



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

The South West Native Title Settlement

An Agreement reached between the Noongar People and
the Western Australian Government

Noongar Land Estate: Factsheet

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

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

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

For the latest information see the 'status of the Settlement' section of the Department of the Premier and Cabinet website (<http://www.dpc.wa.gov.au/lantu>).



Noongar Land Estate

The Noongar Land Estate (NLE), as a part of the South West Native Title Settlement, 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 by the Noongar Boodja Trust (NBT) and is intended to provide significant opportunities for the Noongar community to achieve sustainable economic, social and cultural outcomes.

Why is the Noongar Land Estate important?

It is recognised that land is intrinsically linked to the spiritual, social and economic wellbeing of the 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 WA Government through the Settlement has created a number of mechanisms to improve Noongar access to land with the NLE being the most significant land asset. See also changes to the water by-laws and the joint managements arrangements under the Settlement (www.dpc.wa.gov.au/lantu).

The NLE will provide the Noongar people with an asset 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 (Annexure J of the Indigenous Land Use Agreements) sets out how and what land will be allocated. The lands to be allocated include:

- unallocated Crown Land;
- unmanaged Reserves; and
- Aboriginal Lands Trust (ALT) properties.

WA Government agencies may also identify freehold land and reserves, 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 already been selected and incorporated as part of the initial Settlement Agreements (or ILUAs). This land will be transferred to the NBT once that body is formally established. The Noongar Land Base Strategy sets out targets for identification and allocation of land of which the Parties, WA Government and NBT, must work towards over the first 5 years.



Map of the South West Native Title Settlement Area showing the six ILUA boundaries



Is privately held land affected by the Settlement?

No, privately held or 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 not included in the transfer. Aboriginal Lands Trust (ALT) properties involving leases will carry over with the transfer of land title to the NBT Trustee.

How is land assessed for allocation?

The Department of Planning, Lands and Heritage (DLPH) will coordinate 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 (Annexure J of the [Indigenous Land Use Agreements](#)). Copies of the Indigenous Land Use Agreements (ILUAs) are available on the website (www.dpc.wa.gov.au/lantu).



Table 1. The 5 Steps for the Allocation of Land to the Noongar Land Estate

Steps	Process	Description
Step 1	Identification	DPLH and South West Aboriginal Land and Sea Council (SWALSC)/NBT will identify land that may be eligible for allocation (including Aboriginal Land Trust Freehold Land). This land will be assessed against identification criteria set out in the Land Base Strategy and referred to the Department of Mines, Industry Regulation and Safety (DMIRS) for indicative assessment and indicative tenure. DPLH prepares a List of Identified Lands with DMIRS indicative assessment/preferred tenure.
Step 2	Selection	SWALSC/NBT in consultation with relevant Noongar Regional Corporation(s) select parcels from the List of Identified Lands and specify tenure preference within the range identified through the indicative assessment.
Step 3	Assessment	DPLH commences the Assessment Process (i.e. assessing requirements for divestment, meeting Legislative requirements, Ministerial/Internal Approval, etc.). DPLH will consult with relevant government agencies including Local Government Authorities (LGAs).
Step 4	Finalise Terms of Allocation	Once selected land is deemed eligible, DPLH will offer Terms of Allocation to NBT. NBT will in turn advise acceptance (or refusal) of the Terms of Allocation within a prescribed timeframe.
Step 5	Allocation	The NBT confirms acceptance of the Terms of Allocation and land is transferred to the NLE.



How will the Noongar Land Estate land be managed?

Once land is allocated to the Noongar Boodja Trust (NBT), the Trustee must manage the land in accordance with the requirements of the Trust Deed (Annexure G of the [Indigenous Land Use Agreements](#)). 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).

All allocated reserve land will be held under a Management Order. This Management Order to the NBT is a statutory right to manage and control Crown Land in accordance with the designated purpose of “Noongar social, cultural or economic benefit”.

The Minister for Lands will retain the standard statutory rights, powers and duties in relation to reserve land under the *Land Administration Act 1997* and the *Land Administration (South West Native Title Settlement) Act 2016*.

