



The South West Native Title Settlement

Newsletter September 2017

The South West Native Title Settlement (the Settlement) is the largest and most comprehensive agreement to settle Aboriginal interests over land in Australia. The Settlement, involving six Noongar Native Title Agreement Groups, and covering 200,000 square kilometres of land, represents significant social and economic investment in the Noongar community and the shared future of Western Australia.

On 8 June 2015, after extensive negotiations, and authorisation by the Noongar people, the Western Australian Government signed (executed) the six South West Native Title Settlement Agreements with the Ballardong, Gnaala Karla Booja, South West Boojarah, Wagyl Kaip & Southern Noongar, Whadjuk and Yued groups.

While some elements of the Settlement commenced at this time, the Settlement as a whole will only become fully effective after all of the six Agreements have been conclusively registered in accordance with the *Native Title Act 1993 (Cth)*, and any related court proceedings have been resolved.



Registration of the Agreements

On the 22 June 2017 the [*Native Title Amendment \(Indigenous Land Use Agreements\) Act 2017 \(Amendment Act\) \(Cth\)*](#) was passed. The *Amendment Act* is in direct response to the uncertainty created by the *McGlade* decision which has delayed the registration of four of the South West Native Title Settlement Indigenous Land Use Agreements (ILUAs). The *Amendment Act* confirms that the four ILUAs, the subject of the *McGlade* decision, are valid and can now be considered for registration. The two unaffected ILUAs are taken to be, and to have always been valid ILUAs.

On 22 August 2017 fresh applications for registration were submitted to the National Native Title Tribunal (NNTT) for the Ballardong People, South West Booiyah #2, Wagyl Kaip - Southern Noongar and the Whadjuk People ILUAs. The Native Title Registrar will defer making a registration decision on the two ILUAs unaffected by the *McGlade* decision (Yued and Gnaala Karla Booja) to allow all six ILUAs to be determined at the same time.

Remaining Processes

A 3-month Notification Period for the lodgement of objections to the registration of the four ILUAs will be run by the NNTT (www.nntt.gov.au). The timing for dealing with any objections and the subsequent registration decision is likely to be known in early 2018. Subject to any separate applications for Judicial Review of the Native Title Registrar's registration decisions, the earliest likely date for Conclusive Registration of all six ILUAs is around mid-2018, with the Settlement then commencing during the second half of 2018.

Despite the delay the WA Government and SWALSC remain fully committed to the Settlement. The Department of the Premier and Cabinet's (DPC) [South West Settlement Implementation Unit](#) (SWSIU) continues to work with a range of government agencies to prepare for the whole of government implementation of the Settlement.

For the latest information about the Settlement please check the DPC website (www.dpc.wa.gov.au/lantu).

Application of the Native Title Act and Aboriginal Heritage Act

Until the South West Native Title Settlement commences the *Native Title Act 1993* (Cth) still applies to all land users planning activities in the Settlement Area. Within the Settlement Area the *Aboriginal Heritage Act 1972* (WA) also applies at all times, and will continue to do so after the commencement of the Settlement.



Machinery of Government Changes

The 1 July 2017 Machinery of Government (MOG) changes generally involve the amalgamation and reduction in the number of existing government departments and agencies into 10 newly designated departments. DPC has written to all new departments to confirm that there is no change to the various WA Government obligations and all relevant ILUA obligations are carried through to the new departments.

Once the Settlement has commenced it will then be appropriate to update the ILUAs with references to the new departments. Minor implications to the Noongar Standard Heritage Agreement (NSHA), which came into effect on the 8 June 2015, are detailed below.

See the [Public Sector Commission's website](#) for more information about the Machinery of Government changes.

Noongar Standard Heritage Agreements

NSHA Requirements – Government and Industry

Ten government agencies have now entered into NSHAs many with all six of the Noongar Native Title Agreement groups, with several other agencies working towards sign up. Since June 2015 (Execution of the ILUAs) all WA Government departments and certain Government agencies and instrumentalities are required to enter into a NSHA when conducting an Aboriginal Heritage Survey in the Settlement Area, unless a pre-existing heritage agreement was in place as at 8 June 2015.

