

## Flying Minute - Template Noongar Heritage Agreement for Local Government

*By Susie Moir, Policy Officer, Community, Strategy Policy and Planning*

**That the Template Noongar Heritage Agreement for Local Government be endorsed.**

**RESOLUTION 111.FM/2020**

**CARRIED**

### **Executive Summary**

- WALGA, the South West Aboriginal Land and Sea Council (SWALSC), the Department of Planning, Lands and Heritage (DPLH), the Department of the Premier and Cabinet (DPC), and the State Solicitors Office have worked together to develop a Template Noongar Heritage Agreement for Local Government (NHALG) that is consistent with Local Government legislative frameworks, procurement requirements and resourcing.
- Affecting 103 Local Governments, the South West Native Title Settlement (SWNTS), once all judicial reviews are completed and it is conclusively registered, will comprise the full and final resolution of all native title claims in the South West of Western Australia. The NHALG is based on the Noongar Standard Heritage Agreement (NSHA) that came into effect on 8 June 2015 as part of the SWNTS, and which all State Government land users are required to enter where land use activity may impact an Aboriginal site.
- The NHALG will facilitate a consistent approach to Aboriginal heritage in the SWNTS area, and assist Local Government to engage positively with local Aboriginal people.
- Individual Local Governments will be able to enter the NHALG with SWALSC in accordance with their needs.
- The NHALG has been prepared by DPLH and endorsed by SWALSC in principle.

### **Attachments**

Template Noongar Heritage Agreement for Local Government.

Attachment 1: [https://walga.asn.au/getattachment/Documents/Attachment-1-Final-Draft-Noongar-Heritage-Agreement-for-Local-Government-\(1\).docx?lang=en-AU](https://walga.asn.au/getattachment/Documents/Attachment-1-Final-Draft-Noongar-Heritage-Agreement-for-Local-Government-(1).docx?lang=en-AU)

Noongar Standard Heritage Agreement – Information for Local Government – December 2017

Attachment 2: [https://walga.asn.au/getattachment/Documents/Attachment-2-NSHA-Principles-Info-for-Local-Government-\(002\).pdf?lang=en-AU](https://walga.asn.au/getattachment/Documents/Attachment-2-NSHA-Principles-Info-for-Local-Government-(002).pdf?lang=en-AU)

### **Background**

Since 2018 WALGA has participated in the South West Native Title Settlement Group (SWNTS Group), which comprises WALGA, SWALSC, DPLH, and DPC. Meeting quarterly, the purpose of the SWNTS Group is to keep Local Government engaged and informed about the progress of the SWNTS. A key priority that the SWNTS Group identified was supporting Local Government to engage more closely and build lasting relationships with local Aboriginal communities, and to comply with the requirements of the *Aboriginal Heritage Act 1972*. To this end, the SWNTS Group agreed to develop a template Noongar Heritage Agreement for Local Government.

The SWNTS is the largest and most comprehensive agreement to settle Aboriginal interests over land in Australia. The SWNTS involves six Noongar Native Title Agreement Groups, and covers 200,000 square kilometres of land. On 8 June 2015 the State Government executed the six South West Native Title Settlement Agreements (Indigenous Land Use Agreements) with the Ballardong, Gnaala Karla Booja, South West Bojarah, Wagyl Kaip and Southern Noongar, Whadjuk and Yued groups.

The SWNTS as a whole will only become effective after all six Agreements have been conclusively registered in accordance with the Native Title Act 1993 (Cth), and any related Court proceedings resolved. In January 2020 six special leave applications were lodged with the High Court of Australia seeking special leave to appeal against the Full Federal Court decision in December 2019 confirming that the Settlement Agreements were correctly registered.

The NSHA commenced on 8 June 2015, the same date the State Government executed the six SWNTS Agreements. All WA Government land users are required to enter into and follow the NSHA where an Aboriginal heritage survey is required to be conducted.

Local Government is not a party to the six Indigenous Land Use Agreements that comprise the SWNTS, therefore they are not required to enter the NSHA. However DPLH encourages all land users to follow key elements of the NSHA to ensure a consistent approach across the SWNTS area.

The NHALG is similar to the NSHA with changes made only where necessary to comply with Local Government legislative and policy requirements, and updates based on more recent heritage agreements in other parts of the State. Key differences between the NSHA and NHALG are:

- Inclusion of a mutual termination clause (this does not form part of the NSHA);
- Procurement provisions that align with the *Local Government Act 1995 (WA)*, *Local Government (Functions and General) Regulations 1996 (WA)*, and Local Government Purchasing Policies;
- Provision for between 2 and 8 Aboriginal Consultants to participate in surveys, as agreed between SWALSC, the Aboriginal Heritage Service Provider and the Local Government, depending on the size of project area, scope of project, budget and likely Aboriginal heritage values;
- A cap of 5% beyond estimated survey costs;
- Travel expenses for Aboriginal consultants updated in line with newer Aboriginal heritage agreements to provide certainty.

