



Department of Planning,  
Lands and Heritage



## Esperance Nyungar Government Standard Heritage Agreement - Issuing an Activity Notice

### Esperance Nyungar Indigenous Land Use Agreement

On the 14<sup>th</sup> March 2014, the Federal Court made a Determination of non-exclusive Native Title in respect of the Esperance Nyungar claim encompassing the Shires of Esperance and Ravensthorpe.

On the same day, the Esperance Nyungar Indigenous Land Use Agreement (ENILUA), and the Esperance Nyungar Government Standard Heritage Agreement (ENGSHA), were each executed between the Esperance Nyungar Native Title Group, the State of Western Australia and each of the Government Parties. The ENGSHA area (agreement area) covers approximately 29,000 square kilometres in the area surrounding Esperance.

Since 14 April 2014, WA Government Departments and Agencies are bound to follow the ENGSHA when seeking to undertake on-ground activities in the Esperance Nyungar native title determination area. A formal review of the ENGSHA resulted in a Variation Agreement which came into effect on 5 October 2020. The Variation Agreement amends particular terms of the ENGSHA. All who were bound by the ENGSHA continue to be bound by the ENGSHA as varied by the Variation Agreement from 5 October 2020.

The ENGSHA provides a uniform and efficient approach to Aboriginal Heritage Surveys over the agreement area, in compliance with the *Aboriginal Heritage Act 1972*. The ENGSHA provides all Parties with a clear, timetabled framework about their various Aboriginal heritage obligations. The ENGSHA also delivers a process for improving the quality of data on the WA Government's Aboriginal Heritage Inquiry System (AHIS), which in turn enhances protection of Aboriginal heritage through the identification of sites that are important to the Esperance Nyungar people.

#### What is an Activity?

An **Activity** is defined at *clause 1.1* and refers to 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).

#### What is the purpose of an Activity Notice?

Particular activities will require a written notice to be provided to the Esperance Tjaltjraak Native Title Aboriginal Corporation (ETNTAC). The main purposes of an **Activity Notice** are:

- To provide adequate information to assist the above Corporation in making an assessment as to whether a Survey is required and if so, whether a Site Identification or Site Avoidance Survey is required.

If a Survey is required, the Activity Notice helps in providing returned information relevant to the conduct of the Survey.

### When is an Activity Notice not required?

If the Proponent has reasonable grounds to form the opinion that no Survey is required following a due diligence assessment, *clause 8.1(a)* provides that an Activity Notice may not be required if the proposed Activity consists entirely of:

- Minor Impact Activity (as defined in *Clause 1.1*).
- Low Ground Disturbance Activity of a class which has been notified in writing by the PBC to the Proponent. Low Ground Disturbance Activity means any Activity that does not involve major or significant ground disturbance.

### When is an Activity Notice required?

For a proposed Activity which does not meet the criteria as set out in *cl 8.1(a)*, an Activity Notice **must** be issued in writing to the PBC. An Activity Notice may also be required in the event that the Proponent is unsure as to whether *clause 8.1(a)* operates to exempt it from giving an Activity Notice (as per *cl 8.1(b)*).

Proponents are encouraged to engage in an early exchange of information with PBC (as set out in *cl 7.1*) about the proposed Activities to enable informed decisions to be made.

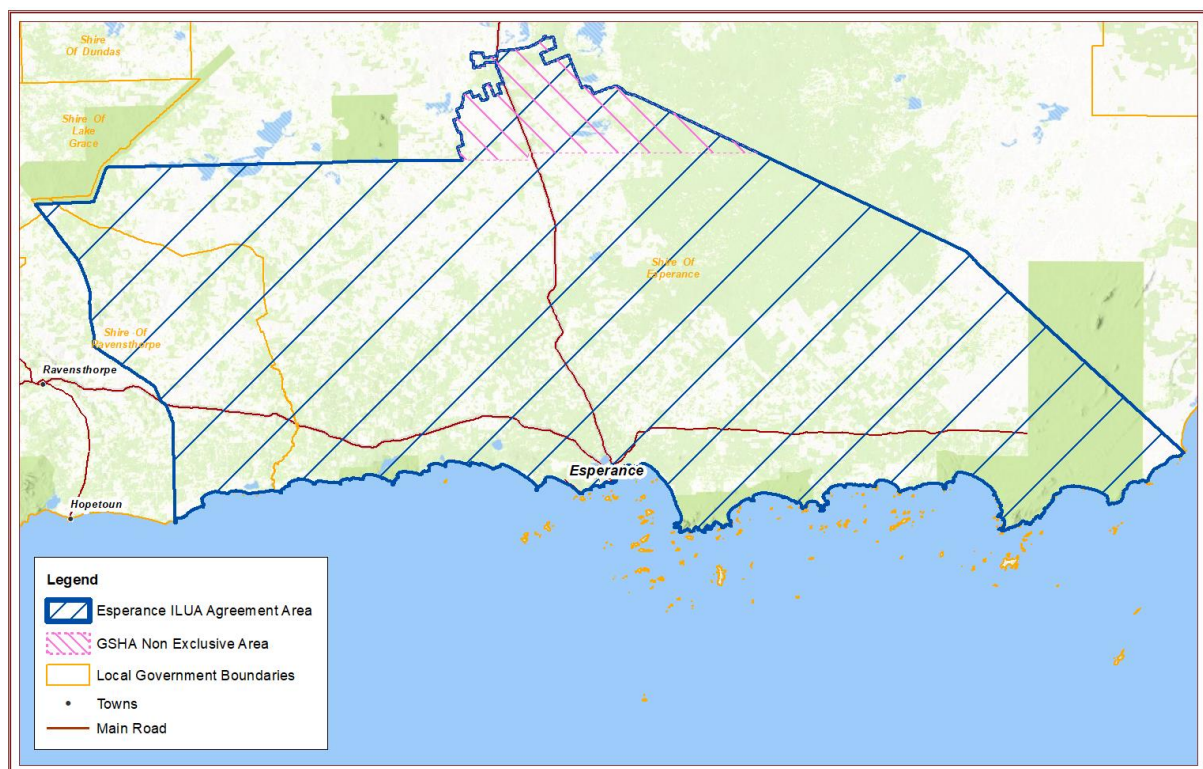
An Activity Notice should be considered if, upon assessment of the Proposed Activity:

- Is not a Minor Impact Activity (see definition in *clause 1.1*).
- Is not an agreed Low Ground Disturbance Activity (see definition in *clause 1.1*).
- Where there has been no previous survey undertaken in relation to the area of the Activity Notice
- The extent to which the land has been affected by previous ground disturbing activities.
- Is within the boundary of an Aboriginal Heritage Place or Site as defined under section 5 of the Aboriginal Heritage Act.
- Excavates, destroys, damages, conceals or in any way alters an any Aboriginal Place or Site; or
- Is within an area of minimal disturbance and where there have been no previous Aboriginal Heritage Surveys, or previous surveys may be unreliable.

The processes associated with considering an Activity Notice and deciding whether a Survey is required are set out in detail in *clauses 8.3* and *9.3* of the ENGSHA.

### For more information: Insert Esperance Inbox

Esperance Tjaltraak Native Title Aboriginal Corporation	Department of Planning, Lands and Heritage
<b>Name: Peter Bednall, CEO</b> <b>Contact Number: (08) 9072 0094</b>	<b>Name: Glenn Shaw, HPS – Manager</b> <b>Partnerships and Agreements</b> <b>Contact Number: (08) 6551 7985</b>



**Map of the Esperance Nyungar Indigenous Land Use Agreement Area.**

