

LOGO

# **WAGYL KAIP AND SOUTHERN NOONGAR ABORIGINAL CORPORATION CULTURAL ADVICE POLICY**

**Compiled by: SWALSC**

**Issue date: 17 May 2021**

[Regional Corporation for Wagyl Kaip Southern Noongar Region]

# Cultural Advice Policy Guidelines

## Document Information

Document Number		Revision	
-----------------	--	----------	--

## Current Revision Approvals

	Name / Title	Signature	Date
Author			
Approved by			

## Revision History

Revision	Description	Date	Prepared by	Approved By
0				

## Document Distribution

Copy No.	Company / Department	Name / Position
0 (Original)		
1		
2		
3		
4		
5		

## TABLE OF CONTENTS

<b>1. PRINCIPLES</b> .....	<b>1</b>
<b>2. CULTURAL VALUES AND RESPONSIBILITIES</b> .....	<b>1</b>
2.1 Cultural Protocols and Practices.....	1
2.2 Right People for Country.....	1
2.3 Acknowledging Knowledge Holders .....	2
2.4 The Sharing and Passage of Knowledge .....	2
2.5 Inclusion.....	2
2.6 Respect.....	2
<b>3. SCOPE</b> .....	<b>2</b>
<b>4. POLICY PROTOCOLS</b> .....	<b>3</b>
<b>5. PARTIES TO THE POLICY</b> .....	<b>4</b>
<b>6. PURPOSE AND INTENT OF THIS POLICY</b> .....	<b>4</b>
<b>7. PROCESS FOR SEEKING CULTURAL ADVICE</b> .....	<b>4</b>
7.1 Heritage Surveys.....	4
7.2 Ceremonial Engagement .....	5
7.3 Other Decisions.....	6
<b>8. CONFIDENTIALITY STATEMENT</b> .....	<b>6</b>
<b>9. APPENDICES</b> .....	<b>6</b>
<b>APPENDIX 1</b> .....	<b>7</b>
<b>APPENDIX 2</b> .....	<b>8</b>
<b>APPENDIX 3</b> .....	<b>9</b>
<b>APPENDIX 4</b> .....	<b>11</b>
<b>APPENDIX 5</b> .....	<b>13</b>
<b>APPENDIX 6</b> .....	<b>16</b>
<b>APPENDIX 7</b> .....	<b>18</b>

## 1. PRINCIPLES

- (a) This document, including Appendixes 1 to 7, sets out the policy for managing Cultural Advice to ensure the proper making of cultural decisions by the Noongar Alliance Aboriginal Corporation (**Corporation**). To ensure the highest level of Cultural Advice is secured, we adopt the following set of principles:
  - (i) Transparency – our processes will be transparent and open;
  - (ii) Accountability – we will be accountable for our actions and our decisions;
  - (iii) Consistency – our processes and decision making will be consistent;
  - (iv) Scale – our processes will be appropriate to the scale of the task;
  - (v) Conflicts of interest – at all times we will declare and manage any conflicts of interest;
  - (vi) Timeliness – we will act in a timely manner for the benefit of all parties; and
  - (vii) Efficiency – our processes will be efficient and will provide value to the community.

## 2. CULTURAL VALUES AND RESPONSIBILITIES

### 2.1 Cultural Protocols and Practices

- (a) We acknowledge, value, honour and respect our Noongar cultural protocols and practices. Our cultural protocols and practices designate us as the custodians of our country, which means we have responsibilities to our country that we need to meet. Our cultural protocols and practices endow and bestow us with values of respect and reverence for the land and waters and all that is in them.

### 2.2 Right People for Country

- (a) While the lands of our families overlap and while there are no exclusive domains in Noongar country, we acknowledge and accept that through our traditions and culture, our families are connected to specific areas and have traditional ownership and custodianship of our lands and waters.
- (b) When seeking Cultural Advice and making cultural decisions, we will ensure that the people who are empowered to speak for an area of land through cultural protocols and practices are also empowered through this policy.

### 2.3 Acknowledging Knowledge Holders

- (a) We acknowledge that the people who possess direct knowledge of a place or area of country are of key importance in making cultural decisions. We acknowledge that we need to incorporate all our cultural knowledge in our Cultural Advice and decisions. By including all knowledge holders we ensure that we meet our responsibilities to country in the best way possible.

### 2.4 The Sharing and Passage of Knowledge

- (a) Our culture and customs have been inherited from our ancestors. The strength of Noongar culture is only secure when there is a broad understanding of our country and culture amongst our community. To ensure our culture is robust and strong, when conducting our business and involving ourselves in decisions about country, we will endeavour to share knowledge both with our countrymen and countrywomen and with our next generation.

### 2.5 Inclusion

- (a) For too many years we have been subject to the policies and laws of exclusion. We will not exclude each other. Instead, we acknowledge that to be strong, to make good decisions, and to fulfil our cultural obligations, we must work together as families and as a community. Our approach is to be inclusive when we provide Cultural Advice and make decisions about our lands and waters.

### 2.6 Respect

- (a) We respect our Elders and acknowledge their privileged position in our Noongar nation as community and cultural leaders and the special authority that is granted by them for our Noongar culture. We respect women and men and acknowledge the special role they have in our society and the special knowledge they possess respectively. We respect our youth; they are the ones who will inherit our knowledge. We will make every effort to ensure knowledge is passed on to them and respected. We respect each other. We are a nation of people and are proud and strong. In order to remain a strong nation, we will work together with the mutual respect we all deserve.

## 3. SCOPE

- (a) This policy applies to the Corporation which, in its day to day activities, must make a variety of decisions about lands and waters to meet the obligations of the in the Wagyl Kaip & Southern Noongar Indigenous Land Use Agreement (**ILUA**). Many of these decisions will affect the Cultural Interests of the Wagyl Kaip & Southern Noongar Agreement Group (**Agreement Group**). These decisions are called 'Corporate Cultural Decisions' in the Rule Book of the Corporation (**Rule Book**).
- (b) These Corporate Cultural Decisions do not give permission to the Corporation or the Board of the Corporation to have authority over the general cultural affairs of the community, instead they relate strictly to some of the decisions the Corporation must make to meet its obligations in the Wagyl Kaip & Southern Noongar ILUA.

