



# Native Title Settlements and Indigenous Land Use Agreements

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## Overview

- What is an Indigenous Land Use Agreement (ILUA) in relation to Native Title
- South West Native Title Settlement
- Noongar Heritage Agreement for Local Government (NHALG)
- Yamatji Nation Indigenous Land Use Agreement

## What is an Indigenous Land Use Agreement (ILUA) in relation to Native Title?

- An Indigenous Land Use Agreement (ILUA) is an agreement about the use and management of land and waters made between the people who hold, or may hold Native Title in the area, and other people (including organisations, Industry or Government).
- ILUA's must meet the requirements of the Native Title Act 1993 (NTA).
- An ILUA can be a practical methodology to resolve Native Title issues, and it allows Aboriginal people to gain benefits such as employment, compensation, heritage protection mechanisms and recognition of Native Title rights and interests.
- Other parties such as Government, Industry or Developers may get access for the use of land or waters, and this can in certain circumstances happen independently of a determination of Native Title.

# South West Native Title Settlement (SWNTS)





## What is the South West Native Title Settlement (SWNTS)

- The South West Native Title Settlement (SWNTS) is a negotiated agreement between the State Government and the Noongar native title groups/South West Aboriginal Land and Sea Council (SWALSC)
- Once conclusively registered will result in full and final resolution of all South West native title claims through the surrender of native title rights and interests by the Noongar community in exchange for a negotiated package of benefits.
- Native Title Act will no longer apply over the settlement area – no ‘future acts’; past ‘invalid acts’ validated, no further State compensation liability.
- Aims to:
  - provide the Noongar community with greatly improved opportunities for cultural, social and economic development
  - deliver greater certainty over land management to business and government.
- Six identical ‘Indigenous Land Use Agreements’ (ILUAs) document all elements of the Settlement – one for each of the 6 Noongar groups
- The High Court has advised it will hold an oral hearing on 26 November 2020 before it hands down its judgement in relation to South West Native Title Settlement (SWNTS) special leave applications. If the Applications for Special Leave are dismissed, the Settlement will commence approximately 60 days thereafter.

## Benefits to the Noongar community

- **Recognition** through Act of Parliament – the **Noongar (“Koorah, Nitja, Boordahwan”) (Past, Present and Future) Recognition Act**
- **Noongar Governance Structure:**
  - A Perpetual Trust (**‘Noongar Boodja Trust’**) managed by a Professional Trustee, to hold and manage funds, land and a housing portfolio
  - **6 Noongar Regional Corporations + 1 Central Services Corporation** funded through the Trust.
- **Noongar Land Estate** – transfer of up to 320,000 hectares, held by the Trust
- **Cooperative and Joint Management** of SW Conservation Estate
- **Access** to certain crown lands for customary activities
- Uniform Aboriginal **heritage management** regime – **Noongar Standard Heritage Agreement (NSHA)** and **Noongar Heritage Partnership Agreement (NHPA)**
- **Noongar Land Fund** – up to \$46,850,000 for land-related initiatives
- **Noongar Housing Program** – transfer and refurbishment of 121 properties
- **Economic and Community Development** Frameworks
- Funding for **Noongar Cultural Centre** and **offices** for Noongar Corporations

## Noongar Heritage Agreement for Local Government (NHALG)

The Noongar Heritage Agreement for Local Government is a template heritage agreement for the South West region of WA:

- Based on Noongar Standard Heritage Agreement (NSHA), negotiated between WALGA and SWALSC and DPLH, but tailored to meet the needs of LGAs including procurement requirements, Local Government regulations and processes that can vary with size and scope of project
- Facilitates the protection and preservation of Aboriginal Sites/Objects in accordance with the AHA
- Provides both parties with a clear, timetabled framework about their various obligations
- Provides a uniform and efficient approach to heritage surveys to streamline land approvals in compliance with the AHA
- Provide a process for increasing and improving DPLH site information
- Nothing in the NHALG purports to authorize any act or omission that would be a breach of the AHA (*cl. 7.3*)



