

The South West Native Title Settlement

Noongar Boodja

The South West Native Title Settlement is a landmark native title agreement negotiated between the Noongar people and the Western Australian Government. The Settlement commenced 25 February 2021.

This fact sheet contains information about

- Noongar Land Estate
- Cooperative and Joint Management of the Conservation Estate
- Noongar Housing Properties
- Noongar Heritage Agreements.

For the latest information visit noongar.org.au.

The Noongar Land Estate

The Noongar Land Estate (NLE) will initially hold up to 300,000 hectares of land allocated as reserve or leasehold and up to 20,000 hectares of land allocated as freehold for cultural or economic development use. The NLE will be held in the Noongar Boodja Trust (NBT).

The NLE is intended to provide significant opportunities for the Noongar community to achieve sustainable economic, social and cultural outcomes.

It is recognised that land is intrinsically linked to the spiritual, social and economic wellbeing of Noongar people. During the negotiations for the Settlement it was apparent that connection to land and lawful access to land was of high importance to the Noongar community.

The NLE will provide Noongar people a significant asset base to be developed in line with Noongar cultural, social and economic aspirations for the benefit of generations to come.





What land will be allocated?

The Noongar Land Base Strategy, which is Annexure J of the Indigenous Land Use Agreements (ILUAs), sets out how and what land will be allocated.

The lands to be allocated include:

- Unallocated Crown land
- Unmanaged reserves; and
- Aboriginal Lands Trust properties.

WA Government agencies may also identify freehold land and reserves, that they own or for which they hold management orders but no longer require, for potential allocation to the NLE.

Of the up to 320,000 hectares of land to be allocated to the NLE, approximately 1,100 hectares has been selected and incorporated as part of the ILUAs. This first tranche of land parcels have been transferred to the NBT following the Trust Effective Date on 29 March 2021.


The Noongar Land Base Strategy sets out targets for identification and allocation of land of which the WA Government must work towards during first five years of the NBT.

Is privately owned land affected by the Settlement?

No, privately owned land will not be eligible for selection and allocation to the NLE. Crown land that is currently leased to a third party (for example, a pastoral lease) is also not eligible.

The WA Government and Local Governments may identify freehold land and reserves that they own or for which they hold management orders but no longer require, for potential inclusion in the NLE.





How will the Noongar Land Estate be managed?

The Department of Planning, Lands and Heritage (DLPH) is coordinating the allocation of all land to the NBT. The procedures for allocating land to the NBT is set out in the Noongar Land Base Strategy. Once land is allocated, the Noongar Boodja Trustee (Trustee) will manage the land in accordance with the requirements of the Noongar Boodja Trust Deed (Trust Deed).

Any further dealings on freehold land, including the potential sale of the land, are subject to the agreement of the Trustee in consultation with the relevant Noongar Regional Corporation(s).

The management responsibilities for all land in the NLE lie with the Trustee, regardless of tenure, however it is intended that cultural land will be leased to the relevant Regional Corporation.


All allocated reserves will be held under a management order. The management order will give the Trustee, as management body, a statutory right to manage and control Crown land in accordance with the designated purpose of "Noongar social, cultural and/or economic benefit".

Reserves remain Crown land, with the Minister for Lands retaining the standard statutory rights, powers and duties in relation to reserves under the Land Administration Act 1997 (WA).

The Trustee will own and manage freehold land like any other private land owner and must meet the standard land holding costs including local government rates and charges, insurance, fire service levies, and any additional land management costs.

As per the terms of the Trust Deed, the Trustee, in consultation with the Noongar Regional Corporation(s), must determine whether the land to be allocated to the NLE will be for cultural or development purposes.





How will Cultural Land be managed?

It is acknowledged that the Noongar community remain the spiritual and cultural custodians of land in the South West of the State and continue to practise their values, languages, beliefs and knowledge.

The NBT will hold and manage Cultural Land, in consultation with and on the recommendation of the relevant Noongar Regional Corporation(s), in a manner that has regard to the spiritual and cultural connection of the Noongar Agreement Groups to their traditional lands.

Cultural Land cannot be sold or commercially developed. Standard land management requirements will apply to Cultural Land.

