policy</li> <li>- Ceremonial/Burial Grant Policy.</li> </ul>	<p><b>practice.</b></p>
<p>13.8 The Audit Committee should liaise with both internal and external auditors to ensure they obtain the widest possible coverage.</p>	<p>As outlined in this report the Audit Committee has access to and meets with the external auditors at Audit Committee meetings. No such process is in place regarding internal audit.</p>	<p>Refer previous recommendations regarding the need to have an internal audit function incorporated into the NLC. Note that this function could be managed internally, be outsourced or be co-sourced.</p>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>
<p>13.9 The external auditor should attend at least one, preferably two, committee meetings each financial year</p>	<p>The external auditor has attended two meetings in the last thirteen months.</p>	<p>This approach is appropriate.</p>	<p><b>On track/in line with better practice.</b></p>
<p>13.10 The Audit Committee should be provided with a status report for all recommendations provided by the internal and statutory auditors for which it is agreed action is required. These reports should include accountable officers and</p>	<p>The Audit Committee is provided with status reports from their external auditors, both before, after and during the audit process. There is no existing internal audit program. There is also regular communication with the ANAO.</p>	<p>The current framework appropriately addresses the reports received from external auditors but do not provide a similar report capability for internal audit. This functionality should be included in any internal audit framework that is implemented.</p>	<p><b>Identified Gap – Action required to achieve better practice.</b></p>

Better Practice	Observations	Recommendations	Category
implementation dates.			

**Element 14: Statutory Accountability**

Better Practice	Observations	Recommendations	Category
14.1 A formal process is required to identify all of the legislation relevant to the CAC.	<p>Formal responsibility for identifying all relevant legislative requirements sits with NLC’s PLO. As part of the role, The PLO and his team respond to day to day issues that involve key pieces of legislation affecting the NLC and provide advice to the Executive Council where required.</p> <p>There also appears to be significant experience across the group which reduces the regulatory, statutory and legal risks to NLC.</p>	This approach is appropriate.	<b>On track/in line with better practice.</b>
14.2 There must also be a continuing process to ensure that any legislative and regulatory changes are identified and their impact accessed and communicated to the Board.	<p>Staff members attached to the Legal branch attend compulsory education seminars to ensure they remain abreast of changing legal and statutory requirements.</p> <p>When significant issues arise they are escalated by the PLO to the Executive Council and dealt with at Executive Council meetings if required.</p>	This approach is appropriate.	<b>On track/in line with better practice.</b>
14.3 Critical legislative compliance obligations, including implementation, should form part of the Board monitoring and reporting requirements.	NLC’s PLO and the Legal Branch appear to have the required level of knowledge and experience in relation to the legislative compliance obligations. The PLO also attends Executive Council meetings to provide updates on the status of all legislative matters.	This approach is appropriate.	<b>On track/in line with better practice.</b>