



PUBLIC ACCOUNTS COMMITTEE

Inquiry into the New South Wales Aboriginal Land Council's Mortgage Fund



Report No. 141

December 2002

[No. 23/52]

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Charter of the Committee

The Public Accounts Committee has responsibilities under the *Public Finance and Audit Act 1983* to inquire into and report on activities of government that are reported in the State's Total State Sector Accounts and the accounts of the State's authorities.¹ The Committee, which was established in 1902, scrutinises the actions of the Executive Branch of Government on behalf of the Legislative Assembly.

The Committee recommends improvements to the efficiency and effectiveness of government activities. The sources of inquiries are the Auditor-General's reports to Parliament, referrals from Ministers and references initiated by the Committee. Evidence is primarily gathered through public hearings and submissions. As the Committee is an extension of the Legislative Assembly, its proceedings and reports are subject to Parliamentary privilege.

Members of the Committee

The Committee comprises members of the Legislative Assembly and assumes a bi-partisan approach in carrying out its duties.

Chairman: Joseph Tripodi MP, Member for Fairfield

Vice-Chairman: Pam Allan MP, Member for Wentworthville

Members: Ian Glachan MP, Member for Albury

Katrina Hodgkinson MP, Member for Burrinjuck

Richard Torbay MP, Member for Northern Tablelands

Barry Collier MP, Member for Miranda

¹ See Part 4 of the Act – The Public Accounts Committee.



Committee Secretariat

Secretariat members involved in the Inquiry were:

Committee Manager:	David Monk
Project Officer:	Vicki Buchbach
Committee Officer:	Jacqui Isles
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Chairman's Foreword

The Auditor-General reports to Parliament each year on the results of audits of the accounts of Authorities of the State and the State's public accounts.

The Committee chose to follow up comments relating to the New South Wales Aboriginal Land Council's Mortgage Fund because it had featured in three successive reports.

The Committee notes the mortgage scheme was established in order to fund the operations of the Council after the cessation of government funding at the end of 1998. The scheme was part of an aggressive investing strategy designed to increase the value of the Council's assets.

Many of the loans to commercial developers ran into difficulties. The Committee considers that this occurred because the Council acted against financial advice and did not ensure policies and procedures were followed in making decisions to approve mortgages.

The Committee notes that the Independent Commission Against Corruption also examined the issue of the mortgage scheme and concluded that there was no evidence of corrupt behaviour.

Further, the Council has been restructured and initiated improved financial management practices. The Committee congratulates the Council for its efforts in recovering funds by court action that would otherwise be lost and, in one case, arranging as mortgagee in possession for the completion of a residential unit development.

The Committee encourages the Council to continue improving its financial and management practices. The Committee notes that Council has recently chosen to remove the Chief Executive Officer and trusts it will appoint a suitably qualified replacement as soon as possible.

The Committee would also like to thank the representatives of the Council and the Audit Office for their co-operation and expert input and Vicki Buchbach for preparing this report.

A handwritten signature in cursive script that reads 'Joe Tripodi'.

Joseph Tripodi MP
Chairman



Chapter One

Concerns about the NSW Aboriginal Land Council's Mortgage Scheme

Introduction

The Committee resolved to undertake this inquiry into the performance of the New South Wales Aboriginal Land Council's Mortgage Fund as a result of comments in three Auditor-General's reports to Parliament from 2000 to 2002.

Auditor-General's reports

In 2000, the Auditor-General noted that the New South Wales Aboriginal Land Council (the Council) commenced operating a mortgage scheme which had provided loans of \$12.9 million by the end of the 1998-99 financial year. The report noted that the audit review had disclosed a number of deficiencies, including missing and/or incorrectly obtained valuation reports, and commented this could expose the Council to additional risks.²

The Auditor-General included the Council's mortgage scheme in the "Significant Items" section in his 2001 Report to Parliament. This stated:

An amount of \$4.5 million has been provided to cover possible losses of moneys advanced under the Council's Mortgage Scheme. The scheme's mortgage lending practices were found to be deficient.³

By the end of the 1999-2000 financial year, the balance of the scheme had risen to \$22.9 million. The report noted significant problems with loan defaulting. Further, the valuations of properties, against which mortgages had been calculated, were inflated.⁴