There are a number of possible pathways for the management of Cultural Land (subject to any pre-existing lease arrangements on Aboriginal Lands Trust (ALT) land):

- The relevant Noongar Regional Corporation may request and be granted an interest (eg a lease) in Cultural Land. Before granting an interest, the Trustee must be satisfied that the Noongar Regional Corporation is able to meet the costs of managing that land and that the land will continue to be held and treated as Cultural Land.
- Where the Noongar Regional Corporation does not request an interest in the Cultural Land, the Trustee will consult with the Noongar Regional Corporation to manage the land and make decisions with regards to its use. This may include the grant of an interest to a third party consistent with Cultural Land purposes. Any leases or licences of Cultural Land cannot be transferred or mortgaged.
- Cultural Land may be converted to Development Land. However, this requires an extensive consultation process with stakeholders and the relevant Noongar Regional Corporation(s). The members of the relevant Agreement Group must also endorse the conversion of the Cultural Land.



How will Development Land be managed?


The NBT will hold, manage, invest and develop Development Land in consultation with the Noongar Regional Corporation(s) and the Investment Committee in a manner that will generate positive returns for the NBT Future Fund.

The Investment Committee will be established by the Trustee to provide guidance on investment decisions.

Development Land, subject to any pre-existing leasing arrangements on ALT land, may be used in the following ways:

- 'Property Development Activities'; for example, property development or redevelopment activities, commercial exploitation or sale. A separate Noongar Boodja Development Corporation (or Corporations) will be established to undertake the development activities, subject to the agreement of the Trustee, the relevant Noongar Regional Corporation(s) and the Investment Committee. The Trust Deed sets out the default rules for the distribution of proceeds from development activities (unless the Trustee decides otherwise):
 - 10% of the net proceeds will go to the operations account of the relevant Noongar Regional Corporation;
 - 15% will be distributed equally to the operations accounts of the other Noongar Regional Corporations; and
 - 75% will be directed to the NBT Future Fund to be invested to support future distributions to the six Noongar Regional Corporations.
- 'Passive Investment Activities'; for example, leasing Development Land to third parties on commercial terms.





Will the Noongar Boodja Trust need to pay rates on the freehold land allocated under the Settlement?

Yes.

The NBT will be required to meet the standard costs, including rates and service charges, associated with owning and managing land.

Land may be exempt from rates under s.6.26(2)(g) of the Local Government Act 1995 (WA), where that land is used exclusively for charitable purposes. If land is used for a commercial purpose or leased for a commercial enterprise it may be rateable.

When and how will Local Government Authorities be consulted?

The Settlement encompasses 101 Local Government Authorities (LGAs). DPLH will consult with LGAs at the 'Assessment Stage' of the land transfer process.

DPLH engagement with the LGAs will be in accordance with section 14 of the Land Administration Act 1997 (WA). LGAs are invited to advise DPLH about 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 scheme amendments 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 corresponds directly with relevant LGAs in relation to parcels of land that are located within a specific local government area.

DPLH has conducted a number of information sessions with LGAs across the Settlement area to explain the land transfer process and the consultative process that will be adopted to effectively address interests and concerns.

There is no requirement for LGAs to be consulted in relation to freehold land currently held by the WA Government.

Will Aboriginal Lands Trust properties be transferred to the Noongar Land Estate?


The transfer of Aboriginal Lands Trust (ALT) properties under the Settlement is in line with the Aboriginal Lands Trust Strategic Action Plan 2019-2021 to divest the estate in accordance with the aspirations of native title holders and Aboriginal residents.

Some ALT freehold properties that are unleased are included in the terms of the ILUAs. These properties are among the first parcels transferred to the NBT.

Where ALT freehold land is subject to an existing lease, the freehold land may be allocated subject to the terms of the lease. ALT reserves may also be allocated to the NBT.

The process of allocation will take into account any existing encumbrances (such as an existing lease), and the ALT will advise lessees about the re-allocation of the reserves to the NBT. The change of management body from the ALT to the NBT will not alter the lessees' rights and obligations under the existing lease terms.





Are there opportunities for third party interests, including existing Aboriginal organisations, in relation to Noongar Land Estate land?