How will the Noongar Boodja Trust manage freehold and reserve land?

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

The NBT will have the care, control and management of reserve land under a Management Order with specified conditions for the agreed purpose of “Noongar Social, Cultural or Economic benefit”.

The conditions of the Management Order over reserve land may include the power to lease, sublease or licence any part of the reserve consistent with the reserve purpose. The NBT as the management body must meet the standard land holding costs associated with reserve land.

The particular use of a reserve will be determined by the NBT in consultation with the relevant Noongar Regional Corporation(s) and in accordance with the conditions set out in the Management Order. The Minister for Lands retains the standard statutory rights, powers and duties in relation to the reserve land under the *Land Administration Act 1997* and the *Land Administration (South West Native Title Settlement) Act 2016*.



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

Some ALT freehold properties that are unleased have already been included in the Settlement Agreements (or ILUAs). These properties will be the first parcels transferred to the NBT once that body is formally established. Where ALT freehold land is subject to an existing lease, the freehold land may be allocated subject to the terms of the lease. The NBT Trustee will need to accept the Terms of Allocation subject to the existing lease. The change in lessor from ALT to NBT will not alter the lessees' rights and obligations under the existing lease.

ALT reserve land will 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 reserve land 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.

How will Cultural and Development land be managed by the Noongar Boodja Trust?

As per the terms of the NBT 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.

Cultural Land

It is acknowledged that the Noongar community remain the spiritual and cultural custodians of the Cultural Land and continue to practise their values, languages, beliefs and knowledge in relation to that Cultural Land. The NBT must 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 WA Government land management requirements apply.

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

1. The relevant Noongar Regional Corporation may request and be granted an interest (e.g. a lease) in Cultural Land. Before granting an interest, the NBT 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.



2. Where the Noongar Regional Corporation does not request an interest in the Cultural Land, the NBT 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.
3. 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 ILUA Agreement Group must also endorse the conversion of the Cultural Land.

Development Land

The NBT must hold, manage, invest and develop Development Land in consultation with the Noongar Regional Corporations and an Investment Committee, in a manner that will generate positive returns for the Noongar Boodja Trust Future Fund. The Investment Committee will be established by the NBT 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:

1. 'Property Development Activities'; for example, property development or re-development 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 NBT, the relevant Noongar Regional Corporation(s) and the Investment Committee.

The NBT Deed (Annexure G of the [Indigenous Land Use Agreements](#)) 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 Noongar Boodja Trust Future Fund to be invested to support future distributions to the six Noongar Regional Corporations.
2. 'Passive Investment Activities'; for example, leasing Development Land to third parties on commercial terms.



When and how will Local Government Authorities (LGAs) be consulted?

The Department of Planning, Lands and Heritage (DPLH) will consult with LGAs at the Assessment Stage of the land transfer process. (See Table 1. The 5 Steps for the Allocation of Land to the Noongar Land Estate.)

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.

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

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

DPLH is corresponding directly with relevant LGAs in relation to parcels of land that are located within a specific local government area. DPLH may seek further information or arrange for a meeting with the LGA.

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

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

Yes. Nothing in the six Settlement Agreements (or ILUAs) removes the need for the NBT to obtain standard planning, development and other regulatory approvals in order to develop or do other activities with reserve land. Any lessee of reserve land, including a Noongar Regional Corporation, will need to comply with all applicable laws.



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

As the owner of the freehold land, the NBT will be required to meet the standard costs, including rates and service charges, associated with owning freehold land. Freehold 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. However, if the freehold land is used for a commercial purpose or leased for a commercial enterprise, it will not be exempt from rates.

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 NBT Trustee in consultation with the relevant Noongar Regional Corporation(s) and other advisory committees, as outlined in the Noongar Boodja 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 NBT and the Noongar Regional Corporations.

Further information

Further information about the Settlement, including the six Settlement Agreements (or Indigenous Land Use Agreements – ILUAs) made in compliance with the Commonwealth *Native Title Act 1993*, can be found on the website of the Department of the Premier and Cabinet (<https://www.dpc.wa.gov.au/lantu>)