The 2002 report's "Significant Items" section noted that the scheme had lost \$4.5 million in 2000-01 and further losses were anticipated in subsequent years. The body of the report stated the Council had made further allowance of \$3.0 million for bad debts, although the Council may have some redress for recovery of losses. The balance of the scheme was \$14.5 million at the end of the financial year.⁵

² Auditor-General, *Auditor-General's Report to Parliament 2000*, Volume 2, Sydney, 2000, p 16

³ Auditor-General, *Auditor-General's Report to Parliament 2001*, Volume 2, Sydney, 2001, p iii

⁴ *ibid.*, pp 15-16

⁵ Auditor-General, *Auditor-General's Report to Parliament 2002*, Volume 2, Sydney, 2002, p iii, p 14



Terms of reference

The Committee noted that three reports by the Auditor-General had raised similar concerns which did not appear to have been addressed adequately by the Council. It resolved to inquire into this issue on 8 May 2002. In undertaking this inquiry, the Committee sought information about:

- the mortgage loan investment scheme;
- the extent and likelihood of further losses that may be incurred; and
- initiatives or measures taken to recover losses already incurred and minimise further losses.

The Committee resolved to focus on the findings presented in the audit report and, after seeking and considering the views of the relevant authorities, to provide recommendations to assist the Council:

- recover the losses already incurred;
- minimise the extent of future losses; and
- develop and implement processes that will minimise the risk of financial losses of this nature in the future.

Conduct of the Inquiry

The Chairman wrote to the Minister for Aboriginal Affairs seeking a submission. Submissions were received from the Minister as well as from the Council. A list of these submissions is at Appendix A. On 24 October 2002, a public hearing was held in Sydney. A list of witnesses appearing at the hearing is included in Appendix B.

Background

The Council is a statutory body established by the *Aboriginal Land Rights Act 1983* (the Act) and regulations. The purpose of the Act is:

to make provisions with respect to the land rights of Aborigines, including provisions for or with respect to the constitution of Aboriginal Land Councils, the vesting of land in those Councils, the acquisition of land by or for those Councils and the allocations of funds to and by those Councils.⁶

The Act provides for the establishment of Local and Regional Aboriginal Land Councils (ALCs). The Council is the peak representative body, consisting of full time members elected from each of the 13 Regional Aboriginal Land Council areas. Among other powers, the Council has responsibility for:

- administering the Council's account and the Mining Royalties Account;

⁶ *Aboriginal Land Rights Act 1983*, preamble



- granting funds for payment of the administrative costs and expenses of regional and local Aboriginal Land Councils;
- acquiring land on its own behalf or on behalf of or to be vested in Local Aboriginal Land Councils; and
- making grants, lending money or investing money on behalf of Aborigines.⁷

The Council's investments

Until 31 December 1998, the Council received grants to the value of 7.5 per cent of the funds collected in state land tax. This amounted to \$44.4 million in 1997-98.⁸ After that date, the Council received no further public funds and was required to meet its budgetary needs from investments.

There were statutory restrictions on the Council's ability to use these funds as the intention was that they be used for the long term benefit of aboriginal people. Section 29A of the Act provided that fifty percent of the land tax funds and any interest earned must be invested and not be disbursed except for the purpose of paying any costs incurred in making investments. Interest accrued after 31 December 1998 was, however, able to be spent.⁹

Clause 88 of the *Aboriginal Land Right Regulation 1996* provides that the Council's funds "may be invested in any manner for the time being authorised by law for the investment of trust funds". The current relevant law is the *Trustee Act 1925* which contains detailed duties and restrictions for the management of funds held in trust. These include a requirement to seek independent valuations of property against which funds were to be advanced and a maximum amount of funds lent of two thirds of the value of the security.¹⁰

The Mortgage Scheme

The Committee received historical information about the inception of the mortgage scheme from a review of the fund commissioned by the Council from PricewaterhouseCoopers (PwC) and a preliminary investigation of the scheme by the Independent Commission against Corruption.¹¹

⁷ *ibid.*, s23

⁸ Auditor-General, *Auditor-General's Report to Parliament 1999*, Volume 2, Sydney, 1999, p 37

⁹ This section has been repealed by the *Aboriginal Land Rights Amendment Act 2001 (No 118)* as will be discussed in Chapter 2. However, these amendments commenced only on 25 October 2002 and the previous Act operated when the Council initiated the mortgage scheme.