Decisions regarding the management and leasing of NLE properties will be made by the Trustee in consultation with the relevant Noongar Regional Corporation(s) and other advisory committees committees, as outlined in the Trust Deed.

Subject to these decisions, it is possible for third parties, including existing Aboriginal organisations, to be involved in the management and/or leasing and development opportunities in land held by the NBT.

Planning in relation to third party arrangements for particular parcels of land should most appropriately occur following the establishment of the Noongar Regional Corporations and in consultation with the Trustee.

Will the Noongar Boodja Trust need to comply with zoning and planning laws when developing or using land allocated under the Settlement?

Yes.

The Land Sub will be required to obtain standard planning, development and other regulatory approvals in order to develop or undertake certain activities within reserves.

Any lessee of reserves, including a Noongar Regional Corporation, will need to comply with all applicable laws.





Co-operative and Joint Management of the Conservation Estate

The Department of Biodiversity, Conservation and Attractions (DBCA) and the six Noongar Regional Corporations will enter into Co-operative and Joint Management Agreements for the management and care of the South West Conservation Estate.

The Noongar people, as the traditional owners of the land and waters, in the Settlement Area, have cultural obligations to care for their land. DBCA has a statutory responsibility to manage the Conservation Estate.

Under the Settlement the Noongar People, through the Noongar Regional Corporations, and DBCA, have entered agreements to work together to manage the South West Conservation Estate.


Specifically, the agreements will acknowledge the continuing cultural, spiritual and social connections of the Noongar people to the Settlement Area, and their unique traditional knowledge and expertise in the future management of the Conservation Estate.

The Co-operative and Joint Management Agreements are available at noongar.org.au.

What is the South West Conservation Estate?

The South West Conservation Estate is the lands and waters within the Settlement Area managed by DBCA under the *Conservation and Land Management Act 1984* (CALM Act, section 5(1)), and includes State forests, national parks, nature reserves, conservation parks, marine parks and other areas set aside for conservation.





How will Co-operative and Joint Management arrangements be established?

Co-operative and Joint Management arrangements will be established in a two-stage process:

Stage 1: Co-operative Management

Six Co-operative Management Agreements (CMAs), one for each of the six ILUA areas, will be entered into by the DBCA and the relevant Noongar Regional Corporation.

The CMAs will apply to the whole of the Conservation Estate within each specific ILUA area. Each CMA provides for the establishment of a Co-operative Management Committee to implement each CMA.

These six Co-operative Management Committees (CMCs) will comprise DBCA employees, and Noongar representatives nominated by the respective Noongar Regional Corporations.

The Co-operative Management Committees will be responsible for providing high level strategic advice on matters affecting the Conservation Estate within a particular ILUA area.


Stage 2: Joint Management

The Co-operative Management Committees will work to identify and prioritise specific areas of the Conservation Estate to be jointly managed by Joint Management Bodies established under Joint Management Agreements, as set out in Annexure M to the ILUAs.

Joint Management Bodies established under the Joint Management Agreements will include up to six persons nominated by the relevant Noongar Regional Corporation and representatives from DBCA.

The Joint Management Bodies will be required to manage the specific park or reserve in accordance with an agreed Management Plan and the conditions of the Joint Management Agreement.





Will the Public be able to comment on Management Plans in the South West Conservation Estate?

Yes, both new and updated Management Plans will be subject to standard public notification and submission processes. This includes any Management Plans prepared or updated to facilitate joint management over particular priority areas identified by Co-operative Management Committees.

DBCA is required under the CALM Act to protect Aboriginal cultural and heritage values, and access to certain areas may be restricted to ensure these values are protected. State and Commonwealth laws governing access to land and environmental protection will also remain in place, including protection of Aboriginal heritage sites.

How much of the South West Conservation Estate will be jointly managed?

DBCA and the Noongar Regional Corporations, through the six Co-operative Management Committees, will work together to identify and implement joint management arrangements over areas of the South West Conservation Estate.

At least one Joint Management Agreement for a specific park or reserve in each ILUA area will be put in place within the first five years of the commencement date of the Settlement.

At least one further Joint Management Agreement will also be created in another part of each ILUA area within 10 years of the commencement date of the Settlement.