- (c) To comply with the ILUA, the Rules of the Corporation must set out that:
  - (i) The Corporation must establish and regularly update this Cultural Advice Policy (**Policy**), and the Policy needs to be consistent with the Rule Book;
  - (ii) The Policy must establish a process for identifying people with Cultural Authority from which Cultural Advice can be taken;
  - (iii) The process for identifying people with Cultural Authority needs to take into account cultural protocols and practices, who is connected to the country affected and who has knowledge of the country affected, as well as the scale of the decision (i.e. is it a small or large area);
  - (iv) The Corporation is required to give reasonable assistance to people with Cultural Authority to provide Cultural Advice;
  - (v) The policy must be endorsed by the Wagyl Kaip & Southern Noongar Agreement Group.

#### **4. POLICY PROTOCOLS**

- (a) Protocols are ethical principles which guide behaviour in a particular situation. These protocols are designed to protect Noongar cultural and intellectual property rights.
- (b) The protocols pave the way for improving working relationships between Noongar people and their potential partners and consequently for achieving better outcomes. Cultural and intellectual property rights include the right for Noongar people to:
  - (i) own and control our cultural and intellectual property;
  - (ii) ensure that any means of protecting our cultural and intellectual property is based on the principle of self-determination;
  - (iii) be recognised as the Cultural Authority of our culture and to regulate how stories and information are presented;
  - (iv) authorise or refuse the use of our cultural and intellectual property according to cultural protocols and practices;
  - (v) maintain the secrecy and sacredness of our knowledge and other cultural practices;
  - (vi) be given full and proper attribution for sharing our heritage; and
  - (vii) control the recording of cultural customs and expressions, the particular language which may be intrinsic to cultural identity, knowledge, skill and teaching of culture.

## **5. PARTIES TO THE POLICY**

- (a) This policy applies to:
  - (i) Employees of the Corporation;
  - (ii) Employees of the Central Services Corporation (**CSC**); and
  - (iii) Members of the Corporation.
  - (iv) Directors

## **6. PURPOSE AND INTENT OF THIS POLICY**

- (a) This Policy has been prepared to:
  - (i) enable the Corporation to meet the obligations of the ILUA and its rules;
  - (ii) set out the principles and values through which the Corporation and the Noongar members of the Agreement Group need to engage with the process;
  - (iii) articulate the specific areas and types of decisions that this Policy governs;
  - (iv) set out the considerations that need to be taken into account in cultural decision making;
  - (v) articulate a process to follow in identifying those people with Cultural Authority; and
  - (vi) articulate a process or processes to gain the required Cultural Advice from the identified people.

## **7. PROCESS FOR SEEKING CULTURAL ADVICE**

### **7.1 Corporate Cultural Decisions**

- (a) There is no single tool that can be employed which will provide a simple instruction on how to gain Cultural Advice or from whom to seek it; rather a proper process relies on the application of two sets of knowledge:
  - (i) Application of research base  
Information/evidence gathered through the research process conducted by the South West Aboriginal Land and Sea Council (**SWALSC**). This Noongar knowledge base is critical in being able to identify those with Cultural Authority and therefore being able to provide Cultural Advice to the Corporation.
  - (ii) Application of the Cultural Advice Committee  
Community knowledge of families, including who is connected to the country affected and who has knowledge of the country affected (by the proposed survey, or otherwise) is of particular importance. The terms of reference for the Cultural Advice Committee are set out at Appendix 7.
- (b) Subject to clauses 7.2 and 7.3, all Cultural Interest or Corporate Cultural Decision matters must be referred to the Cultural Advice Committee for Cultural Advice in accordance with Appendix 7.

### **7.2 Heritage Surveys**

- (a) It is understood that all lands and waters are culturally important to Noongar people regardless of its history, tenure or current condition. Protecting Noongar

heritage is an important part of maintaining Noongar culture. Noongar heritage is of immense cultural, scientific, educational and historic interest to the whole community. It provides Noongar people of today with an important link to their present and past culture.

- (b) Places that are significant for Noongar people can be fragile and therefore easily damaged. It is important to identify key knowledge holders for Cultural Advice to ensure that Noongar heritage is protected as much as possible.
- (c) On many occasions the Corporation or the CSC will receive requests seeking Cultural Advice or instructions on heritage related matters.
- (d) The Corporation may receive requests:
  - (i) through the Noongar Standard Heritage Agreement (**NSHA**) process in the form of an activity notice;
  - (ii) from a proponent seeking advice or information on how to consult with Noongar people (without NSHA involvement);
  - (iii) from a Noongar community member identifying a heritage issue; or
  - (iv) from a Heritage Consultant.
- (e) Each contact or correspondence needs to be assessed and an appropriate follow up action implemented in accordance with Appendix 5 – Heritage Survey Selection Process.
- (f) All other Cultural Interest or Corporate Cultural Decision matters must be referred to the Cultural Advice Committee, in accordance with Appendix 7, for Cultural Advice.

### **7.3 Ceremonial Engagement**

- (a) Requests for Noongar ceremonial engagement in events such as conferences, functions or meetings happen frequently. Each engagement may consist of a single speech (in language or English or both); it may include a cultural performance (a song or dance); or it may be a combination of these.
- (b) Noongar cultural protocols establish who can and cannot ‘speak for country’. These cultural protocols take into consideration age, gender and family lineage under Noongar cultural protocols and practices. Noongar cultural protocols are to be observed as sacred and any digression is considered a breach of custom.
- (c) The act of nominating a representative who has traditional connection to a particular place, area or region is an acknowledgement of respect for traditional owners. Nominating a representative with the right ‘to speak for country’ demonstrates respect for people, respect for rights and respect for country.
- (d) When providing cultural ceremonial services, such as ‘welcome to country’, artistic performances and songs, Aboriginal people are using their intellectual property. In line with standard practices, a form of payment is to be sought either to individuals or to the Corporation for providing such a service, in accordance with Appendix 6 – Procedure of Noongar Ceremonial Engagement).
- (e) All other Cultural Interest or Corporate Cultural Decision matters must be referred to the Cultural Advice Committee, in accordance with Appendix 7, for Cultural Advice.

