



Government of **Western Australia**
Department of **the Premier and Cabinet**

The South West Native Title Settlement

Newsletter June 2016

The South West Native Title Settlement is the largest and most comprehensive agreement to settle Aboriginal interests over land in Australia since colonisation. Involving around 30,000 Noongar people and covering approximately 200,000 square kilometres, the Settlement provides an opportunity for the WA Government to work in partnership with the Noongar community to improve their economic, social and cultural development. It represents a significant investment in both the Noongar community and the shared future of the Western Australian community as a whole.



Settlement update

8 June 2016 marks a year since the Government of Western Australia executed the 6 South West Native Title Settlement Indigenous Land Use Agreements (ILUAs) with the representative parties for the Ballardong People, Gnaala Karla Booja, South West Boojarah #2, Wagyl Kaip & Southern Noongar, Whadjuk People and Yued native title agreement groups.

Since our last newsletter update in December 2015, several significant milestones have been achieved toward commencement of the South West Native Title Settlement (Settlement).

We are particularly pleased to [announce](#) the proclamation of the *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act 2016* on WA Day 2016, formally recognising the Noongar People as the traditional owners of the South West of WA, and the recent selection of Perpetual Trustee Company Limited as the Professional Trustee Company who, subject to the successful registration of the ILUAs, will be appointed to act as the initial Noongar Boodja Trustee.

The proclamation of the *Land Administration (South West Native Title Settlement) Act 2016* and gazettal of WA Water By-Law Amendments also represent significant milestones toward Settlement.

This newsletter provides information on these achievements, as well as an update on progress toward the registration of the six ILUAs, the establishment of the Noongar Corporations, the implementation of the Noongar Standard Heritage Agreement, Noongar Land Base Strategy, and general planning for the commencement of the Settlement.

Progress on Conditions to Settlement

There are four conditions that must be satisfied to enable the commencement of the Settlement.

The WA Government has now satisfied 3 of those conditions, with only the registration of the 6 ILUAs remaining outstanding. Updates on the status of those conditions are provided below.

Proclamation of the Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act 2016

The *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act 2016* was proclaimed on WA Day – 6 June 2016, marking a historic day for WA.



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The Act is a symbolic piece of legislation which establishes the Noongar People as the traditional owners of the land in the South-West. It is central to the Settlement, but is also stand-alone legislation that has greater significance than simply one element of a native title agreement.

WA Premier Colin Barnett conveyed the significance of the Act when he stated:

“It brings me great pride that this Parliament has enacted legislation enshrining the Noongar People as the traditional owners of the land in the South-West. This is an overdue and historic recognition of the significant contributions Noongar People have and continue to make to our State. It is one of the most rewarding events that I have been able to participate in as Premier.”

We encourage all stakeholders to promote awareness of, and celebrate the significance of this Act, for example as part of NAIDOC week celebrations (3-10 July 2016).

To assist in promoting awareness, an Information Pack is now available on the Department of the Premier and Cabinet (DPC) [website](#).

Proclamation of the *Land Administration (South West Native Title Settlement) Act 2016*

The *Land Administration (South West Native Title Settlement) Act 2016*, also proclaimed on 6 June 2016, provides for the implementation of specific land-related provisions in the Settlement. These include the implementation of a Land Base Strategy for the creation of the Noongar Land Estate, and the granting of Land Access Licences to the six Noongar Regional Corporations.

The Noongar Land Estate, drawn primarily from existing unallocated Crown land and unmanaged reserves, will hold up to 300,000 hectares of reserve land and a maximum of 20,000 hectares of freehold land for cultural or development purposes.

Land Access Licences held by the Noongar Regional Corporations, once established, will give Noongar people valid access to certain areas of unallocated Crown land for the practice of customary activities.

Gazettal of Water By-Law Amendments

The *Metropolitan Water Supply, Sewerage, and Drainage Amendment By-Laws 2016* and the *Country Areas Water Supply Amendment By-Laws 2016* were gazetted on 7 June 2016. The By-Laws set out arrangements for Noongar people to access some water catchment areas for limited customary activities, so that Noongar people can access and maintain Aboriginal sites and teach and learn on country.