Transfer of Noongar Housing Properties

Under the Settlement Agreements, the WA Department of Communities will transfer 121 properties, located in the South West region and metropolitan Perth, to the Noongar Boodja Trust (NBT), to support Noongar housing outcomes. The properties will be transferred in freehold.

The properties are variously located in the Perth metropolitan area and a number of towns across the Settlement area.

To protect the confidentiality of current tenancy agreements, specific property locations remain confidential.

Upon transfer of houses to the NBT, the Department of Communities will make funding available through a \$10m Housing Fund for the refurbishment, upgrade, repair or demolition of the properties. The Noongar Boodja Trustee (Trustee) will be responsible for these works.

How will the properties be used?

The NBT will hold the properties, and must manage, invest and/or develop them in consultation with the NBT's Noongar Advisory Company and Investment Committee, and the relevant Noongar Regional Corporation/s, for the benefit of the Noongar Community.

The Trustee will work with the Noongar Community, through the six Noongar Regional Corporations and the Central Services Corporation, and the relevant NBT Committees, to develop a broader Noongar Housing Strategy. The Strategy will guide decisions in relation to the properties, and identify broader opportunities to improve Noongar housing outcomes.

Properties may be developed through a combination of refurbishment and redevelopment, sale, commercial exploitation, and/or rental.





Noongar Heritage Partnership Agreements

The Noongar Heritage Partnership Agreements (NHPA) provide a framework for each of the six Noongar Regional Corporations and the Department of Planning, Lands and Heritage (DPLH) to work in partnership to improve the recording, protection and preservation of Aboriginal sites within the South West Native Title Settlement Area.

Key NHPA objectives are to improve:

- Aboriginal site preservation and management;
- Data on the Aboriginal Heritage Inquiry System (AHIS); and
- The exchange of information with regard to Aboriginal sites between DPLH and Noongar people, as facilitated by the six Noongar Regional Corporations.

What is the role of the Noongar Regional Corporations in relation to the Noongar Heritage Partnership Agreements?

The six Noongar Regional Corporations, via the six Steering Groups established for each of the six NHPAs, will:

- Advise DPLH on Aboriginal heritage matters within their ILUA region;
- Create and amend local and regional Heritage Management Plans within their ILUA region;
- Make recommendations and give advice to DPLH to inform decisions on the application of Sections 16 and 18 of the Aboriginal Heritage Act 1972 (WA);
- Work with DPLH in the preparation of policies, programs and other heritage management documents for the six ILUA areas; and
- Provide advice and work with DPLH on the development of Aboriginal heritage training and employment initiatives within the six ILUA areas.





Noongar Standard Heritage Agreement

The Noongar Standard Heritage Agreement (NSHA), part of the Settlement, provides a uniform and efficient approach to Aboriginal heritage surveys in the South West, in compliance with the *Aboriginal Heritage Act 1972*.

An NSHA provides all parties with a clear, timetabled framework about their various obligations and also delivers a process for improving the quality of data on the WA Government's Aboriginal Heritage Inquiry System.

The Noongar Standard Heritage Agreement (NSHA) template commenced operation from the date the six Settlement Indigenous Land Use Agreements (ILUAs) were executed 8 June 2015.

Who must use an NSHA?


WA Government land users must use a NSHA.

Since 8 June 2015, WA Government departments, agencies and instrumentalities are required to sign up to an 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 as at 8 June 2015.

Registered holders of a Mining or Petroleum Tenement or Access Authority granted after 8 June 2015 will have a heritage condition on their title requiring them to enter into a Heritage Agreement with SWALSC on behalf of that ILUA group.

This may be either an NSHA or another form of Heritage Agreement if agreed to by SWALSC.





Does the NSHA/ Heritage Condition apply over private land?

The requirement for WA Government departments to use a NSHA, and the heritage condition on new tenements, applies across all land in the ILUA areas, including private land. This reflects the fact that the *Aboriginal Heritage Act 1972* applies to all land.

When must WA Government agencies use an NSHA?

A NSHA must be used by WA Government agencies when conducting Aboriginal Heritage Surveys in the six ILUA areas. However it is recommended that a NSHA is entered into, and an 'Activity Notice' issued, if there is a risk that an activity will 'impact' (ie by excavating, destroying, damaging, concealing or in any way altering) an Aboriginal site.