#### **7.4 Other Decisions**

Other areas and types of decisions governed by this Policy may be added from time to time.

### **8. CONFIDENTIALITY STATEMENT**

- (a) Some Noongar material is unsuitable for public scrutiny. Noongar people have the right to keep their sacred and ritual knowledge secret in accordance with cultural protocols and practices. Secret and sacred material refers to information that is restricted under cultural protocols and practices and therefore unsuitable for publication.
- (b) Secret and sacred material should not be published unless duly authorised. Any authorisation granted for the use of sensitive materials in a particular instance, should be prominently displayed.
- (c) Privacy and confidentiality agreements concerning Noongar people's personal affairs are also to be respected. It is necessary to consult with Elders and/or other Noongar people in authority to identify any sensitive, sacred or religious issues that might prevent use of particular material. Some types of personal information may require special caution.
- (d) Some images and knowledge may be gender-specific and may only be seen and obtained by men or by women. Gender-based works and information may require special communication procedures, which are to be discussed with the community prior to distribution.

## **9. APPENDICES**

Appendix 1: Definitions used in this document

Appendix 2: ILUA obligation for the corporation with regard to Cultural Decisions

Appendix 3: Rule book obligations for the corporation with regard to Cultural Decisions

Appendix 4: The Cultural Land Fund Trustee requirements in the Noongar Boodja Trust Deed

Appendix 5: Procedure of heritage survey selection process

Appendix 6: Procedure of Noongar ceremonial engagement

Appendix 7: Terms of reference for the Cultural Advice Committee

## APPENDIX 1

### Definitions

*The following definitions apply to the whole of this document.*

**CATSI** means the Corporation (Aboriginal and Torres Strait Islander) Act 2006.

**Committee** means the Noongar Elders Cultural Advice Committee established in accordance with this Cultural Advice Policy- Procedures and as envisaged under the ILUA and Rule Book.

**Corporation** means the Regional Corporation registered as Wagyl Kaip & Southern Noongar Regional Corporation [insert Indigenous Corporation Number] with the Office of the Registrar of Indigenous Corporations.

**Corporate Cultural Decision** has the same meaning given in the Rule Book, being a decision of the Corporation to do, or agree to do, an act that is likely to materially affect Cultural Interests in the Region, including a decision:

- (a) about how land and waters in the Region should be used or managed;
- (b) to request the Noongar Boodja Trustee to convert Cultural Land within the Region to Development Land pursuant to the Noongar Boodja Trust Deed;
- (c) by the Noongar Boodja Trustee that necessitates a Decision to Proceed in relation to:
  - (i) Development Land; or
  - (ii) Housing Land; or
  - (iii) Cultural Land Development Decision in relation to Cultural Land; or
  - (iv) as to the grant of an interest to the Corporation in relation to Cultural Land.

**Cultural Advice** has the same meaning given in the Rule Book being advice in relation to a Corporate Cultural Decision from persons identified as having Cultural Authority in relation to that Corporate Cultural Decision following the Cultural Advice Policy.

**Cultural Advice Committee** means the committee of regional Noongar Elders, as set out in Appendix 7.

**Cultural Advice Policy** means policy, procedure and mechanisms developed by the Board in accordance with rule 15.2(a) of the Corporation Rule Book in relation to the process of making Corporate Cultural Decisions and obtaining Cultural Advice.

**Cultural Authority** means the right and responsibility recognised under traditional laws and customs for a particular person or group of persons to speak for and make decisions about land and waters on behalf of the Regional Agreement group.

**Cultural Interests** means the values and/or rights and interests with respect to land and waters that are held in common by the Noongar community and recognised under their traditions and/or extant cultural practices. Circumstances where Cultural Interests may be affected include, but are not limited to, the management or development of land or waters where heritage or environmental values exist or where an activity may impact upon the exercise of customary activities.

**Cultural Land** has the same meaning given in the Noongar Boodja Trust Deed namely: any estate, right, interest in land or Management Order held by the Land Sub and vested in the Trust from time to time and identified by the Trustee as Cultural Land.

**Cultural Land Development Decision** has the same meaning given in the Noongar Boodja Trust Deed namely: a decision to do any of the following in relation to the whole or part of any Cultural Land in a Region:

- (a) granting an interest to a third party other than the Relevant Regional Corporation;
- (b) undertaking works that are, in the reasonable opinion of the Trustee, likely to involve significant ground disturbance; and
- (c) erecting any building or improvement.

**Decision to Proceed** means a decision to enter into a binding agreement or arrangement to exploit land by any of the following:

- (a) selling;
- (b) leasing, licensing or otherwise granting a third party a right or interest to occupy or possess;
- (c) mortgaging, charging or otherwise granting any security or preferential interest of any kind; and
- (d) erecting one or more buildings or improvements, or renovating existing buildings or improvements, the aggregate cost of which in a financial year exceeds \$500,000 (indexed annually in accordance with the Consumer Price Index).

**Development Land** means any estate, right or interest in real property held by the Land Sub and vested in the Trust from time to time and identified by the Trustee as Development Land.

**Housing Land** has the same meaning as clause 12.2 of the Noongar Boodja Trust Deed.

**ILUA** means the Region's Indigenous Land Use Agreement registered on 17 October 2019 and forming part of the South West settlement reached between the Noongar people and the State of Western Australia.

**Land Sub** has the meaning given in the ILUA being a subsidiary company to be established by the Trustee under clause 22.1 of the Trust Deed to hold any interest in land and with which the care, control and management of reserves will be placed.

**Trust** means the Noongar Boodja Trust established under the Trust Deed.

**Trustee** means the trustee of the Trust from time to time.

**Trust Deed** means the trust deed that establishes the Trust, a copy of which is attached at Annexure G to the ILUA.

**Regional Corporation Principles** means the Regional Corporation Principles as detailed in Part B of Annexure E in the ILUA.

**Regional Corporation Officer** means any Officer employed by the Regional Corporation.

**Rule Book** means the rulebook for the CATSI Corporation that constitutes a Regional Corporation as referred to in the Trust Deed.