Conclusive Registration of the ILUAs

Conclusive Registration of the six ILUAs is the remaining condition that needs to be met before the Settlement can commence in full.

At this stage the ILUAs are still progressing through the Registration process. Following a notification period from 16 September to 16 December 2015, the National Native Title Tribunal (NNTT) received 107 objections across the 6 ILUA areas from a total 25 objectors. A procedural fairness procedure applies whereby the State and the South West Aboriginal Land and Sea Council (SWALSC) provided responses to these objections in April 2016, and the objectors now have the opportunity to consider and respond.

After procedural fairness processes have been completed, the NNTT Registrar will consider all of the information provided and determine whether the ILUAs can be registered. It is possible that applications for judicial review of the Registrar's decisions may then be filed by objectors.

Separately, four High Court applications were commenced in December 2015 against the Native Title Registrar and the parties to the ILUAs, including the State and SWALSC, seeking to prevent the NNTT Registrar from registering the Whadjuk, Ballardong, South West Boorah #2 and Wajal Kaip & Southern Noongar ILUAs on the basis that these four ILUAs are not "Indigenous Land Use Agreements" as defined in the *Native Title Act 1993*, and are therefore not capable of being registered. These applications were remitted to the Full Federal Court in February 2016 and are scheduled to be heard on 28 and 29 July 2016.

The Settlement will commence subject to the 6 ILUAs remaining registered after the conclusion of any legal proceedings challenging registration. At present, the earliest likely date for commencement is early in 2017.

Announcement of initial Noongar Boodja Trustee

The formal Selection Process for the initial Noongar Boodja Trustee (Trustee), undertaken between the WA Government and SWALSC, has concluded with Perpetual Trustee Company Limited (Perpetual) being notified of its selection as the initial Trustee for the Noongar Boodja Trust upon the establishment of the Trust.

The Selection Process was a significant undertaking as it is a critical component in the implementation of the Settlement. The initial Trustee is required to be a Professional Trustee Company, which meets specific requirements under the *Corporations Act 2001* (Cth) and has substantial relevant experience in carrying out functions and services that will be required by the Noongar Boodja Trust. The State and SWALSC agreed, in partnership, to adopt a Selection Process that followed Government procurement guidelines.



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The WA Government and SWALSC established the Noongar Boodja Trustee Selection Taskforce (Taskforce) in June 2015 to facilitate the selection of the Professional Trustee Company. Comprised of an Independent Chair and four representatives appointed by each of the WA Government and SWALSC, the Taskforce provided strategic direction to assist the Noongar Boodja Trustee Selection Panel (Panel) in their selection of a suitable Professional Trustee Company.

Panel members, listed below, were chosen because of their extensive experience and expertise.

- Independent non-voting Chair: Dr Ken Michael AC, former Governor of Western Australia;
- Independent Financial Expert: Ms Catherine Nance, Partner PricewaterhouseCoopers;
- Independent Legal Expert: Mr Geoff Gishubl, Partner Ashurst Australia;
- Independent Practical Expert: Professor Colleen Hayward AM, Pro-Vice-Chancellor, Equity and Indigenous, Edith Cowan University;
- State-nominated Representative: Ms Kylie Towie, Assistant Director General, Department of Health; and
- SWALSC-nominated Representative: Mrs Gningala Yarran-Mark, Aboriginal and Torres Strait Islander Coordinator, Aboriginal Engagement, UGL Limited.

Perpetual was notified on 27 June 2016 that it had been selected by the Panel as the successful Professional Trustee, and could now be described as a 'Trustee in Waiting'. Perpetual will only be formally appointed and commence its role as the Trustee at the 'Trust Effective Date'. This will only occur after the Settlement commences, following the registration of the six ILUAs with the NNTT.

Under the ILUAs, Perpetual's role, once it is formally appointed as Trustee, will be principally around asset management and development, developing and maintaining governance standards and administering the distribution of funds to the Noongar Corporations to provide services for the benefit of the Noongar People.

Perpetual is expected to work in partnership with the Noongar People, and bring all its resources, expertise, connections and experience to enable the Noongar People to build their economic, social and cultural future through enduring relationships with Government, business and the wider community in Western Australia.