The NSHA provides a clear framework for when and how Aboriginal heritage surveys will be conducted across the Settlement Area whilst strengthening relationships with the Noongar community and assisting compliance with the *Aboriginal Heritage Act 1972*.

A NSHA Working Group comprised of Government agency users and SWALSC representatives provides a quarterly forum to review progress and collectively address any matters in relation to NSHA sign-up and operation.

Learn more about the NSHA, access a range of templates and resources by visiting the DPC website (www.dpc.wa.gov.au/lantu)

NSHA a condition on mineral and petroleum titles

More than 80 NSHAs have now been agreed by tenement holders as a direct result of the heritage condition on title which applies to all new tenements granted in the ILUA areas since 8 June 2015. Industry Proponents can visit the Department of Mines,



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Industry, Regulation and Safety (DMIRS) [South West Native Title Settlement website](#) for more information.

Questions about the NSHA?

Contact Jeremy Elliott, South West Settlement (Heritage) Director, at the Department of Planning, Land and Heritage (formerly DAA) on (08) 6551 8070 or Jeremy.Elliott@daa.wa.gov.au

NSHAs already entered into by Government

Where a former WA Government department had entered into a NSHA, the new Department that succeeds it is taken to be the party to that NSHA. This principle is consistent with the ILUA requirement that NSHA obligations on the WA Government apply to all departments. DPC has written to relevant departments confirming specific implications in relation to pre-existing NSHAs, and reiterating continuing heritage obligations.

The NSHA templates will undergo a minor change to amend reference to the former Department of Aboriginal Affairs to the Department of Planning, Lands and Heritage (DPLH). Once updated, these templates will be available on the DPC [South West Native Title Settlement website](#) as well as via the SWALSC, DPLH and DMIRS websites.

Local Government: Heritage Guidance and Proposed Template

At the recent WA Local Government Convention DPLH and SWALSC staff presented on local government obligations under the *Aboriginal Heritage Act 1972*. Although Local Government is not bound to use the NSHA, key elements of the NSHA were presented as guidance for minimising risk to Aboriginal heritage. Contact Jeremy Elliott (DPLH) or Peter Nettleton (SWALSC) – Peter.Nettleton@noongar.org.au, for further information.

SWALSC and the WA Local Government Association (WALGA) are working together to develop a Local Government-specific Noongar Heritage Agreement to align with Local Government regulations and policies. With 103 of the 138 WA Local Government Authorities falling within the Settlement ILUA areas, the majority of local governments will have a direct interest in this process. Joanne Burges, Executive Manager, Planning and Place, at WALGA can be contacted for further information: jburges@walga.asn.au.

South West Aboriginal Land and Sea Council

Prior to the commencement of the Settlement SWALSC is the primary point of consultation on matters to do with heritage, land and culture. This is acknowledged by all WA Government agencies and many other authorities through the mechanism of



the Noongar Standard Heritage Agreement. SWALSC can be contacted on (08) 9358 7400 or reception1@noongar.org.au. SWALSC continue to work with the Noongar Agreement Groups towards establishing the Noongar Regional Corporations and preparing for commencement of the Settlement.

Regional Information Sessions

SWSIU and DPLH staff will be in regional locations to offer individual meetings with agencies and/or broader information sessions in relation to the South West Native Title Settlement and/or particular elements such as the Noongar Standard Heritage Agreement, Noongar Land Base Strategy and Community Development Framework.

- **Bunbury: 24 October 2017**
- **Northam: 16 November 2017**
- **Albany: November 2017 (date TBA)**

Please email SouthWestSettlement@dpc.wa.gov.au or call 6552 6191 to register for a briefing, nominating your area of interest. Additional dates can be arranged subject to demand.