## APPENDIX 2

### ILUA Obligation for the Corporation with regard to Cultural Decisions

#### Regional Corporation Principles Clause 12

##### Cultural Decisions

- (a) A Regional Corporation must have a process providing for cultural decisions to be made in accordance with the advice and recommendations of persons who have traditional connection and Cultural Authority under Traditional Laws and Customs over the land and waters the subject of the proposed cultural decision.
- (b) A Regional Corporation must have a mechanism to resolve cultural decisions which must include:
  - (i) the process for determining those persons who should advise and make recommendations to the Regional Corporation in relation to cultural decisions;
  - (ii) a requirement that the Regional Corporation will make a cultural decision in accordance with advice of those persons determined under item 12(b)(i);
  - (iii) the timeframe for resolution of a cultural decision;
  - (iv) the default outcome if there is no resolution via the cultural decision process; and
  - (v) a requirement to notify the outcome of a cultural decision to the Regional Corporation of any adjacent Region that will be affected by a cultural decision.
- (c) Cultural decisions by a Regional Corporation on a matter the subject of an ILUA must comply with any relevant obligations and timeframes on the Regional Corporation under the ILUA.

## APPENDIX 3

### **Rule Book Obligations for the Corporation with regard to Cultural Decisions** ***Noongar Alliance Aboriginal Corporation Rule Book Clause 15:***

#### **15. CULTURAL DECISIONS**

##### **15.1 Making a Corporate Cultural Decision**

- (a) The Board can only make a Corporate Cultural Decision:
  - (i) after having received Cultural Advice following the Cultural Advice Policy; or
  - (ii) where the circumstances in clause 15.3 apply.
- (b) The Board must make a Corporate Cultural Decision consistent with any Cultural Advice unless to do so would, in the reasonable opinion of the Directors be:
  - (i) contrary to law or the terms of the Regional ILUA;
  - (ii) likely to result in the Corporation assuming an unsustainable cost burden; or
  - (iii) likely to result in the assumption of unacceptable risk.

##### **15.2 Managing Corporate Cultural Decisions**

- (a) The Board must establish and regularly update a Cultural Advice Policy which must:
  - (i) be consistent with this Rule Book and the Regional Corporation Principles;
  - (ii) establish a process for identifying persons with Cultural Authority in relation to a Corporate Cultural Decision having regard to:
    - (a) Law and Custom;
    - (b) the Cultural Interests of the Agreement Group in relation to certain land and waters within the Region; and
    - (c) the varying nature of Corporate Cultural Decisions and that not all Corporate Cultural Decisions can be treated alike;
  - (iii) require the Corporation to provide reasonable assistance to persons with Cultural Authority to provide Cultural Advice; and
  - (iv) be endorsed by Resolution of the Members in a General Meeting.
- (b) The Corporation must, as far as practicable, resolve all Corporate Cultural Decisions within 90 days of the Corporate Cultural Decision first arising.
- (c) Where a Corporate Cultural Decision must be made in relation to a matter which is the subject of the Regional ILUA, the Corporate Cultural Decision must be made in accordance with the relevant obligations and timeframes set out in the Regional ILUA (or in an agreement under the Regional ILUA).
- (d) Where the land and waters affected by a Corporate Cultural Decision include land and waters the subject of an ILUA adjacent to the Regional ILUA, the Corporation must notify the adjacent Regional Corporation (or if there is none, the legal representative of the Agreement Group of that Region) of the outcome of the Corporate Cultural Decision.

##### **15.3 Making a Corporate Cultural Decision without Cultural Advice**

- (a) The Directors of the Corporation may make a Corporate Cultural Decision without receiving Cultural Advice where:
  - (i) the Corporation has made at least 2 bona fide attempts to obtain the Cultural Advice following the Cultural Advice Policy; and
  - (ii) the Corporation has been unable to obtain Cultural Advice within 21 days of the second bona fide attempt by the Corporation.

## APPENDIX 4

### The Cultural Land Fund Trustee Requirements from the Noongar Boodja Trust Deed

#### 10.1 General Purpose of the Cultural Land Fund

- (a) In accordance with clause 6.2, the Trustee must establish a Sub Fund of the Trust Fund to be called the Cultural Land Fund to be administered in accordance with this clause 10 and otherwise in accordance with this Deed.
- (b) The Trustee acknowledges that the members of the Noongar Community remain the spiritual and cultural custodians of the Cultural Land and continue to practice their values, languages, beliefs and knowledge in relation to the Cultural Land.

#### 10.2 Accepting Land into the Cultural Land Fund

- (a) Subject to clause 10.2(b), at the request of an Eligible Noongar Entity or an Agreement Group, or as required under an ILUA, the Trustee may accept any estate, right or interest in land or Management Order and hold and manage that land or Management Order as Cultural Land in the Cultural Land Fund in consultation with and on the recommendation of one or more Relevant Regional Corporations (if there is one).
- (b) In consultation with the Noongar Advisory Company, where the Trustee accepts any estate, right or interest in land or Management Order to be held in the Cultural Land Fund, the Trustee must clearly identify:
  - (i) the estate, right or interest in land or Management Order that is accepted by the Trustee as Cultural Land;
  - (ii) the Region or Regions in which that Cultural Land is located; and
  - (iii) the Relevant Regional Corporation or Corporations (if any) that is acting for the relevant Agreement Group or Agreement Groups in relation to that Cultural Land, and must give written notice of those matters to the Noongar Relationship Committee.