¹⁰ Trustee Act 1925, s 18

¹¹ Pricewaterhouse Coopers *Report to the NSW Aboriginal Land Council November: Review of Mortgage Loan Practices*, November 2000 and Correspondence from Kieran Pehm, Deputy Commissioner, ICAC, to Mr Rod Towney Chairman NSW ALC, 28 March 2002. Both documents were provided to the Committee as part of Submission No 2 from Mr Jeffrey Bradford, Chief Executive Officer of the NSW ALC



According to ICAC, the Council's then Treasurer advocated the introduction of a mortgage loans scheme primarily to provide access to finance for Local ALCs. This type of investment had only become possible after amendments to the *Trustee Act 1925* in 1996.¹²

Guidelines for a mortgage scheme were developed by legal advisers. This included guidelines for two types of mortgage. The first type were "internal" loans to Local ALCs for the purpose of providing homes for aboriginal people. These were considered low risk: as the Council controlled the funding for the Local ALCs, they could recover outstanding mortgage payments from future allocations.¹³

The Council's lawyers had identified a gap in the finance provision market for developers seeking more than \$1 million and for fixed rate loan of more than two years. Therefore, the other part of the mortgage scheme was for "external" loans at market rates. This was designed to earn income for the Council. The guidelines limited these to loans "granted with security by way of first mortgage over properties located anywhere in Australia other than rural (farm) properties". The guidelines limited external loans to a minimum of \$50,000 and stated that special rules may be developed for loans of over \$1 million.¹⁴

The guidelines also provided for the establishment of the Mortgage Investment Fund Committee to assess loan applications and decide whether or not loans should be issued. Although the Investment Committee reported to the Council regarding the operation of the scheme, the Council had no role in making loan assessments.¹⁵

Section 14B(2) of the *Trustee Act 1925* imposes a duty on trustees to take advice. On 1 January 1999, the Council formally engaged financial advisers Chifley Financial Services as its external financial advisers. Chifley was asked to develop an investment strategy which would generate about \$22 million a year and not have negative returns in more than two consecutive years in any five year period. It developed a strategy but warned the Council about the risks of operating mortgage investments and, in particular, did not support the proposal to invest in loans other than for the provision of homes for aboriginal people.¹⁶

The Investment Committee resolved to proceed with the mortgage scheme on 12 January 1999. According to the ICAC investigation, in March 1999, the Committee resolved that the power to approve or disapprove mortgage loans be

¹² ICAC, *op. cit.*, p 8

¹³ Clause 20 of Schedule 1 Guidelines for loans from the NSWALC Mortgage Investment Fund to Local Aboriginal Land Councils provides for the Council to deduct mortgage arrears from LALC allocations, appended to Submission No 1, The Hon Andrew Refshauge MP, Minister for Aboriginal Affairs.

¹⁴ *ibid.*, Schedule 2 *Loans to Persons or Corporations other than LALCs*, clauses 3 and 4,

¹⁵ *ibid.*, *Objectives, Procedures and Guidelines for the NSW ALC Mortgage Investment Fund*, clauses 4-15

¹⁶ ICAC *op. cit.*, p 10, p 15



delegated to the Council's Financial Controller and Business Controller. These staff members sought loan applications by contacting mortgage brokers.¹⁷

The first internal loan was made in May 1999. Several external loans were made in the following months.

Problems with the operation of the Mortgage Scheme

By January 2000 the viability of the scheme came into question when several loans had fallen into arrears and one of the borrowers was in receivership.

