

Noongar Governance Structure Manual

7 December 2015

Disclaimer

This Manual does not contain comprehensive legal advice, nor is it intended to completely describe all of the Trustee's obligations under the Noongar Boodja Trust, the NGS Documents or the law.

This Manual should be read in conjunction with each of the documents it summarises and refers to – there is no substitute for considering these documents in full.





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Glossary

CSC	Central Services Corporation
ENE	Eligible Noongar Entity
ILUA	Indigenous Land Use Agreement
IC	Investment Committee
NC	Nominations Committee
NAC	Noongar Advisory Company
NBT	Noongar Boodja Trust
NCC	Noongar Corporations Committee
NGS	Noongar Governance Structure
NLE	Noongar Land Estate
NRC	Noongar Relationship Committee
RC	Regional Corporation
State	State of Western Australia
SWALSC	South West Aboriginal Land and Sea Council

	Quorum requirements
	Voting requirements
	Frequency of meetings
	Secretariat requirements

Introduction and Background

1. This manual has been prepared for professional trustee candidates submitting a tender response to the State for the position of first Trustee of the NBT.
2. The NBT is one component of the NGS that has been designed under the South West Settlement Package between the State and the Noongar People. This document explains the various components of the NGS and the connection between those components.
3. The NGS Manual is intended to be a simple, yet appropriately detailed, practical document regarding the operation of the NGS. It is intended to be a useful educational tool for tenderers during the tender process.
4. It is also anticipated that the NGS Manual will prove to be a valuable tool for the successful Trustee during the Transition Period, and in the early phase of the NGS, when the Trustee is building its own internal team to service the NGS.
5. The NGS Manual focuses on the agreed NGS documents and the future operation of the NGS. The Manual does not explain the background to the South West Settlement Package, or the process for designing and developing the NGS. This information is provided elsewhere in the tender package.

NGS Documents

6. The technical requirements for the NGS are documented across a range of governing documents (**NGS Documents**). These comprise:
 - (a) 6 ILUAs;
 - (b) the NBT Deed;
 - (c) the CSC Template Rulebook;
 - (d) the CSC Principles;
 - (e) the RC Template Rulebook;
 - (f) the RC Principles;
 - (g) the Security Deed; and
 - (h) the Land Sub Bare Trust Deed.
7. The NGS Documents are necessarily complex and detailed due to the breadth and scope of the South West Settlement Package, and the long term significance of the NGS.
8. In summarising and explaining the key provisions of the NGS Documents, the NGS Manual includes relevant cross references, to enable the reader to easily locate and explore the topic further in the source document.

Supporting Documents

9. Numerous other information documents have been prepared to communicate the various elements of the South West Settlement Package and the NGS. Where appropriate, this NGS Manual includes relevant cross references. Additionally, we recommend that the reader refers to the following documents:
 - (a) SWALSC – Summary Guide to the Noongar Native Title Settlement Documents (**SWALSC Summary Guide**) 9 October 2014¹;
 - (b) SWALSC – Quick Guide to the Proposed Noongar Native Title Settlement (**SWALSC Quick Guide**) 7 October 2014²;
 - (c) Department of Premier and Cabinet – The South West Settlement Questions and Answers, March 2015³;
 - (d) Department of Premier and Cabinet – The South West Settlement Fact Sheet, 7 July 2015⁴;
 - (e) Jackson McDonald – Framework of Assessment of Transition Principles;
 - (f) ILUA - Noongar Land Base Strategy Implementation Process Charts⁵;
 - (g) ILUA – Community Development Framework;⁶
 - (h) ILUA – Noongar Economic Participation Framework;⁷
 - (i) Jackson McDonald – Transition Timeline;
 - (j) Jackson McDonald - Building Blocks Presentation dated 30 July 2015;
 - (k) Jackson McDonald - Trustee Timeframes;
 - (l) Trustee Selection Taskforce Communique; and
 - (m) Relevant documents prepared for Trustee Symposium.