#### 10.3 Holding Cultural Land

- (a) The Trustee must, subject to the Title Protection Criteria and the conditions imposed by the Minister for Lands pursuant to section 46(1) of the Land Administration Act 1997 (WA):
  - (i) at the request of a Relevant Regional Corporation and subject to clause 10.3(b), grant the Relevant Regional Corporation an interest over the whole or any part of the Cultural Land:
    - (A) in the form of a lease or sublease, license or other form of legal or equitable tenure;
    - (B) in compliance with any applicable requirements under the *Land Administration Act 1997 (WA)* and any conditions imposed by the Minister for Lands on the grant of the interest on the Trustee or on the Land Sub in the case of a Management Order; and
    - (C) otherwise on such terms and conditions as the Trustee deems appropriate; and
  - (ii) otherwise hold and manage the Cultural Land:

- (A) in consultation with the Relevant Regional Corporation (if there is one); and
    - (B) by exercising the Trustee's investment powers in accordance with clause 19, Schedule 5 and the Investment Policy or Default Investment Policy (as the case requires); and
  - (iii) prior to making any Cultural Land Development Decision in relation to Cultural Land in a Region, consult with the Relevant Regional Corporation (if there is one).
- (b) In exercising its powers under clause 10.3(a)(i), the Trustee:
- (i) may consult with and consider the recommendations of the Noongar Advisory Company; and
  - (ii) must be satisfied that the grantee of an interest in Cultural Land:
    - (A) complies with the Title Protection Criteria;
    - (B) can meet the outgoings and costs of maintaining the interest in the Cultural Land; and
    - (C) reports to the Trustee in such form and at such times as the Trustee determines in its discretion but at least once annually.
- (c) For the purposes of this clause 10.3, the Title Protection Criteria are:
- (i) the Cultural Land must be held by the Trustee and managed in consultation with the Relevant Regional Corporation;
  - (ii) subject to clause 10.4, title to the Cultural Land will be held in perpetuity by the Trustee; and
  - (iii) any interest in the Cultural Land granted under this clause 10.3 must:
    - (A) not be capable of alienation by sale, transfer, assignment or other disposal by the Relevant Regional Corporation or be made subject to any encumbrance, mortgage, charge or other security; and
    - (B) be granted on the condition that the interest will automatically terminate if an ENE Termination Notice is issued in respect of the Relevant Regional Corporation.

#### **10.4 Conversion to Development Land**

- (a) Notwithstanding the provisions of this clause 10, the Trustee may reclassify Cultural Land other than land the subject of a Management Order as Development Land:
  - (i) only at the request of the Relevant Regional Corporation;
  - (ii) following consultation with the Noongar Advisory Company; and
  - (iii) with the Agreement Group Endorsement.
- (b) Upon reclassification under this clause 10.4, the reclassified Cultural Land shall be treated as Development Land pursuant to clause 11.

## APPENDIX 5

### Interim Procedure of Heritage Survey Selection Process (pre-incorporation)

#### Phase 1: Contact or receipt of correspondence

- (a) Each contact or correspondence needs assessment:
  - (i) request through Noongar Standard Heritage Agreement (NSHA) in form of an Activity Notice
- (b) In relation to a heritage survey matter, establish whether the proponent has entered into a NSHA – protocol to be followed, including Activity Notice Process.
- (c) If the proponent is required to enter into a NSHA, or elects to do so, a formal legal process is to be undertaken. The NSHA on execution by the parties is entered into the NSHA Register. The formal process includes:
  - (i) entering into consultation and arrangements for NSHA;
  - (ii) drafting of NSHA;
  - (iii) endorsement of final draft NSHA via letter;
  - (iv) execution of NSHA; and
  - (v) entering NSHA onto the NSHA Register.
- (d) The Senior Legal Officer is responsible for the coordination of establishing and entering into NSHAs.
- (e) Request from a proponent seeking advice or information on how to consult with Noongar people (without NSHA):
  - (i) obtain a detailed description of the project and request further information (work program, timeframe and maps). Refer to the DAA Due Diligence Guidelines and discuss whether the proposed activity is ground disturbing and level of impact. Encourage proponent to enter into a NSHA where applicable. If the proponent is willing to enter into a NSHA it could do for all future projects;
  - (ii) assess if heritage issues exist; and
  - (iii) discuss heritage survey selection process as applicable.
- (f) Noongar community member calling to alert to a heritage issue:
  - (i) Discuss and gather details of heritage issue;
  - (ii) Follow up with entity that is undertaking relevant activity.
- (g) Assess if further action is required.
- (h) Request from Heritage Consultant:
  - (i) discuss details of proposed activity and whether a NSHA has been entered into;
  - (ii) discuss request for heritage survey; and
  - (iii) discuss timeframes.

**Steps:**

Steps	Activity/task	Responsibility
Initial consultation/assessment	Discuss and take notes – request further information	
	Create file (within two days of request)	
NSHA	Coordinate NSHA	
Cultural Advice	Formulate Cultural Advice	

**Phase 2: Management of Heritage Matter**

- (a) Management of the heritage matter will depend on the issue and activity required. Activities can be defined as follows:
- (i) whether a heritage survey process is required;
  - (ii) whether a submission is to be lodged;
  - (iii) whether further consultation is required; or
  - (iv) whether a request to enter into a NSHA needs following up.
- (b) Request for Heritage Survey:
- (i) the Regional Corporation (**RC**) or Central Services Corporation (**CSC**) does not coordinate or conduct heritage surveys – they are undertaken by a heritage service provider on behalf of the proponent;<sup>1</sup>
  - (ii) the RC or CSC seeks Cultural Advice to identify the appropriate people who speak for and have knowledge of country as a recommendation to the proponent for participation in the heritage survey. Under the NSHA eight participants are required for the survey process. The RC or CSC provides the proponent with a list of names, usually more than eight names for the proponent to make their selection. A fee is charged for the service;
  - (iii) prior to undertaking a Seeking Cultural Advice process the proponent must in writing agree to the service.

**Steps:**

Steps	Activity/task	Responsibility
Approval from proponent	Written agreement from proponent (letter or email) for the RC or CSC to provide the Selection Panel Service	
	Inform Finance Section Request purchase order	
Receipt of request	Liaise with Research for advice	
	Undertake Research within 10 working day	Research Officer
	Liaise with Community members for community knowledge input	
	Coordinate Selection Panel Meeting	
	Conduct Selection Panel Meeting	

---

<sup>1</sup> The RCs may elect to value add in relation the services they provide and establish a heritage survey provider service for the conduct of heritage surveys.