The Aboriginal Heritage Due Diligence Guidelines, referenced by an NSHA, provide guidance in how to assess this risk.

Can other land users use an NSHA?

Yes, other land users are encouraged to consider using an NSHA when their planned activity occurs within an ILUA area and an Aboriginal Heritage Survey may be required.

The *Aboriginal Heritage Act 1972* and Regulations apply across all WA land including the ILUA areas, but unlike the WA Government, other land users (including local Government and private land users) are not bound to enter into an NSHA. However, they may find an NSHA offers an efficient and Aboriginal Heritage Act-compliant alternative.





Where other land users do not elect to follow an NSHA, and a heritage survey is necessary, it is recommended that heritage surveys be conducted following key elements in an NSHA to ensure a consistent approach across the South West and to assist in compliance with the *Aboriginal Heritage Act 1972*.

This would include:

- Following the Aboriginal Heritage Due Diligence Guidelines to determine whether an activity may pose a risk to Aboriginal heritage and may require a survey;
- Seeking the names of suitable Aboriginal Consultants through SWALSC (or the Noongar Regional Corporations, once established);
- Consulting with SWALSC prior to making an application for consent to impact a site under section 18 of the *Aboriginal Heritage Act 1972*; and
- Following an NSHA's prescribed schedule of fees, as and where appropriate.

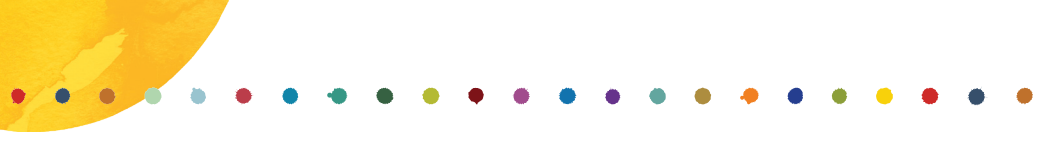
Any land user interested in using an NSHA or seeking further information on key elements of an NSHA can visit the DPLH website.

Is there a template?

A template Noongar Heritage Agreement for Local Government (NHALG) has been negotiated between SWALSC and the Western Australian Local Government Association (WALGA), and is being trialled between SWALSC and one Local Government Authority before being rolled out more broadly.

Local Government Authorities should seek advice from SWALSC in relation to entering into a NHALG for land based activities.





What is an Aboriginal Heritage Survey?

An Aboriginal Heritage Survey under an NSHA is defined as a survey conducted to assess the potential impacts of activities on Aboriginal Heritage and may include anthropological, ethnographic or archaeological investigations as appropriate.

Aboriginal Heritage Surveys can also be conducted solely for the purpose of identifying potential Aboriginal sites with no linkage to planned activities.


My NSHA is with SWALSC What happens now that the Noongar Regional Corporations are established?

Since 2015, SWALSC has been signing up to NSHAs on behalf of the six ILUA groups.

Once the Noongar Regional Corporations are established and ready to assume heritage responsibilities, SWALSC will make arrangements to transfer all existing NSHAs to the relevant Noongar Regional Corporations - there is no requirement for a replacement NSHA to be executed.

Regional Corporations will also sign up to any new NSHAs and will be the key contact for Aboriginal heritage matters, within their respective ILUA areas.





Does a Proponent to an NSHA have the same obligations when it contracts another party to undertake ground-disturbing activity?

Yes, if a Proponent engages a contractor to carry out ground disturbing activities then all the usual obligations apply. The Proponent must also ensure that the contractor is aware of obligations under both an NSHA and the Aboriginal Heritage Act.

It is recommended that Land users (whether Government or non-government) seek their own advice about their obligations in these circumstances.

What happens if there is an emergency, for example a bushfire?

Emergency activities to secure life, health or property are exempt from the need for an Aboriginal heritage survey. An NSHA does not apply in these circumstances.

Who should I contact about Aboriginal Heritage matters in the South West?

For NSHA sign up, contact SWALSC

Phone: 9358 7400

e-mail: heritage@noongar.au

For more information about the Settlement, SWALSC and the Regional Corporations visit noongar.org.au



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