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¹ Available via <http://www.noongar.org.au/talks-government.php>

² Available via <http://www.noongar.org.au/talks-government.php>

³ Available via <https://www.dpc.wa.gov.au/lantu/Claims/Pages/SouthWestSettlement.aspx>

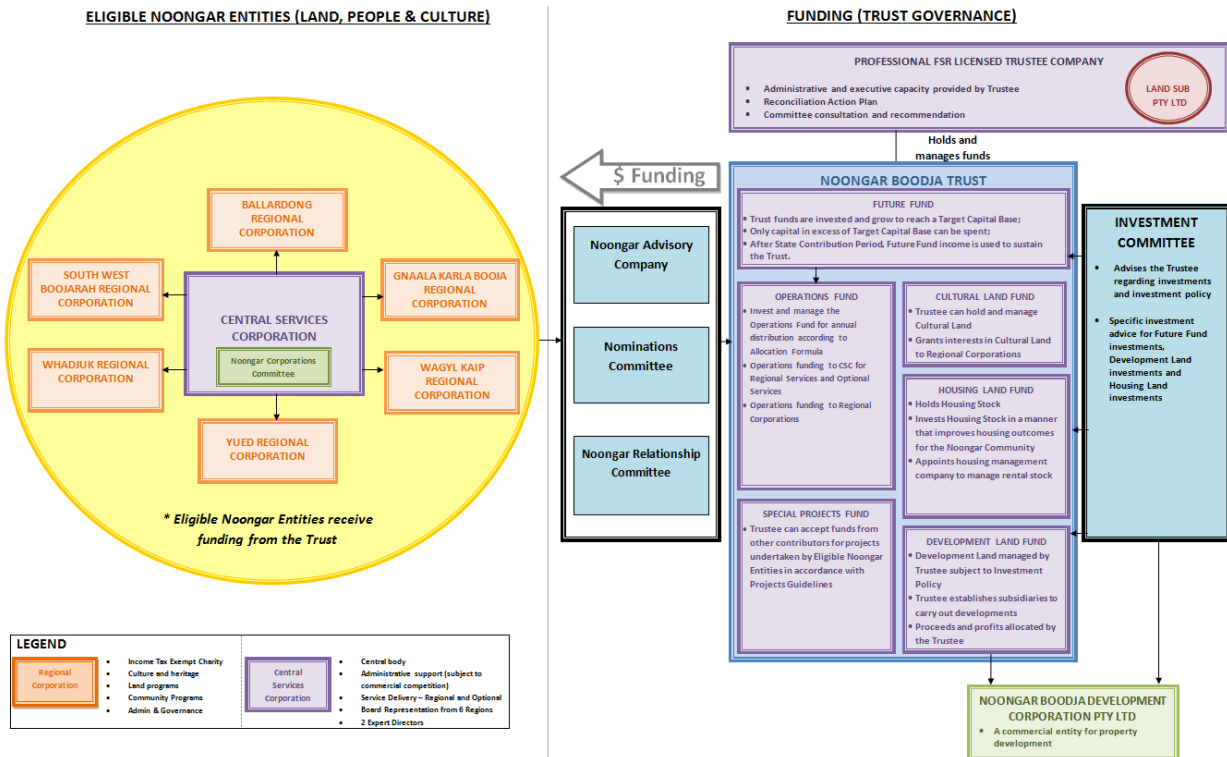
⁴ Available via <https://www.dpc.wa.gov.au/lantu/Claims/Pages/SouthWestSettlement.aspx>