Update proponent	Provide Selection Panel Report	
	Update Finance Section	
	Invoice proponent	
Heritage Survey undertaken	Request preliminary report and final reports	

**Phase 3: Reporting**

- (a) There is a compliance obligation to report on heritage activity including:
  - (i) number of NSHAs entered into;
  - (ii) heritage survey matters;
  - (iii) S18 Applications lodged; and
  - (iv) other submissions lodged.
- (b) Currently there is a Register for NSHA.
- (c) A Register should be maintained for Heritage Survey matters to report and track activity.

## APPENDIX 6

### Procedure for Noongar Ceremonial Engagement

On the occasions that the Central Services Corporation (**CSC**) and the Aboriginal Corporation (**RC**) are contacted by an agency for assistance to provide a "Welcome to Country" ceremony, the following process must be completed so that the request can be fulfilled.

#### Procedure

- (a) If the request is received by the CSC:
  - (i) complete the attached application form (Form ABC) for the event; and
  - (ii) forward application form to the appropriate RC.
- (b) If the request is received by the RC:
  - (i) complete the attached application form (Form [XYZ]) for the event; and
  - (ii) process the request in accordance with steps to be set from time to time.

## Request for Welcome to Country ceremony

Name of Caller: \_\_\_\_\_

Name of Company/Agency: \_\_\_\_\_

Contact details: \_\_\_\_\_

Type of Request: \_\_\_\_\_

Welcome to Country Only (in language/English or both)	
Cultural performance	
Smoking ceremony	

Type of Event: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Location: \_\_\_\_\_

Identify appropriate elder (list male/female – dependant on event)	
If possible, introduce elder to event organiser/contact	
Who will meet the elder	
Partner to accompany elder (if requested)	
Who will chaperone/escort them (treated as a dignitary)	
Decide if they are staying for the event ie. dinner/conference (?)	
Dietary requirements	
Exchange contact details (if required)	

It is important to remember that the Noongar representative/s must be comfortable with all arrangements.

**APPENDIX 7**

**WAGYL KAIP AND SOUTHERN NOONGAR  
ABORIGINAL CORPORATION**

**Cultural Advice Committee  
Terms of Reference**

# Contents

1. INTRODUCTION.....	21
2. CULTURAL ADVICE COMMITTEE.....	21
3. OBJECTS OF THE CULTURAL ADVICE COMMITTEE.....	22
4. ELIGIBILITY CRITERIA TO SERVE ON THE CULTURAL ADVICE COMMITTEE.....	22
5. PROCESS FOR NOMINATION AND APPOINTMENT.....	22
6. INDUCTION.....	22
7. CONFLICT OF INTEREST.....	23
8. MEETINGS.....	23
9. CORPORATE CULTURAL DECISION WITHOUT ADVICE FROM THE CULTURAL ADVICE COMMITTEE.....	24
10. EXECUTIVE SUPPORT.....	24
11. TERM OF APPOINTMENT OF THE CULTURAL ADVICE COMMITTEE.....	25
12. CESSATION OF MEMBERSHIP.....	26
ANNEXURE A - DECLARATION OF STANDING INTEREST FORM .....	27
ANNEXURE B – DECLARATION OF INTEREST FORM.....	28

## 1. INTRODUCTION

- (a) Noongar Elders will be appointed to a regional Noongar Elders Cultural Advice Committee (**Cultural Advice Committee**) which is empowered to provide Cultural Advice to the Corporation when it is required to make a Corporate Cultural Decision.
- (b) The Cultural Advice Committee is intended to be the principal means through which Cultural Advice is provided to the Corporation for the purposes of the Corporation making a Corporate Cultural Decision.
- (c) The Objects of the Corporation, as set out in Clause 2 of the Rule Book requires the Corporation to work to maintain, protect, promote, and support Noongar culture, customs, language and traditions within the geographical boundaries of the Corporation.
- (d) In accordance with Clause 15 of the Rule Book, the Corporation must have a Cultural Advice Policy mechanism so as to be able to make cultural decisions. This mechanism must include:
  - (i) a process for determining those persons who should advise and make recommendation to the Corporation in relation to cultural decisions;
  - (ii) a requirement that the Corporation will make a cultural decision in accordance with advice of those persons determined above;
  - (iii) the timeframe for resolution of a cultural decisions; and
  - (iv) a requirement to notify the outcome of a cultural decision to the Regional Corporation of any adjacent Region that will be affected by a cultural decision.
- (e) The Cultural Advice Policy and this Terms of Reference for the Committee has been the subject of wide consultation, multiple workshops and information gathering from the Noongar community over an extended period of time. It aims to support the Corporation in adhering to its obligations relating to cultural decision making.
- (f) This Appendix 7 should be read in conjunction with the Rule Book and the Cultural Advice Policy itself. The principles set out in the Cultural Advice Policy will be adopted by the Corporation to guide it in making culturally appropriate decisions and adhering to its obligations in relation to cultural decisions.
- (g) Cultural decisions made by the Corporation must comply with all obligations and timeframes as set out in Clause 15 of the Corporation Rule Book.

## 2. CULTURAL ADVICE COMMITTEE

- (a) The establishment of a Noongar Elders Cultural Advice Committee was a key recommendation made during community consultations, that would serve to achieve compliance with the obligations and principles of the ILUA and Rule Book on cultural decision making.
- (b) The Cultural Advice Committee provides Cultural Advice to the Corporation in support of Regional Corporation decision making processes, in accordance with the Cultural Advice Policy.
- (c) The Cultural Advice Committee will comprise up to six (6) Noongar women and six (6) Noongar men, with a minimum of three each of women and men who are recognised, acknowledged and respected by the Noongar community as Noongar Elders, and who:
  - (i) are keepers of tradition, custom, lore and culture;

- (ii) work with integrity, honesty and are trusted;
- (iii) have historical, cultural and/or traditional connection and knowledge of the Regional Corporation's land base;
- (iv) have extensive knowledge and understanding of their country, area, families, stories; and
- (v) have a history of sharing cultural knowledge, information and customs.

### **3. OBJECTS OF THE CULTURAL ADVICE COMMITTEE**

- (a) The Cultural Advice Committee must convene on a regular basis, or as required, to provide unbiased advice on cultural matters relating to lands and waters in in the Region that will enable the Corporation to make Corporate Cultural Decisions (see definition in Appendix 1).