The NHALG is a template agreement, therefore it will be up to individual Local Governments to enter the agreement with SWALSC, depending on their own requirements. Local Governments are also able to seek to negotiate further changes to the template if they wish.

Supporting materials to assist Local Government to understand the NHALG are in development.

## Comment

It is anticipated that the NHALG will benefit the Local Government sector through:

- Assisting Local Governments to comply with the requirements of the *Aboriginal Heritage Act 1972 (AHA)* (currently under review)
- Providing Local Government with a clear process for engagement with the Aboriginal community about activities that may impact Aboriginal heritage sites, and a structured framework for when and how Aboriginal heritage surveys will be conducted
- Requiring the provision of heritage surveys to DPLH for recording on the Register of Aboriginal Sites, which can be accessed by future land users
- Assisting Local Governments to develop ongoing, mutually respectful relationships with local Aboriginal knowledge holders.

A number of Local Governments have provided input into the development of the NHALG:

- Shire of Augusta Margaret River
- City of Perth
- City of Rockingham
- City of Wanneroo
- City of Armadale

WALGA also engaged legal consultants to provide feedback on the NSHA.



Agenda Item position has been considered by the People and Place Policy Team and it is recommended for State Council endorsement.

### **FLYING MINUTE OUTCOMES**

Total Invited to Survey: 24

Total Finished Survey: 17

**That the Template Noongar Heritage Agreement for Local Government be endorsed.**

<b>First Name</b>	<b>Last Name</b>	<b>Completed Date</b>
Phillip	Blight	10/08/2020 at 19:25
Jenna	Ledgerwood	02/08/2020 at 15:32
Paul	Kelly	03/08/2020 at 22:07
Malcolm	Cullen	03/08/2020 at 19:37
Cheryl	Cowell	Not Completed
Stephen	Strange	04/08/2020 at 15:15
Chris	Mitchell JP	10/08/2020 at 10:32
Les	Price	Not Completed
Russ	Fishwick JP	03/08/2020 at 14:03
Karen	Chappel	07/08/2020 at 6:59
Michelle	Rich	Not Completed
Julie	Brown	08/08/2020 at 15:52
Doug	Thompson	04/08/2020 at 12:25
Carol	Adams OAM	03/08/2020 at 10:26
Logan	Howlett JP	31/07/2020 at 13:56
Tony	Dean	03/08/2020 at 12:32
Ken	Seymour	Not Completed
Peter	Long	06/08/2020 at 13:10
Ronnie	Fleay	03/08/2020 at 9:40
Catherine	Ehrhardt	Not Completed
Cate	McCullough	Not Completed
Mark	Irwin	Not Completed
Ruth	Butterfield	06/08/2020 at 9:45
Frank	Cvitan	06/08/2020 at 12:16

## Comments

**Stephen Strange** on 04/08/2020 at 15:15

That our members realise this is a template only and not in any way a view by WALGA one way or another.

**Chris Mitchell JP** on 10/08/2020 at 10:32

I agree fully with Councillor Strange's' comment. This is a template only. Not a position statement.

**Phillip Blight** on 10/08/2020 at 19:25

As a non-lawyer I find this difficult to comment on. Only time will expose its qualities. I suggest a review in 3-5 years be scheduled to give opportunity for changes based on lived experience. I agree with Cr Strange that it must be made clear that this is a suggested template that is not mandatory

## Secretariat Comment

The NHALG template has been developed to offer Local Governments an additional tool to assist them to fulfil their obligations under Western Australia's Aboriginal cultural heritage legislation, to build positive relationships with SWALSC and local Aboriginal knowledge holders, and to facilitate a consistent approach to Aboriginal heritage in the SWNTS area. It is therefore anticipated that it will be of benefit to Local Governments that choose to enter the NHALG. However it is a decision for each Local Government to make about whether to enter the NHALG or not depending on their own circumstances and they are under no obligation to do so. DPLH will be offering information sessions to all Local Governments within the SWNTS area to assist Local Governments decide about whether they wish to enter the NHALG.

The NHALG template will be subject to ongoing review as part of the regular discussions of the SWNTS Group (WALGA, SWALSC, DPC & DPLH).