In May 2000 the first Auditor-General's report to Parliament was issued. In response to this audit, the Council's new Financial Controller asked PwC to undertake a comprehensive review of the operation of the scheme. This review identified a number of management deficiencies. The major findings were:

- The Committee pursued investments in mortgage loans despite concerns expressed by their investment advisers and risk management advisers.
- Despite advice that the Council engage an adviser with experience in mortgage loan investments, the Investment Committee relied on the Council's then Financial Controller, whom PwC did not consider to be adequately qualified.
- Contrary to best practice, only cursory due diligence or pre-lending reviews were performed by the Council on loan mortgagors to assess their ability to meet obligations.
- There is evidence the Council was a "soft touch" for borrowers.
- The Council did not arrange valuations of the mortgaged properties. The valuations were conducted on behalf of the mortgagor or the mortgage broker.
- The Council was not in possession of loan documentation relating to two mortgage loans. This may be a breach of the *Trustee Act 1925*.
- One of the external borrowers, Stonehaven Gardens Pty Ltd, fell into arrears only one month after receiving the loan of \$4.8 million.
- The proprietor of Stonehaven, is also the proprietor of Tintara Nominees Pty Ltd, which also fell into arrears. Both of these loans were referred by Robertson Finance. An employee of Robertson Finance was a secondary mortgagor on Tintara.
- The valuation provided to the Council for the Stonehaven loan was significantly higher than subsequent valuations prepared as part of the sale process.
- It did not appear that policies and procedures for loan lending were always followed by the Council.

¹⁷ *ibid.*, p 11



- The files do not contain many key documents including formal loan applications and analysis of borrower's financial documents. In most cases these documents may never have existed.¹⁸

The subsequent ICAC investigation also pointed out that the Audit Office's audit of the scheme commented that the Council's decision to delegate approval of the mortgage loans to the Investment Committee breached the Council's Rules for the Operation.¹⁹

As noted above, the mortgage scheme was designed to operate anywhere in Australia rather than be limited to New South Wales. This may have hampered the amount of supervision the Council could have had on its investment and the amount of verification of financial information it could perform. The Committee notes that several of the problem loans were in other states including Queensland and South Australia. One loan requiring \$4.4 million to be written off was in South Australia.

Performance of the Mortgage Fund

The table on the following page shows the financial performance of the total fund over the four years since its operation commenced.

For the first two years of the scheme's operation, the weighted average return on capital of the scheme was 8.35 per cent and 8.98 per cent. However for 2000-01, the return was -16.32 per cent.²⁰

¹⁸ Pricewaterhouse Coopers, *op. cit.*, pp 5-7

¹⁹ ICAC *op. cit.*, p16

²⁰ NSW Aboriginal Land Council, *NSW Aboriginal Land Council Annual Report 1998-1999*, p 58; *NSW Aboriginal Land Council Annual Report 1999-2000*, p 48; *NSW Aboriginal Land Council Annual Report 2000-2001*, p70



Performance of the Mortgage Scheme

	30 Sep 2002^(a) \$'000	30 Sep 2001 \$'000	30 Sep 2000 \$'000	30 Sep 1999 \$'000
Mortgages	13,547	14,518	22,162	12,925
Provision for Doubtful Loans	-3,000	-3,000	-4,500	0
Net Mortgage Loan Investment	10,547	11,518	17,662	12,925
Loans Made Since Scheme Started	25,600	25,600	25,100	12,925
Loans in Default	10,565	14,500	9,600	(b)
Balance of Loans Without Independent Valuations	(b)	11,700	11,600	
No of Loans without Independent Valuations	(b)	8	7	
Loans Written Off	0	4,688	0	

Source: collated from Council's annual reports and submission to the inquiry.

^(a) Until the commencement of amendments to the Act in October 2002, the Council's Financial Year commenced in 1 October. Now it commences on 1 July.

^(b) Information was not available to the Committee.



Chapter Two

Improvements in Management of the Aboriginal Land Council

The Committee heard that there had been significant changes to the personnel and management of the Council since the mortgage scheme was established.

Council's Response to Auditor-General's Report

In his 2002 report to Parliament, the Auditor-General made comments about many other aspects of the management of the Council in addition to comments about the mortgage scheme.

The report included this response from the Chief Executive Officer of the Council which describes planned and completed administrative changes and a commitment to achieving unqualified audit reports in the future:

As the inaugural appointee to the newly established position of Chief Executive Officer, NSW Aboriginal Land Council I believe the report's findings justify the actions and changes which have been set in place since my commencement as the CEO in June 2001.

I believe the actions taken address and will alleviate most of the issues raised in the report. Some of the actions include:

- a review of staffing and structure
- a baseline financial review
- a review of council's rural properties.