### **4. ELIGIBILITY CRITERIA TO SERVE ON THE CULTURAL ADVICE COMMITTEE**

- (a) Criteria

To be eligible for election and to serve as a Cultural Advice Committee member, an individual must:

- (i) possess the cultural knowledge and authority required to fulfil the Cultural Advice Committee objects;
- (ii) be aware that cultural advice and decisions may include (but are not limited to) matters related to Noongar land, lore and custom, sacred material and places, cultural safety, custodianship, cultural securities, other cultural interests, and having the cultural capacity and authority to share knowledge of country; and
- (iii) be able to act with honesty, care and diligence, and in the best interest of the Corporation and Regional Noongar people.

- (b) Persons not eligible to be appointed to the Committee

An individual is not eligible for appointment as a Cultural Advice Committee member if the individual:

- (i) is an employee of the Corporation or the Central Services Corporation;
- (ii) is a Director of another Noongar Regional Corporation; or
- (iii) is a committee member of any committee or is a Director of any corporation established in accordance with the Noongar Boodja Trust Deed.

### **5. PROCESS FOR NOMINATION AND APPOINTMENT**

- (a) Calls for nominations will be put out to the members of the Corporation via post, social media and newsletters and any other appropriate means.
- (b) The Corporation will assess eligibility of the Noongar people nominated against the Eligibility Criteria detailed in clause 4. Once a nominee's eligibility has been confirmed, the nominee will be notified and invited to provide material to support their nomination which will be presented at the first General Meeting of the Corporation immediately following the close of nominations.
- (c) The nominations will be presented to the Corporation members at the General Meeting for voting.

- (d) Voting will proceed in accordance with the Corporation Rule Book and Election Manual, which includes the capacity to hold a Secret Ballot.
- (e) Following the voting process, a resolution must be passed by simple majority to confirm the appointment of members to serve on the Cultural Advice Committee.

## 6. INDUCTION

- (a) The Corporation will ensure that all newly elected Cultural Advice Committee members are duly inducted to ensure that the members are properly informed of their roles, responsibilities, and scope of duties. The induction process will provide the new member with:
  - (i) a letter of appointment outlining the role and expectations of Cultural Advice Committee members;
  - (ii) a copy of the Corporation Rule Book;
  - (iii) a copy of the Cultural Advice Policy and Procedures and any applicable Code of Conduct;
  - (iv) a Declaration of Standing Interests Form;
  - (v) other relevant policies, procedures and governance documents necessary to ensure effective performance of the role and duties of a member; and
  - (vi) information on training and workshops available and specific to the role.

## 7. CONFLICT OF INTEREST

- (a) All members of the Cultural Advice Committee are required to declare any real or apparent conflicts of interest. This declaration is to inform the Cultural Advice Committee and the Corporation that the member has a personal interest that may cause or be seen to cause a conflict in relation to sound decision making.
- (b) Although many potential conflicts are often inconsequential, it is the individual's responsibility to declare those interests that could potentially be perceived as a conflict of interest. A conflict of interest may include:
  - (i) being involved in any decision-making process which may compromise the position and role of a Cultural Advice Committee member, or for personal gain;
  - (ii) not using the position to obtain a private benefit;
  - (iii) allowing decisions to be influenced by family or other personal relationships; or
  - (iv) seeking or accepting gifts or favours for services performed in connection with duties as a Cultural Advice Committee member.
- (c) Cultural Advice Committee members must declare any conflict of interest at commencement of their appointment by way of notice in the Form attached hereto marked *Annexure A – Declaration of Standing Interest(s)* and prior to each Cultural Advice Committee members' meeting in the Form attached hereto and marked *Annexure B – Declaration of Interest(s)*.
- (d) If a declaration has been made prior to a Cultural Advice Committee meeting in the Form attached hereto and marked *Annexure B*, the following procedure must be adhered to:
  - (i) the declaring member may choose to leave the meeting for the duration of the discussion of the relevant Agenda item; or
  - (ii) the Cultural Advice Committee may vote (by majority) on whether the declaring member will be required to leave the meeting for the duration of the discussion of the relevant Agenda item.

- (e) If there is no conflict of interest at the time of completing the Form, but one arises subsequently, Cultural Advice Committee members must inform the Committee, as soon as is practicable.

## **8. MEETINGS**

(a) Number of Meetings

- (i) The Cultural Advice Committee will endeavour to meet at least six (6) times per year and may schedule additional meetings for urgent business.

(b) Quorum

- (i) The quorum for a meeting must be not less than one-half of the elected members (up to six members in total) who, for cultural reasons or by lore, are not restricted to make decisions in relation to the matter.
- (ii) Proxies are not allowed.
- (iii) The quorum must be present at all times during the meeting. If a quorum is not achieved on the day, the meeting will be re-scheduled.

(c) Operation

- (i) The Corporation will work with the Cultural Advice Committee to develop a written agenda for each meeting, which shall be distributed, no less than one week prior to a scheduled meeting.
- (ii) The Corporation will facilitate the meeting and provide all necessary administrative support to Cultural Advice Committee meetings and processes.
- (iii) A chairperson will be elected by Cultural Advice Committee members, who shall hold that position for a period to be agreed by the members.
- (iv) In respect of each matter, the following process will apply:
- The chair will introduce the matter;
  - A Corporation Officer or any other person who has expert anthropological or technical knowledge relevant to the matter will provide the Cultural Advice Committee with relevant information for consideration.
  - The Cultural Advice Committee will take an appropriate length of time to deliberate upon the matter and ask questions.
  - All discussions will be recorded in the minutes.
  - The Cultural Advice Committee's final advice and recommendations in relation to each individual matter will be recorded in the form of a Resolution passed by majority of the members present.

- (d) The Corporation will ensure the draft minutes of the meeting are sent to the Cultural Advice Committee within a two-week period following the meeting date, and at the subsequent meeting, the members will endorse or amend the minutes.

- (e) For the avoidance of doubt, where required the Corporation may proceed to make the Corporate Cultural Decision in accordance with the Cultural Advice received prior to the minutes being endorsed.