## Commencement of the NHALG and an alternative process

- Whilst the NHALG template has been finalised, SWALSC has requested that full commencement be delayed, whilst they determine resource requirements to enter into NHALGs and respond in a timely manner
- SWALSC's resourcing issues also means that for the moment they cannot respond directly to LGA's in relation to heritage site enquiries
- DPLH upon receipt of a request, will continue its current system of providing advice directly to LGA's which may include:
  - Advice on application of the Due Diligence Guidelines (DDG) and the likelihood of impacting heritage
  - Advice on whether a Regulation 10, s16 or s18 may or may not be required
  - Advice on whether a Survey may or may not be required
  - Where a Survey is being undertaken by the LGA, provide the names of informants for the Survey
- LGA's are encouraged to send emails to [aboriginalheritage@dplh.wa.gov.au](mailto:aboriginalheritage@dplh.wa.gov.au) and cc the South West Settlement team on [swsheritage@dplh.wa.gov.au](mailto:swsheritage@dplh.wa.gov.au) if there are questions on process

## Due Diligence Assessment

An essential component of the process is the Due Diligence Assessment, which should include an assessment in response to the following questions:

- Could the Activity potentially impact an Aboriginal heritage site?
- Does a search of the Aboriginal Heritage Inquiry System (AHIS) reveal any sites in the area?
- Have there been previous heritage surveys in the area?
- Refer to Aboriginal Heritage Due Diligence Guidelines
  - How much has the landscape already been altered?
  - What is the potential impact on the landscape

*Note: cl 1.1 Definitions of Minimal Impact Activities and Low Ground Disturbance Activities, and cl 8.1(b)(ii), can assist*

- If unsure, check with:
  - You heritage or land use team
  - DPLH

## Resources

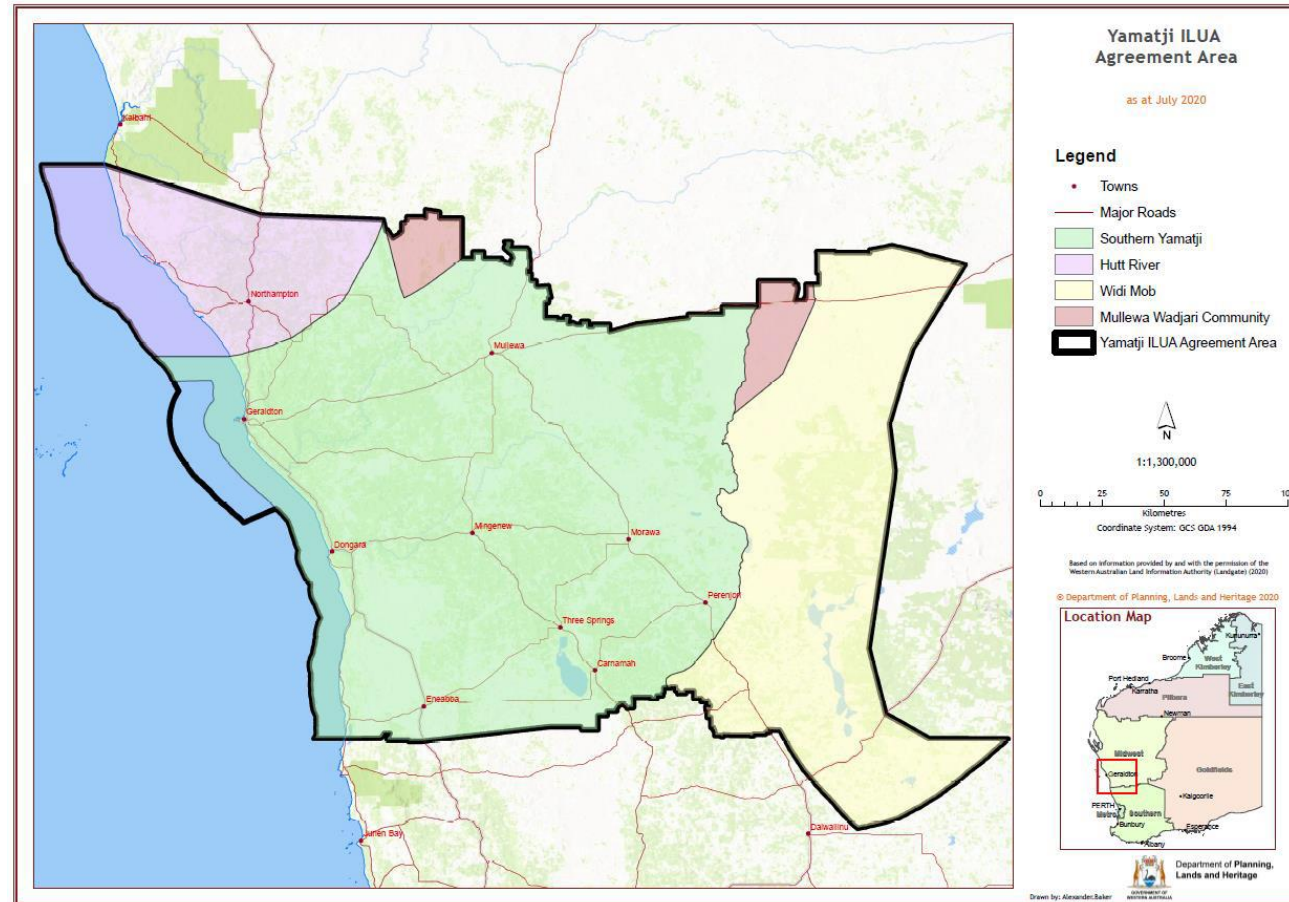
- The Due Diligence Guidelines are available at <https://www.dplh.wa.gov.au/projects-and-initiatives/south-west-native-title-settlement/noongar-standard-heritage-agreement/resources-and-templates>
- Copies of the six NSHA templates including the Schedules, supporting templates and maps can be found at <https://www.dplh.wa.gov.au/projects-and-initiatives/south-west-native-title-settlement/noongar-standard-heritage-agreement/resources-and-templates>
- Further information about the Settlement, including Fact Sheets, the six NSHA templates, Activity Notice templates, AHSP contract templates and links to the six ILUAs and the DPC SWS website at <https://www.dplh.wa.gov.au/projects-and-initiatives/south-west-native-title-settlement/noongar-standard-heritage-agreement/resources-and-templates>