I assure you that we will be working very hard to improve the accounting and internal control procedures in order to get an unqualified Audit Report this Financial Year.

A large number of amendments have been made to the Aboriginal Land Rights Act which will also assist Council in addressing a number of the issues raised. It is expected that the amendments to the Act will be assented to in July 2003.

The changes and actions outlined are but some of the restructure process that Council is currently undergoing. I firmly believe that as a result of the changes being introduced and the attention being paid to the strengthening of internal control measures and adherence to the organisation's statutory obligations, future reports to Parliament will be of a totally different [nature].²¹

Response to comments about the Mortgage scheme

The Committee notes that the Council engaged PwC to investigate the status of the mortgage fund in response to concerns expressed in Auditor-General's report

²¹ Auditor-General, *Auditor-General's Report to Parliament 2002*, Volume 2, Sydney, 2002, p23



in 2000. After this inquiry, the Council sought legal advice and then referred the matter to the ICAC. In its report of a preliminary investigation of March 2002, ICAC commented on the inadequacy of the processes in place to manage the investment funds but could find no evidence that corrupt conduct occurred.²²

The Committee commends the Council for taking these actions.

In evidence the Committee heard from the Audit Office that subsequent audits did not show problems to the same extent as the first audit and, after the first year, no new external loans were issued. The Audit Office commented that over the years since the issue was first raised, the Council had made a substantial response in improving its financial management:

Mr GLACHAN: Have you looked at them since and have there been any changes?

Mr McLEOD: Yes, we have looked at them in the subsequent two years, 1999-2000 and 2000-2001. There have been changes to the extent that I think after that first year the council stopped making loans to commercial people. So while the problems were still there in terms of lack of documentation, the problems did not increase because they were no longer continuing to make loans of that nature. They have continued to make loans to local Aboriginal land councils and I think we had some minor concerns about those, but nothing to the degree of the first year that we looked at it.

Mr GLACHAN: So they have introduced better practices?

Mr McLEOD: Yes.

CHAIR: So there has been a sizeable response to the first time that the issue was raised in the Parliamentary report? I mean it may not be a complete and sufficient response, but a sizeable response?

Mr McLEOD: Yes, given the two years that have passed since we first put our concerns to the council, yes. My answer would be yes.²³

Staff Restructure

During this inquiry the Committee heard that the staff and advisers directly involved in establishing the mortgage scheme and issuing the non-performing loans were no longer in the employ of the Council.

Mr Bradford commenced duties as the Council's Chief Executive Officer in June 2001. In evidence he stated he had terminated the employment of the financial controller and the engagement of the solicitors. The business manager is also no longer employed by Council.²⁴

²² ICAC *op. cit.*, p 16

²³ Director of Audit, Audit Office of NSW, transcript of hearing, 24 October 2002, p 36

²⁴ Chief Executive Officer, NSW Aboriginal Land Council, transcript of hearing, 24 October 2002, p39



Changed arrangements for Investment Account

The Council also informed the Committee that the Investment Committee had been disbanded and all investment decisions now needed to be made by the Council itself rather than delegated:

Mr GLACHAN: For some years an investment committee controlled the scheme. When was the committee disbanded and who is responsible now for managing and monitoring the scheme?

Mr BRADFORD: The whole investment committee was disbanded not long after I took over. I found that that was one of the issues that needed to be dealt with. In my opinion, it failed to stack up to checks and balances. Any money now that comes out of the investment account has to be a decision of the full council.²⁵

The Council also stated that there is monthly reporting by staff to Council about the status of loans.²⁶

The Committee also heard that the risks of similar problems arising have been minimised by not issuing further external loans after the first year of the scheme's operation. At the hearing the Council mentioned that there had been consideration of issuing a loan to a Local ALC but this would be an internal loan and, therefore, a lower risk investment than an external commercial loan.²⁷

Level of Recovery of Funds

The performance of individual loans is described in Chapter 3. In summary, the Committee notes the Council has made significant efforts to recover money. Tactics used included serving bankruptcy notices on a defaulter and, in one case, undertaking to complete a building that would otherwise have been extremely difficult to sell for an acceptable price. The Committee heard that the Council had been active in exploring all available options to recover these funds especially where a mortgage was issued on the basis of an inflated valuation report:

Mr BRADFORD: The next mortgage of real concern was Stonehaven, the one in South Australia, where I had little option other than to eventually take a loss on that particular premises. We have not given up; we are still actively involved in pursuing the valuers involved against their professional indemnity insurance. I am not convinced at this stage that there was not a great deal of skulduggery that went on in the way that that mortgage was obtained. I believe the valuations to be false and our legal team believe that we have a good case of possibly recovering our money from the valuer.