## **9. CORPORATE CULTURAL DECISION WITHOUT ADVICE FROM THE CULTURAL ADVICE COMMITTEE**

- (a) The Corporation may only make a Corporate Cultural Decision without advice if the circumstances set out in Rule 15.3 of the Rule Book apply, being that the Corporation has been unable to receive Advice from the Cultural Advice Committee.

## 10. EXECUTIVE SUPPORT

The Corporation will provide executive support to the Cultural Advice Committee by:

- (a) managing the promotion of vacant positions in the Cultural Advice Committee and facilitating the process for calling for nominations;
- (b) assessing eligibility of nominees and facilitating the voting process at general meetings;
- (c) coordinating meetings, circulating invitations and agendas;
- (d) attending committee meetings;
- (e) providing minute takers to record meetings, providing draft minutes of the meeting to Cultural Advice Committee within fourteen (14) days of meeting.
- (f) securely maintain records of:
  - (i) the induction processes (confidentiality forms etc);
  - (ii) attendances at meetings;
  - (iii) recommendations, decisions and actions from meetings;
  - (iv) register of conflicts of interest; and
  - (v) database of Noongar community members.
- (g) respecting confidentiality of information divulged by the Cultural Advice Committee and other information associated with the committee;
- (h) providing maps of lands for consideration for use for cultural purposes, detailing tenure, past uses of lands, potential impacts on cultural or spiritual uses of lands;
- (i) providing access to the Corporation's resources as required to obtain additional information on cultural lands;
- (j) providing access to IT equipment and support at meetings; and
- (k) organising the appropriate training for the members of the Cultural Advice Committee to acquire skills to perform their duties.

## 11. TERM OF APPOINTMENT OF THE CULTURAL ADVICE COMMITTEE

- (a) Elected Cultural Advice Committee members will have a rotational term of appointment to provide equal opportunity and ensure the transfer of knowledge within the community.
- (b) The number of persons referred to in this Table is based on a 12-person Committee, noting the Corporation may decide to have fewer members on the committee in the future.

1 <sup>st</sup> GM	Selection of 2 men and 2 women to serve for 3 years – Being the members with the 1 <sup>st</sup> and 2 <sup>nd</sup> most votes respectively. Selection of 2 men and 2 women to serve for 2 years – Being the members with the 3 <sup>rd</sup> and 4 <sup>th</sup> most votes respectively. Selection of 2 men and 2 women to serve for 1 year – Being the members with the 5 <sup>th</sup> and 6 <sup>th</sup> most votes respectively.
2nd GM	Selection of 2 men and 2 women to serve for a three-year term.
3rd GM	Selection of 2 men and 2 women to serve for a three-year term.
4th GM	Selection of 2 men and 2 women to serve for a three-year term.

- (c) Annual selection and appointment of men and women as a revolving replacement mechanism will proceed as depicted above and will continue on an ongoing basis.

## **12. CESSATION OF MEMBERSHIP**

- (a) A member can resign from the Cultural Advice Committee by giving written notice to the Corporation.
- (b) The Corporation, by resolution at a General Meeting, may terminate a Cultural Advice Committee member's tenure if the Corporation resolves that the member:
  - (i) can no longer fulfil the objects of the committee;
  - (ii) is no longer eligible as a member; or
  - (iii) has otherwise not met the high standards required of the Cultural Advice Committee.
- (c) Positions that become vacant for reasons stated above, can be filled by the person with the next highest number of votes from the previous voting process.
- (d) The replacing Cultural Advice Committee member will serve only for the remaining term of the member ceasing.

**ANNEXURE A – DECLARATION OF STANDING INTEREST FORM**

**Declaration of Standing Interest(s)**

I (insert full name)	
----------------------	--

*Being a member of Noongar Elders Cultural Advice Committee, hereby declare a conflict of interest with respect to the following item(s).*

<p><b>Related interests</b></p> <p>Do you have affiliation with an organisation, either as an officer of its Board or Staff, which could conflict with your fiduciary duties as a <i>member of the Noongar Elders Cultural Advice Committee</i>?</p> <p><i>If so, please provide the function title and the nature of the interest.</i></p>	
<p><b>Contracts and Agreements</b></p> <p>Do you have any current contract, agreement or arrangement which may give rise to an obligation or an expectation of reward for your role on the <i>Noongar Elders Cultural Advice Committee</i> for yourself or a family member?</p> <p><i>If so, please provide details.</i></p>	
<p><b>Other interests</b></p> <p>Do you have any financial or other interest held or accruing to you or a member of your immediate family during the return period of which you are aware which could reasonably raise an expectation of a conflict of interest with your fiduciary duties?</p> <p><i>If so, please provide details.</i></p>	

This information is true and correct to the best of my knowledge. I declare that as far as I am aware none of these private interests' conflict with any of my official duties. I undertake to advise the CULTURAL ADVICE COMMITTEE in writing if a conflict or perceived conflict arises in the future and to not be involved in any decision-making process in which I may be compromised.

Signature		Date	
-----------	--	------	--

I have noted the information contained in the declaration.

Signature		Date	
-----------	--	------	--

CULTURAL ADVICE COMMITTEE Chair

**ANNEXURE B – DECLARATION OF INTEREST FORM**

**Declaration of Interest(s)**

I (insert full name)	
----------------------	--

*Being a member of the Noongar Elders Cultural Advice Committee, hereby declare a conflict of interest with respect to the following item(s) listed for action during the of Noongar Elders Cultural Advice Committee meeting held in*

Location		Date	
----------	--	------	--

<b>Agenda Item No.</b>	<b>Discussion Item</b>	<b>Declaration</b> (Nature and extent of the conflict and interest)

This information is true and correct to the best of my knowledge. I declare that as far as I am aware none of these private interests' conflict with any of my official duties. I undertake to advise the CULTURAL ADVICE COMMITTEE in writing if a conflict or perceived conflict arises in the future and to not be involved in any decision-making process in which I may be compromised.

Signature		Date	
-----------	--	------	--

I have noted the information contained in the declaration.

Signature		Date	
-----------	--	------	--