The Noongar Boodja Trust will operate as a perpetual charitable trust and is intended to deliver enduring economic, social and cultural benefits to the Noongar People. In making decisions, Perpetual will be required to draw on advice from expert committees about investment and allocation decisions. Each committee will have both Noongar representatives and other relevant experts who hold extensive knowledge and experience in working with Trusts.



Establishment of the Noongar Corporations

SWALSC is continuing to facilitate processes toward the establishment of the six Noongar Regional Corporations by the ILUA groups.

A Transition Program is being finalised which sets out how the Regional Corporations will be established by the ILUA groups. Once the Transition Program has been finalised the DPC and SWALSC will distribute this document so that stakeholders also have an understanding of how the Corporations will be established in line with the registration and commencement of the Settlement.

Noongar Standard Heritage Agreement

Sign up to the NSHA

The 'Noongar Standard Heritage Agreement' (NSHA) was one element of the ILUAs that commenced upon ILUA execution on 8 June 2015. From that date WA Government agencies were required to enter into a NSHA with SWALSC on behalf of the relevant ILUA group when conducting an Aboriginal Heritage Survey in an ILUA area, unless they had a pre-existing heritage agreement.

With the NSHA now in operation for just over a year, three agencies – Main Roads WA, the Water Corporation and the Department of Parks and Wildlife, have signed up to a total of 13 NSHAs across the six ILUA areas. Another four agencies are expected to sign up in the near future.

The Department of Mines and Petroleum has also, since 8 June 2015, been granting new tenements in the ILUA areas with a heritage condition. To date 91 live tenements now have a condition on title, and 14 tenement holders have already signed up to the NSHA. While Proponents with a heritage condition have the initial option to nominate to enter into a NSHA or seek to negotiate another form of Heritage Agreement with SWALSC, the NSHA is SWALSC's preferred option. Industry Proponents can visit the [Department of Mines and Petroleum website](#) for more information.

Other land users, including Local Government, are encouraged to consider using the NSHA when an activity may require a heritage survey. Where a NSHA is not used, following the key NSHA elements, including use of the [Aboriginal Heritage Due Diligence Guidelines](#), is valuable in ensuring *Aboriginal Heritage Act 1972* compliance.

While SWALSC is currently signing up to NSHAs on behalf of the six Noongar ILUA groups, the Noongar Regional Corporations will, once established, take on this role. At this time all existing NSHAs will transfer to the relevant Noongar Regional Corporation/s – there is no requirement for re-signing.



Operation of the NSHA

NSHA signatories now have a clear framework for when and how Aboriginal heritage surveys will be conducted across the Settlement area, assisting them in compliance with the *Aboriginal Heritage Act 1972*.

The Aboriginal Heritage Due Diligence Guidelines are assisting agencies in determining when their activities are at risk of impacting Noongar heritage, and they may need to provide a NSHA 'Activity Notice' to SWALSC. Upon provision of an Activity Notice, SWALSC then carries out a process of research and consultation to determine whether a survey is required, and identifies the relevant Aboriginal consultants to assist the survey.

Following heritage surveys conducted under the NSHA, Survey Reports and Aboriginal Heritage Information Submission Forms are required to be submitted to the Department of Aboriginal Affairs (DAA). Provision of this information will build the database of heritage information in the South West, maximising the protection of Aboriginal heritage and assisting new land users in determining whether their activities are likely to impact sites.

NSHA Working Group meetings convened by DAA and attended by SWALSC representatives and 12 Government agencies, provide a quarterly forum to review progress and address issues arising in relation to the sign-up and operation of the NSHAs.

NSHA Templates and Information

There are six NSHA templates, one for each ILUA area, which can be found on the DPC website together with the Aboriginal Heritage Due Diligence Guidelines, and ILUA maps and technical descriptions for inclusion in NSHAs as required. A number of templates have also been developed in relation to key NSHA steps, and templates may be amended from time to time, so be sure to visit the DPC website for the latest information before proceeding.

To learn more about the NSHA, contact the DAA [South West Settlement \(Heritage\) Director, Jeremy Elliott](#), or visit the [DPC website](#). Peter Nettleton, SWALSC Senior Legal Officer, the primary NSHA contact at SWALSC, can also be contacted at Peter.Nettleton@noongar.org.au.