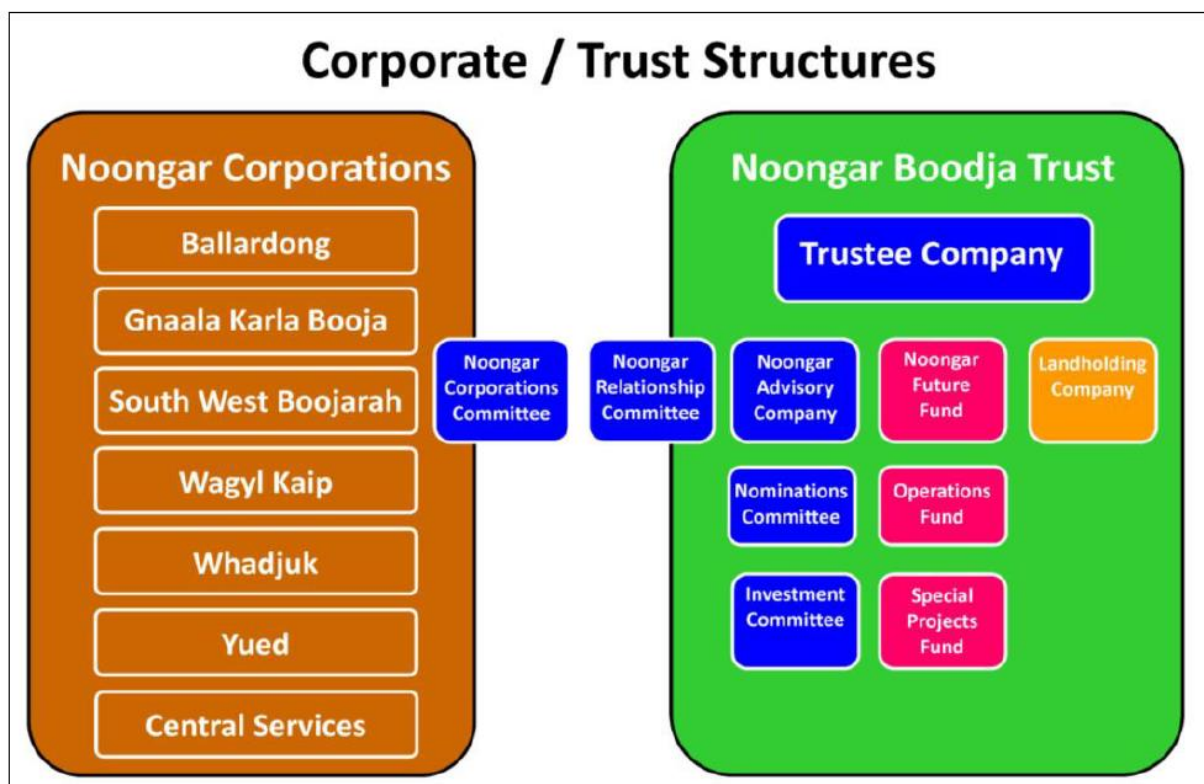
⁵ ILUAs Schedule 10, Annexure K

⁶ ILUAs Schedule 10, Annexure T

⁷ ILUAs Schedule 10, Annexure S

Part 1 - Diagrams





SWALSC Summary Guide to the Noongar Native Title Settlement Documents dated 9 October 2014

Part 2 - South West Settlement Package

Purpose

The South West Native Title Settlement (**Settlement**) involves around 30,000 Noongar people, covers approximately 200,000 square kilometres and provides an opportunity for the WA Government to work in partnership with the Noongar Community to improve their economic, social and cultural development.

1. The Settlement package is set out in each of the 6 ILUAs at Schedule 10. There is one package for the Noongar People generally, there are not different settlement arrangements for each Agreement Group.
2. There are many aspects to the Settlement package, including in particular the Noongar Recognition Bill, heritage protection and community development measures. From the Trustee's point of view, the most relevant aspects of the Settlement package are those that the Trustee will be involved in managing. In this section we therefore focus on the financial and land compensation aspects of the package.⁸
3. The money and land provided to the Trustee or the Land Sub under the ILUAs are referred to as the "State Contribution".⁹ The State Contribution is made during the State Contribution Period which is for a period of 12 years commencing 60 Business Days after the Trust Effective Date (which is the date when the Trust is established).¹⁰

Financial Contribution

4. During the State Contribution Period, the State will make 12 annual payments of:
 - (a) \$50,000,000 to the Noongar Future Fund, to be earmarked for investment.¹¹
 - (b) \$10,000,000 for Operations Funding.¹²
5. These payments are CPI indexed and must never fall below the amount that was paid in the previous year.
6. The ILUAs contain provisions regarding invoicing and bank accounts for the State Contribution, and for payment of interest by the State where a payment is late.¹³

Noongar Land Contribution

7. As part of the Settlement, the State acknowledges that land is intrinsically linked to the spiritual, social and economic wellbeing of the Noongar People. Accordingly, a significant part of the State Contribution is land and funds available in relation to land, which can be distinguished as follows.

⁸ See SWALSC Quick Guide and SWALSC Summary Guide for further information about the non-financial and land base settlement terms.