# YAMATJI NATION INDIGENOUS LAND USE AGREEMENT

## Aboriginal Heritage







## Overview

- Aboriginal Heritage Objectives and Outcomes
- Yamatji Government Standard Heritage Agreement YGSHA (Schedule 16)
- Benefits of the YGSHA
- Key components of the YGSHA (Schedule 16)
- Yamatji Proponent Standard Heritage Agreement YPSHA (Schedule 17)
- Government Partnership Committee (Schedule 13)
- DPLH and Yamatji heritage Working Group (Schedule 13 Annexure B)

## Aboriginal Heritage Agreements

- The Parties to the Yamatji Nation ILUA agree that on and from the Conclusive Registration Date of 26 October 2020, if a State Government Department or Agency (Government Proponent) intends to undertake any Activity within the Agreement Area, then the Government Proponent must enter into an Aboriginal Heritage Agreement with the Yamatji Southern Regional Corporation in the form of a YGSHA. *YNILA CI 22.4*
- Activity means any activity, including physical works or operations, involving entry onto the Agreement Area (whether on the surface of the land or waters or under or over that surface). *YNILUA CI 1.2*

## Local Government not bound by the YGSHA

- While Local Government Authorities (LGAs) are not bound by the Yamatji Nation ILUA, as is the case with the South West Native Title Settlement, LGA's are encouraged to follow the principles of the YGSHA and engage with the Yamatji Southern Regional Corporation on works that could potentially impact Aboriginal heritage within the Yamatji Nation ILUA area.
- It should also be noted the LGAs are required to comply with the Aboriginal Heritage Act 1972 (AHA) in relation to any activities which may impact Aboriginal heritage sites/places. The AHA applies to all land regardless of tenure.



## Benefits of the YGSHA

- Facilitates the protection and preservation of Aboriginal Sites/Objects in accordance with the *Aboriginal Heritage Act 1972* (AHA)
- YGSHAs provide a clear process for engagement with the Yamatji Nation community about activities that may impact Aboriginal heritage sites, and a structured framework for when and how Aboriginal heritage surveys will be conducted across the ILUA area.
- YGSHAs assist compliance with the AHA, and ensure the submission of relevant information to the Department of Planning, Lands and Heritage for potential inclusion on the Register of Aboriginal Sites. *YGSHA CI 12.6.*
- The Parties must at all times comply with the AHA and, for the avoidance of doubt, nothing in this YGSHA purports to authorise any act or omission that would be in breach of the AHA. *YGSHA CI 7.3(a)*