Noongar Land Base Strategy

The Department of Lands (DoL) is continuing work towards the creation of a Noongar Land Estate through the transfer of a maximum of 320,000 hectares of Crown land into the Noongar Boodja Trust over five years following Settlement (a maximum of 300,000 hectares as reserve land and a maximum of 20,000 hectares as freehold title). The process for creation of the Noongar Land Estate is prescribed in the ILUAs in the Noongar Land Base Strategy.



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All transfers, coordinated by the DoL, are subject to statutory clearances and consultation with any affected WA Government or Local Government interest.

The land will be drawn primarily from existing unallocated Crown land and unmanaged reserve, as well as Aboriginal Lands Trust properties. None of the land will be from private land holdings.

To meet the targets set out in the ILUAs for land selection and allocation, SWALSC and the DoL continue to identify and select land potentially available for allocation to the Trust. DoL is also consulting with relevant State and Local Governments before the land is considered eligible for transfer.

The DoL has conducted a number of briefings to Local Governments across the South West explaining the land transfer process, and in particular how they will be consulted about their interests.

WA Government Implementation Planning

In preparation for the potential commencement of the Settlement in early 2017, DPC will soon be convening a preliminary meeting of the South West Settlement Implementation Group. The Group is comprised of senior representatives from those Government agencies with commitments under the Settlement. A Government Service Management Plan (GSMP) is also being finalised with each of the agencies to record, and facilitate reporting against, each Department's Settlement ILUA obligations and associated timeframes, as well as the broader Settlement objectives.

Communication

South West Settlement Briefings

DPC, DAA and DoL representatives continue to offer briefings on the Settlement to a range of stakeholders, including WA Government agencies and Local Governments.

Whilst Local Governments are not signatories to the Settlement, potential intersections and opportunities arise. All 102 Local Governments affected by the Settlement have therefore been offered the opportunity to attend briefings over the past year in relation to relevant elements of the Settlement, including the land transfer process. Following presentations at Regional Zone meetings, a briefing was provided for interested Metropolitan Zone representatives on 19 May 2016 at WALGA.

Staff from DPC, the DAA and DoL will also host a booth at the WA Local Government Convention and Trade Exhibition to be held from 3-5 August 2016 at the Perth Convention



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and Exhibition Centre. Staff will be there to answer questions and provide information in relation to key elements of the Settlement that may be relevant to Local Governments, including land transfers, land access for customary activities, heritage processes, Noongar governance structures, and economic and community development frameworks.

DPC, together with DAA and DoL, can arrange further briefings upon request. DAA's Settlement Director [Jeremy Elliott](#) can be contacted directly in relation to NSHA briefing requirements.

Fact Sheets about the Settlement

Fact Sheets first released July 2015, and updated in December 2016 to assist in stakeholder and broader community understanding of the South West Native Title Settlement, are being further updated to incorporate recent developments. The Fact Sheets outline the specific benefits being provided through the Settlement, including answers to frequently asked questions raised by a range of stakeholder groups during consultations. The latest version of the Fact Sheets (June 2016) will be available on the DPC website in the coming week.

Fact Sheets can be copied and distributed by any stakeholders to interested community members when they seek information about the Settlement.

Online information about the South West Settlement

All relevant documentation about the Settlement is available on the DPC website: www.dpc.wa.gov.au.

Information includes:

- Copies of each of the 6 executed ILUAs;
- Maps of the relevant ILUA area boundaries;
- Technical descriptions of the 6 ILUA boundaries;
- Template Noongar Standard Heritage Agreements for each ILUA area and key NSHA steps;
- Aboriginal Heritage Due Diligence Guidelines;
- An Information Pack on the *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act 2016*;
- Information on the *Land Administration (South West Native title Settlement) Act 2016*;
- Information on the *Metropolitan Water Supply, Sewerage, and Drainage Amendment By-Laws 2016* and the *Country Areas Water Supply Amendment By-Laws 2016*;
- Supporting information, such as the Fact Sheets, that may assist in understanding of the Settlement.

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

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