⁹ ILUAs clause 10.1(m)

¹⁰ ILUAs Schedule 10, item 5.

¹¹ ILUAs Schedule 10, item 5.1; NGS Manual Part 25

¹² ILUAs Schedule 10, item 5.2; NGS Manual Part 26

¹³ ILUAs Schedule 10, items 5.3 and 5.4

8. **Noongar Land Estate¹⁴** - A NLE will be created. This is set out in the ILUAs in the “Land Base Strategy”. This will comprise between a maximum of 300,000 hectares of reserve land and a maximum of 20,000 hectares of freehold land which will be allocated to the Trust from land sourced from unallocated Crown land, unmanaged reserves and Aboriginal Lands Trust lands. The title to the land will be held by the Land Sub on behalf of the NBT.
9. **LandCorp Sales¹⁵** - For certain unallocated Crown land developed by LandCorp and sold after the settlement, LandCorp will pay to the Trustee 5% of the sale price. Depending on the Agreement Area, in which the parcel of land is located, the funds must be deposited by the Trustee in the ENE Operations Account of the relevant Regional Corporation (**ENE Operations Account**).
10. **Housing Properties¹⁶** - The Housing Authority will transfer 121 Housing Properties to the Land Sub pursuant to a Property Transfer Deed. The State (via the Housing Authority) will also provide up to \$10,000,000 for maintenance and upgrades to the Housing Properties under a Funding Agreement. \$500,000 of these funds will form a ‘float’ that will be transferred directly the Trustee to be held in the NBT. The Housing Authority will reimburse the Trustee for payments made from the float, provided that the float does not exceed \$500,000.
11. **Office Premises¹⁷** - The State will provide \$6,500,000 of funding over two years to establish offices for the CSC and RCs. The properties must either be owned or leased by the Land Sub. The State’s consent to the proposed properties must be obtained. The Trustee must prepare and present to the State a business case for each proposed property.
12. **Noongar Cultural Centre¹⁸** - The State will provide \$5,300,000 (of which up to \$300,000 may be allocated for a preliminary business case) and up to 2 hectares of land in the Perth metro area for development of a Noongar Cultural Centre. Title to the property will be held by the Land Sub. External funding must be sought for construction and operation costs, and the full terms and conditions are to be agreed by the State, the Trustee, the CSC and the RCs.
13. **Noongar Land Fund¹⁹** - The State will establish and manage a Noongar Land Fund. The Trustee will not be involved in the administration of this fund. The State will distribute a maximum of \$46,850,000 from this fund over a 10 year period. This fund is to meet the land, joint management and heritage objectives of the Settlement package. For example, money in the Noongar Land Fund will be used to achieve objectives related to land management, Noongar land ownership and Aboriginal heritage protection. Some money will be made available to the RCs for joint management activities in relation to the Conservation Estate of the Region.

¹⁴ ILUAs Schedule 10, item 8 and NGS Manual Part 28

¹⁵ ILUAs Schedule 10, item 10

¹⁶ ILUAs Schedule 10, item 14 and NGS Manual Part 32

¹⁷ ILUAs Schedule 10, item 15(a)

¹⁸ ILUAs Schedule 10, item 15(b)

¹⁹ ILUAs Schedule 10, item 9

Part 3 - Transition Period

Purpose

The parties understand and agree that the NGS cannot begin functioning immediately after the ILUA is signed. There is a very critical transition period that will be a time of planning and preparation.

1. The **Transition Period** is the period between the ILUA execution, and the Trust Effective Date. This is when the CSC and the RCs will be established in accordance with the requirements in the NGS Documents.
2. The parties anticipated this, and have included “Transition Principles” in the ILUA, to provide minimum requirements to be met during the Transition Period. These are found in Annexure Y of the ILUA.
3. The Transition Period also provides an opportunity for the stakeholders to get ready for the first year of the NGS. During the Transition Period the focus should be on identifying and agreeing strong processes and protocols in a number of key areas, which will ensure that the first year is effective, and desired outcomes can be achieved.
4. The first year of the NGS is intended to be a vital time of more detailed planning, scoping and development. It is not intended or possible for all mechanisms and structures to be in place and operational on day 1 of the NGS – this is the purpose of the first year.