²⁵ *ibid.* p40

²⁶ Manager, Financial Operations, NSW Aboriginal Land Council, transcript of hearing, 24 October 2002, p40

²⁷ Chief Executive Officer, NSW Aboriginal Land Council, transcript of hearing, 24 October 2002, p40



Some of the other mortgages, as you will see on the sheet submitted by myself in my submission, we have been able to fully recover by actively pursuing the people. Most of them, the ones that I have dealt with, appear to have the funds salted away and if you pursue them hard enough and long enough you eventually get your money back. I do believe that we will eventually make good on those loans. There is no more of that taking place, especially while I am the Chief Executive Officer of that organisation, because I do agree with some of the things that were said previously: It was just a soft touch, the way it was handled.²⁸

Legislative Changes

Amendments to the *Aboriginal Land Rights Act 1983* commenced on 25 October 2002.²⁹ These mean that the rules for financial management are more clear. The Council now has an obligation to preserve the real value of the Council's investment funds at \$485 million in real terms.

The amendments have also given a statutory role to the position of Chief Executive Officer of the Council. The Committee understands this role was introduced to improve the governance arrangements of the Council.

²⁸ *ibid.*, p 39

²⁹ vide GG No. 189 of 25/10/2002, p. 9059



Chapter Three

Performance of Mortgage Loans Investment Scheme

In this chapter, the Committee reviews the performance of the mortgage loans issued under the scheme. The loans are classified as:

- “written off loans” where the borrower has defaulted and money has been written off;
- “non-performing” loans, which are currently in arrears; and
- “performing” loans which are being managed successfully.

The chapter describes the actions taken by the Council to recover money that would otherwise be lost from external loans.

Written off Loans

The Council issued four loans which required writing off of part of the amount issued. These are included in the table below.

Borrower	Date of Loan	Principal \$	Balance 9/08/02 \$	Balance 30/9/02 \$	Write Offs \$
Tintara Nominees	28/5/99	780,000	76,297	76,297	76,297
Stonehaven Gardens	23/6/99	4,800,000	4,381,142	4,381,142	4,381,142
Patrick Jumeau	24/8/99	900,000	366,105	154,789	154,789
Lenson (Goolmangar)	6/1/00	880,000	76,000	76,000	76,000
TOTAL		7,160,000	4,899,544	4,688,228	4,688,228

Source: Submission from Council

Stonehaven Gardens

This loan was issued for a development in South Australia where the valuation of \$7.5 million was supplied by the developer. It was based on assumptions about the profitability of the site following developments which did not eventuate. The Council did not obtain an independent valuation report. Payments stopped in July 2000. When the company went into receivership, the site was valued again at \$2.5 million.³⁰

³⁰ ICAC *op. cit.*, p 4



It was eventually sold for much less than the original valuation suggested and the Council took a significant loss. Council is currently pursuing the valuer's professional indemnity insurance.³¹

Tintara

This loan was issued to another company owned by the same developer as Stonehaven Gardens and payments on this loan also stopped in July 2000. The valuation report forwarded to Council was prepared on behalf of the mortgage broker. Council did not obtain its own comprehensive valuation report although some market research was undertaken.³² Council eventually received all but \$76,000 of the outstanding balance.

Mr Patrick Jumeau

Mr Jumeau accrued penalties for late payments and dishonoured cheques within two months of receiving a loan of \$900,000. \$6,000 of this was forgiven without documentation by the Investment Committee.³³ Payments ceased in September 2000 and eventually the property was sold for \$690,000. The Council is pursuing Mr Jumeau for recovery of the funds that have been written off. The Council advised that a bankruptcy notice had been issued to him in October 2002.³⁴

Lenon (Goolmangar)

Repayments on this loan ceased after eight months and the company went into receivership. The Council took legal action. It received a series of payments from receivers. In December 2001 the Council received \$630,000 from the sale of the property against which the mortgage was issued. \$76,000 was written off and the Council has a very small outstanding balance on this loan which is largely from legal fees. This was the last external loan issued.

