



South West Native Title Settlement – Heritage Fact Sheet

Noongar Standard Heritage Agreements

Entering a NSHA - Information for State Government Proponents

On 8 June 2015, after extensive negotiations, and authorisation by the Noongar people, the WA Government signed (executed) six South West Native Title Settlement (Settlement) Agreements with the Ballardong People, Gnaala Karla Booja, South West Boojarah #2, Wagyl Kaip & Southern Noongar, Whadjuk People and Yued Agreement Groups.

The Noongar Standard Heritage Agreement (NSHA), a component of the Settlement, took effect upon the signing of the Settlement Agreements by the parties on 8 June 2015. State Government land users (Proponents) are required to enter into and follow the NSHA if an Aboriginal Heritage Survey is required and a pre-existing heritage agreement was not in place as at 8 June 2015.

The NSHA component provides a uniform and efficient approach to Aboriginal heritage surveys in the South West, in compliance with the *Aboriginal Heritage Act 1972* (AHA). The NSHA provides all parties with a clear, timetabled framework about their various Aboriginal heritage obligations. The NSHA also delivers a process for improving the quality of data on the Aboriginal Heritage Inquiry System (AHIS), which in turn enhances protection of Aboriginal heritage through identification of sites that are important to Noongar people.

Nothing in the NSHA purports to authorise any act or omission that would be in breach of the AHA.

The following steps describe the process to be followed where a State Government Proponent is seeking to enter a NSHA. Up until the commencement in full of the Settlement, the South West Aboriginal Land and Sea Council (SWALSC) will be signing up to NSHAs on behalf of the relevant Agreement Group(s). All NSHAs signed during this period will transfer to the relevant Noongar Regional Corporation(s) once they are established and endorsed following Settlement commencement.

Step 1 – Whether to enter a NSHA and area to be covered

Proponents are encouraged in the first instance to contact the Department of Planning, Lands and Heritage (DPLH) Aboriginal Heritage Directorate to discuss the general application of the NSHA. Proponents should always obtain independent advice about their particular circumstances.

The following questions will assist in determining the area to be covered by an NSHA/s:

- Is your organisation likely to conduct activities that may impact Aboriginal sites throughout the Settlement Area? If so, then entering into six NSHAs, one in relation to each Agreement area, in order to cover the entire Settlement area, may be the most efficient way to proceed;
- Are you conducting a one-off activity/project within a defined area? If so an NSHA limited to the project area may be the best way to proceed.

Maps of the six Agreement areas can be found on the DPLH website <https://www.dpc.wa.gov.au/swnts/Pages/Publications.aspx>

Step 2 – Fill in the NSHA Template/s,

Download the relevant NSHA template – there is a separate template for each of the six Agreement areas <https://www.dplh.wa.gov.au/information-and-services/aboriginal-heritage/noongar-heritage-and-history/noongar-standard-heritage-agreement/resources-and-templates>

Only the relevant sections of the templates can be amended (highlighted in the template). This includes:

- Proponent’s name on the front cover and in the footer. A reference number can be added if you have multiple NSHAs
- On Page 8 ‘Due Diligence Guidelines’ definition add date of current Due Diligence Guidelines (see <https://www.dplh.wa.gov.au/information-and-services/aboriginal-heritage/land-use-under-the-aha/aboriginal-heritage-surveys>)
- Schedule 1 (Party Details)
- Schedule 2 (Details of SWS Agreement and Pre-existing Aboriginal Heritage Agreements)
- Schedule 3 (Map and description of Agreement area) - note that this can be for entire Agreement area or a project specific area (DPLH website contains maps and description for each Agreement area).

Step 3 – Send the completed but unsigned NSHA to the SWALSC accompanied by any correspondence about Low Ground Disturbance Activity (LGDAs)

The unsigned draft NSHA is to be forwarded to SWALSC’s Senior Legal Officer. You may also wish to attach a letter seeking in-principle agreement from SWALSC, if there are Low Ground Disturbance Activities (LGDAs) that you request need not be the subject of an Activity Notice as per NSHA Clause 8.1(b)(ii). To date SWALSC has generally agreed to include all LGDAs from (a) to (y) of the LGDA Definition on pages 5-7 of the NSHA. You may wish to seek SWALSC agreement to include additional LGDAs tailored to your agency’s requirements in (z), (z)(i), (z)(ii) and so forth, and to seek SWALSC agreement that these also need not be the subject of an Activity Notice as per Clause 8.1(b)(ii). However, this will require additional discussion to reach a Letter of Understanding (LOU) with SWALSC, and additional time may be required to reach an agreement.

Step 4 – Execution by the Proponent

Once SWALSC confirms the content within the NSHA/s is correct and you have reached in principle agreement on any additional LGDAs, and those LGDAs that are exempt from an Activity Notice as per Clause 8.1(b)(ii), you will need to execute the NSHA/s by signing the last page (in accordance with your organisation’s requirements) and forward the signed copies to the SWALSC.

Step 5 – Execution by the SWALSC

SWALSC will then sign the NSHA/s and return the executed NSHA along with a LOU notifying you of any additional agreed LGDAs in accordance with Clause 8.1(b)(ii). The Agreements require SWALSC to use its best endeavours to provide Government Proponents with the executed NSHAs within 20 business days from the time the SWALSC receives the signed NSHAs from the Proponent.

Contact Information

Further information on NSHAs can be found at <https://www.dplh.wa.gov.au/projects-and-initiatives/south-west-native-title-settlement/noongar-standard-heritage-agreement>

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South West Native Title Settlement Area