Transition Period

5. The State and SWALSC are required to implement the “Transition Principles” as soon as practicable after execution of the ILUA.²⁰ This process has already commenced.
6. It is not the Trustee’s role to implement the Transition Principles. However there will be a role for the Trustee to play during the Transition Period.
7. The purpose of the Transition Principles is to ensure that there is a transparent and accountable process undertaken to establish, identify and appoint the first CSC and RCs. It is also to provide guidance to the Trustee in determining if a nominee entity has satisfied the Transition Principles.²¹
8. The transparent and accountable establishment of the CSC and RCs will be a critical factor in building a better future for the Noongar Community. The Corporations must be able to represent the Noongar Community in engagement with all levels of government and other stakeholders.²²
9. SWALSC is facilitating establishment of the ENEs. It must ensure the Noongar People are fully informed and have the opportunity to be involved in the process. This is important for encouraging capacity development of individuals across the Noongar Community.

²⁰ ILUAs Schedule 10, item 20(a)

²¹ ILUAs Annexure Y, item 1

²² DPC Fact Sheet, Noongar Corporations, page 2

10. The State has appointed an independent Transition Consultant to assist SWALSC in implementing the Transition Principles.
11. The State has developed an assessment framework that will be used to determine if the Transition Principles have been satisfied. This will require:
 - (a) a Transition Program adopted for each Agreement Group, that deals with community participation, communication and consultation in establishing the relevant entity;
 - (b) evidence that the Transition Program has been effectively implemented;
 - (c) a membership drive for RCs and appropriate processing of membership applications;
 - (d) appropriate processes around developing the Rulebooks, Cultural Advice Policies (RCs) and Cultural Consultation Policy (CSC);
 - (e) Agreement Group participation in the recruitment, election and appointment of directors;
 - (f) Agreement Group participation in the recruitment, selection and appointment of senior management and staff;
 - (g) the Agreement Groups to endorse their nominee CSC and RC; and
 - (h) reporting from the Transition Consultant regarding the development and delivery of the Transition Program.
12. During the Transition Period, a number of individuals will be identified for CSC/RC boards, and for Trust committees and subsidiary boards. This nomination and selection process will comprise a significant aspect of the Transition Period. Once formally appointed, it is appropriate and desirable for these important individuals to play a key role in determining how the relevant entity/committee will operate. This necessarily means that important decisions about the NGS should not be made until these entities/committees are operational. This will not be until the first year. Before the entities are operational, they will be in an inactive phase.

Trustee's Role

13. The Trustee may be engaged to provide preliminary services during the Transition Period. These will be limited in scope and nature, and be relevant to facilitating a productive first year for the NGS.
14. During the Transition Period the Trustee may need to meet regularly with the stakeholders and the Transition Consultant. This will be important for monitoring progress and agreeing action items. The Trustee will need to regularly report to the relevant stakeholders based on the terms of its engagement.
15. The Trustee's specific role during the Transition Period may include the following activities:
 - (a) Incorporate subsidiaries (in an inactive state) and establish the Nominations Committee.







- (b) Preliminary establishment steps for Trust support entities:
 - (i) Noongar Relationship Committee;
 - (ii) IC;
 - (iii) NAC;
 - (iv) Land Sub.
 - (c) Engage with stakeholders to scope the first year plan for the following:
 - (i) Noongar Future Fund;
 - (ii) Operations Fund;
 - (iii) Cultural Land Fund;
 - (iv) Development Land Fund; and
 - (v) Housing Land Fund.
 - (d) Design of preliminary/template budgets for first year for Trust, CSC and RCs including for each of the Trust Funds referred to above.
 - (e) Basic financial modelling for the Trust, CSC and RCs for first three years.
 - (f) Design of preliminary/template annual plans for Trust, CSC and RCs.
 - (g) Help to outline the process by which the ENE Common Platform will be developed during the first year (but not development of the ENE Common Platform itself).
 - (h) Determining process for development of the Land Register (not design of Land Register itself) (**Land Register**).
 - (i) Investment Manager selection process.
 - (j) Auditor selection process.
16. Depending on the circumstances, some of the above items may be delayed into the first year.
 17. These preliminary services will be determined by the Trustee Selection Taskforce. The associated costs will be negotiated between the Trustee and the State, and formalised by a separate contract.