## Key Components of the YGSHA

- Clause 1 – Definitions including Low Ground Disturbing Activity and Minor Impact Activity
- Clause 2 – No application of the YGSHA to Emergency Activities
- Clause 7 – Cooperation regarding Aboriginal sites and proposed activities
- Clause 8 – The Activity Notice
- Clause 10 – Survey Team and commencement of Survey
- Clause 11 – Payment of Surveys
- Clause 12 – Survey Reports
- Clause 14 – Identification and Relocation of Ancestral Remains and Objects
- Clause 16 – Environmental Protection
- Clause 17 – Consultation about Aboriginal Heritage Act applications and Yamatji Monitors

## Aboriginal Heritage Agreements *contd.*

### Yamatji Proponent Standard Heritage Agreement (YPSHA)

#### Schedule 17

- From the Conclusive Registration Date of 26 October 2020, in respect of the grant to a Proponent of a Mining Tenement, a PGER Title or a PP Act Title, the Minister for Mines and Petroleum in granting such Tenure, agrees to impose a condition on the Tenure that requires the Proponent to execute and enter into:
  - an Aboriginal Heritage Agreement, other than a YPSHA (as defined in the Yamatji Nation ILUA) with the Yamatji Southern Regional Corporation (Regional Entity); or
  - a YPSHA with the Regional Entity *YNILUA CI 22.5*

## Government Partnership Committee Schedule 13

The aim of the Committee is to foster open communication between State Government agencies and the Yamatji Southern Regional Corporation on matters relevant to meeting the objectives of the Yamatji Southern Regional Corporation, including:

- strong leadership and good governance;
- making decisions to protect, care for and restore the lands and waters of Yamatji Country;
- recognition as Yamatji people;
- promotion and preservation of Yamatji spirituality and Yamatji culture and ensuring that Yamatji culture remains strong;
- creation of a strong, sustainable and responsive Yamatji economy; and
- any issues or opportunities the Yamatji Southern Regional Corporation want to raise relating to the implementation of the Settlement.

Membership of the Committee the Asst Director Generals of approx. 12 State Government Departments and the Yamatji Southern Regional Corporation

# DPLH and Yamatji Southern Regional Corporation Working Group Schedule 13 Annexure B

The Working Group will be established to:

- Increase the understanding of Yamatji Heritage values
- Prioritise management planning for sites of high importance
- Provide advice to DPLH in relation to sites registered under the *Aboriginal Heritage Act 1972* (AHA)
- Prepare local and regional Heritage Management Plans
- Develop information systems that safeguard Yamatji heritage information
- Building capacity of the Yamatji community to engage in heritage management
- Reassessing the integrity of the Register of Aboriginal places and objects
- Make recommendations to DPLH to inform decisions relating to statutory approvals
- Work with DPLH on the development of Aboriginal heritage training and employment initiatives
- Report incidents believed to be breaches of the AHA to DPLH
- Seek funding to support facilitation of heritage training and management arrangements
- Provide advice to DPLH on discovered Ancestral Remains
- Consider how amendments to the AHA that occur after establishment of the Working Group impact on any or all of the Terms of Reference

# Contacts

## NSHA Contacts

### DPLH Aboriginal Heritage:

'Go to' agency for Aboriginal heritage information/advice

- **Glenn Shaw** Acting Manager Heritage Projects [Glenn.Shaw@dplh.wa.gov.au](mailto:Glenn.Shaw@dplh.wa.gov.au)
- **Jeremy Elliott** Director Partnerships and Agreements [Jeremy.Elliott@dplh.wa.gov.au](mailto:Jeremy.Elliott@dplh.wa.gov.au)

### DPC Aboriginal Engagement

Overseeing implementation of SWS Agreements

- **Angela Elder** Assistant Director [Angela.Elder@dpc.wa.gov.au](mailto:Angela.Elder@dpc.wa.gov.au)
- **Natalie Contos** Principal Policy Officer [Natalie.Contos@dpc.wa.gov.au](mailto:Natalie.Contos@dpc.wa.gov.au)

### Email Contacts:

#### **South West Native Title Settlement**

General Inquiries to [SWSHeritage@dplh.wa.gov.au](mailto:SWSHeritage@dplh.wa.gov.au)

#### **Yamatji Nation ILUA**

General Inquiries to [Yamatjinationheritage@dplh.wa.gov.au](mailto:Yamatjinationheritage@dplh.wa.gov.au)