Community Development Framework

The South West Native Title Settlement [Community Development Framework](#) (Framework) is a commitment between the WA Government and the Noongar people to an agreed set of principles and priorities aimed at Noongar Community Development. The Framework recognises that Noongar culture is fundamental in strengthening the future for the Noongar people and the wider South West community, and provides human service agencies with greater scope for direct communication and collaboration with the Noongar community, represented through the six Noongar Regional Corporations, toward improved outcomes.

Regional implementation is to be overseen by Noongar Regional Corporation representatives engaging regularly with relevant Human Service Manager's Group/s (HSMGs). SWSIU is in the process of attending meetings of HSMGs in the South West Settlement Area to provide information on the Framework, and to invite discussion around preparing for commencement of the Settlement/

For further information on the Community Development Framework, visit the DPC [South West Settlement Implementation Unit website](#) or contact Natalie Contos, Principal Policy Officer with the SWSIU team, at Natalie.Contos@dpc.wa.gov.au, or on 6552 6128.



Land Base Strategy – Noongar Land Estate

The [Noongar Land Base Strategy](#) will transfer a maximum of 300,000 hectares of reserve land and a maximum 20,000 hectares of freehold land to the Noongar Boodja Trust (NBT) to form the Noongar Land Estate. The Land Transfer Process consists of five steps: Identification, Selection, Assessment, Finalising the terms of Allocation, and Allocation.

The Department of Planning, Lands and Heritage (DPLH) has a dedicated team investigating land parcels for potential transfer by identifying unallocated crown land and unmanaged reserves within the Settlement Area. SWALSC can also identify land for potential inclusion. Parcels are subject to a desktop investigation, and parcels with competing priorities are removed from the lists.

Once parcels have been identified, SWALSC then selects the parcels on behalf of the Noongar Boodja (Land) Trust. This indicates interest in having land included in the Noongar Land Estate.

After land has been selected and as it becomes clearer when the Settlement will commence, Local Government Authorities (LGAs), relevant Government agencies and others will be approached for consultation regarding the lands to be included, as part of the Assessment phase of the project. During this phase, DPLH project team members conduct further research on each land parcel and seek input from other agencies via referrals.

DPLH engagement with the LGAs will be in accordance with section 14 of the *Land Administration Act 1997 (WA)*. LGAs will be invited to advise DPLH with regard to the following:

- whether there are existing local interests in the same land that cannot be met elsewhere;
- whether there are future proposals for the same land or land within the same general location;
- whether there are planning schemes that could affect future use of the land;
- whether there are other relevant land management issues; and
- any other advice they may wish to provide about the allocation of the land to the NBT.

DPLH will then consider all information received and prepare the terms of allocation, which provides the Noongar Boodja Trust with an offer for a parcel(s) of land. The Noongar Boodja Trust can then accept the offer, at which stage it is allocated.

The NBT will own and manage freehold land like any other private land owner and must meet the standard land holding costs associated with freehold land, including local government rates and charges, insurance, fire service levies, and any additional land management costs. Privately held land is not being considered for inclusion in the Land Base Strategy.



For further information on the Land Base Strategy, visit the DPC [South West Settlement Implementation Unit website](#) or contact Sarah Charbonneau, Principal Policy Officer with the SWSIU team, at Sarah.Charbonneau@dpc.wa.gov.au, or on 6552 6236.

Updated Settlement Fact Sheets

Updated and new factsheets about the major components of the SWNTS have been published to the DPC website (www.dpc.wa.gov.au/lantu)

- About the South West Native Title Settlement
- Noongar Corporations
- Noongar Boodja Trust
- Community Development Framework
- Noongar Land Estate
- Noongar Standard Heritage Agreement
- Noongar Heritage Partnership Agreement
- Co-operative and Joint Management Arrangements
- Noongar Recognition Act
- Noongar Housing Program

Contact Us – South West Settlement Implementation Unit

DPC's South West Settlement Implementation Unit can be contacted directly:

Email: [South West Settlement Implementation Unit](#) Phone: 08 6552 6191

Information and relevant documentation about the content of the Settlement is available on DPC website: www.dpc.wa.gov.au.