Non-performing Loans

The following table shows a list of non-performing mortgage loans issued by the Council.

³¹ Chief Executive Officer, NSW Aboriginal Land Council, transcript of hearing, 24 October 2002, p39

³² ICAC *op. cit.*, p4

³³ ICAC *op. cit.*, p5

³⁴ Manager, Financial Operations, NSW Aboriginal Land Council, transcript of hearing, 24 October 2002, p40



PUBLIC ACCOUNTS COMMITTEE

Borrower	Date of Loan	Principal \$	Balance 9/08/02 \$	Balance 30/9/02 \$
Kestral Properties	28/5/99	8,250,750	9,593,868	9,602,039
Quinnimont Pty Ltd	29/9/99	1,160,000	1,130,813	1,130,813
Travellers Oasis	4/11/99	1,100,000	991,446	962,456
Total		10,510,750	11,716,127	10,595,308

Source: Submission from Council

Kestral Properties

This is by far the largest outstanding Council loan. It was issued for the purpose of constructing a 32 unit residential development near the Wollongong Central Business District. Payments stopped after May 2001 when the building was not completed.

The Council told the Committee that the effect of disposing of the site in its incomplete state would have been a loss for the Council of around \$2.5 million. For this reason the Council engaged the company's receivers to manage repair work and complete the building.³⁵

The Council hoped the building would be completed by early 2003 in order to maximise the chances of recovering their money. The Committee heard quite positive reports of the chances of this occurring in evidence:

Mr GLACHAN: So what is it going to cost you to finish the job? Have you got an estimate of that?

Mr BRADFORD: I think we would be looking for another \$2.5 million.

Mr GLACHAN: What will you get back then when you sell the units?

Mr BRADFORD: If we take the lower end of the market reports, it would be \$13.5 million.

Mr GLACHAN: Will that mean that you will get all your money back?

Mr BRADFORD: That is what it looks like at the moment. We cannot make a profit on it of course, because we are only the mortgagee in possession and the next

³⁵ Chief Executive Officer, NSW Aboriginal Land Council, transcript of hearing, 24 October 2002, p39



person in line for their money is the National Australia Bank. If there is anything left over, it will go to probably the National Australia Bank.³⁶

Quinnimont

Payments for this loan for land at Airlie Beach in Queensland stopped in September 2000. Only \$59,000 was obtained from the receiver. The Council has been attempting to sell this property but has had difficulty finding an acceptable offer because the valuation report was unreliable:

Mr GLACHAN: If they paid a certain amount for the land, it has got to be worth that amount again, has it not?

Mr NARAYAN: No... the valuation when they gave the loan was \$2.1 million and now we are getting a valuation which is \$950,000, and then there was a deal signed with somebody else for \$825,000 and the receiver received \$82,500, but we rejected it because, as I explained, Lang Walker was putting in about \$80 million in the Airlie Beach resort. Definitely, if he is putting in the money, that place might be coming up. The same guy who defaulted on that has come back and offered us \$1.4 million. Then what has happened is he got a loan of \$1 million but the other guy who was giving him the \$400,000 pulled out at the last minute. So that is why we had to go back to another person who is offering us \$1.3 million in cash plus \$800,000 in contrabart dollars, which is only acceptable in the Gold Coast.³⁷

At the hearing the Council advised that the issue of Quinnimont would be resolved shortly and a contract had been signed that week. The Committee has since been advised that this sale would be settled on 13 December.³⁸

Traveller's Oasis

This loan had a number of late interest payments before payments stopped in September 2001. Since then, the Council has been receiving rent payments of about \$10,000 fairly regularly. The Council has optimistic views about the likelihood of recovering these funds in 2003:

Mr NARAYAN:.... The other one is Travellers Oasis where we are still getting rent, but the present owners want to pay it and they are looking to refinancing. I think the lease on that property expires in March.

Mr GLACHAN: They are paying you rent?

Mr NARAYAN: Yes, they are paying rent, we are collecting rent and we have appointed the receiver, so it is being paid straight to the receiver and the receiver

³⁶ Chief Executive Officer, NSW Aboriginal Land Council, transcript of hearing, 24 October 2002, p43

³⁷ Manager, Financial Operations, NSW Aboriginal Land Council, transcript of hearing, 24 October 2002, p42

³⁸ Transcript of Hearing 24 October 2002, pp 40-41, Conversation with Mr Narayan 3 December 2002



has given them time until January to paint the place before the renewal of the lease in March and they are looking for refinance to pay that.³⁹

Performing Loans

There are a small number of loans with a total value of around \$732,000 at 30 September 2002. These were issued to Local ALCs. The Audit Office had no concerns about these mortgages in the 2002 report to Parliament although there was concern about other types of Local ALC debts.⁴⁰ The Committee considers that the Council is managing its internal mortgage loans soundly as there are no non-performing loans of this type.

The Council also issued loans to five external borrowers which performed reasonably well and were repaid in full. The principal issued totalled \$5.46 million. One of these was an interest only loan of \$1.1 million that was regularly paid for 18 months and then paid out in full.

Extent of Losses

The Committee was not able to determine with any precision the extent of losses from the scheme. This was in part because of actions still underway to recover funds but also partly because of the accounting policies of the Council. In their 2000-2001 Annual Report, Council stated in relation to mortgages:

Once a mortgage loan has defaulted, the council does not continue to accrue interest charges on the balance outstanding. Similarly where the margin between recent valuations of the mortgaged property and the balance outstanding is narrow, or in deficit, legal and other costs associated with investigating and negotiating settlement of balances owed to the Council are not accrued as part of the balance outstanding.⁴¹

This means that the extent of interest lost is not included in accounts.

In addition, the opportunity cost to the Council of investing in non-performing mortgage loans rather than less hazardous investments would make the total amount not realised higher than simply the amounts written off.

Conclusion

The Committee concludes that the Council has lost at least \$5 million from the mortgage scheme and has the potential to lose more money if actions currently underway to recover losses are unsuccessful.

³⁹ Manager, Financial Operations, NSW Aboriginal Land Council, transcript of hearing, 24 October 2002, p 44

⁴⁰ Auditor-General, *Auditor-General's Report to Parliament 2002*, Volume 2, Sydney, 2002, p 14

⁴¹ NSW Aboriginal Land Council, 2000-2001 Annual Report, p 66



This situation is a consequence of issuing external mortgages without adequately qualified staff, poor internal control and without seeking independent valuations of property.

However, the Committee notes that Council is taking steps to rectify the management problems.

The Committee believes that the Council was operating in a prudent manner in:

- disbanding the Investment Committee;
- not issuing further external mortgage loans after the first Auditor-General's report into the issue; and
- Taking steps to recover the money lost through court action where appropriate and, in the case of the former Kestral development in Wollongong, in taking the matter to completion.

The Committee encourages the Council to continue improving its financial and management practices. The Committee notes that Council has recently chosen to remove the Chief Executive Officer and trusts it will appoint a suitably qualified replacement as soon as possible.



Appendix A

Submissions and Documents Received by the Committee

No.	Submitted or Tabled by:	Subject
1.	The Hon Andrew Refshauge MP, Minister for Aboriginal Affairs	Submission to the inquiry 2 September 2002
2.	Mr Jeffrey Bradford, Chief Executive Officer, New South Wales Aboriginal Land Council	Submission to the inquiry on behalf of New South Wales Aboriginal Land Council, 6 September
3.	Mr Jeffrey Bradford, Chief Executive Officer, New South Wales Aboriginal Land Council	Correspondence to the Committee, 15 November 2002



Appendix B

List of Witnesses Appearing Before the Committee on 24 October 2002

Witness	Position and Organisation
Mr Ronald Hegarty	Director of Audit Audit Office of NSW
Mr Stephen John McLeod	Director of Audit Audit Office of NSW
Mr Jeffrey Frederick Dose	Audit Manager Audit Office of NSW
Mr Jeffrey John Bradford	Chief Executive Officer New South Wales Aboriginal Land Council
Mr Steven Narayan	Manager, Financial Operations New South Wales Aboriginal Land Council