Part 4 - Expectations of Trustee

Purpose

The role of the Trustee in the NGS will be very different to the previous experiences of professional trustees in Australia. The Trustee is expected to bring all its resources, expertise, connections and experience to enable the Noongar People to build their economic, social and cultural future through enduring relationships with Government, business and the wider community in Western Australia.

1. The establishment of the NGS is the culmination of many years of hard work and dedication across the Noongar community. It is a landmark and unprecedented outcome in native title in Australia. The weight of community expectation is high, and the NGS will be an extremely visible structure that will attract widespread interest locally, nationally and internationally. The Trustee obviously has a fundamental role to play in the success of the NGS.
2. The role of the Trustee evidently extends beyond what is traditionally expected of professional trustee companies in Australia. It is vital that professional trustee candidates recognise this, and consider how the specialised nature of the NGS will influence their tender response, and their overall approach to this appointment.
3. The Trustee will need to understand its role amongst the broader NGS, and the limitations of its functions and powers. The Trustee's role is principally around asset management and development, and administering the distribution process. The other entities in the NGS (e.g. the CSC, RCs and Committees etc) have equally important roles to play, having regard to their relevant functions and purposes.
4. The Trustee will have a close relationship with the ENEs. It will facilitate the operations and governance of the ENEs. It will also have an important role in early identification of potential problems and concerns within the ENEs. This will arise from the regular and structured reporting framework between the Trustee and the ENEs. It is expected that the Trustee will work proactively with ENEs to resolve issues before they are beyond remedy. This is in the interests of minimising costs to the NGS, and minimising disruption to the structures.
5. The Trustee will need to carefully balance its roles as an "enabler" for the ENEs on the one hand, and an "asset protector" on the other. At different times, and for different ENEs, the Trustee must be able to recognise which role is the more appropriate for the circumstances. The Trust Deed mandates the long term protection of the majority of the Trust Fund, and the very structured distribution of the remainder. However, the Trust Deed also emphasises the fundamental role of the Trust in providing opportunities to the Noongar Community by supporting the ENEs.
6. The Trustee should also seek to work strongly with the NRC. Through its direct connection with the NCC, the NRC provides a gateway to the ENEs and the Noongar Community. The Trustee should approach the NRC as a source of knowledge and expertise about the Noongar Community.

COMMON NATIVE TITLE TRUSTS		NOONGAR BOODJATRUST
Large class of multiple beneficiaries		Only <u>ONE</u> RC beneficiary in each Region
Direct benefits trusts with individual payments		No individual payments
Sporadic funding applications with multiple purposes		Once a year allocation Once a year budget
Mixed and conflicting goals and objectives		RCs take care of country, culture, community Trust takes care of base funding for RCs and growth of wealth fund
Real property poor		Real property rich
Little or no time for Trustee preparation prior to appointment		Preliminary services engagement to assist in preparing the Trust for operations

Part 5 - Trustee Eligibility Requirements

Purpose

A Trustee (whether a Professional Trustee Company or Dedicated Trustee) must meet certain requirements in order to be appointed as the Trustee of the NBT.

1. During the State Contribution Period, the Trustee **must** be a Professional Trustee Company. At the end of the State Contribution Period, the Trustee can be either continue to be a Professional Trustee Company or can be a Dedicated Trustee.²³
2. At all times, the Trustee must comply with the following requirements, whether they are a Professional Trustee Company or a Dedicated Trustee:
 - (a) maintain and act in accordance with a Reconciliation Action Plan that includes an Indigenous employment strategy or policy;
 - (b) maintain an office in Perth operated on a full time basis; and
 - (c) provide a full time senior executive employee or officer dedicated to the Trust.²⁴

Professional Trustee Company

3. A Professional Trustee Company is eligible for appointment if it is a trustee company under section 601RAB of the Corporations Act. It must also hold a current relevant AFS license to provide “traditional trustee company services” under section 601RAA of the Corporations Act. A Professional Trustee Company must also have at least 5 years experience carrying out similar functions and services as required under the Trust Deed.²⁵

Dedicated Trustee

4. A Dedicated Trustee must be a public company limited by guarantee that meets the requirements in Schedule 7 of the Trust Deed. It must have a constitution that includes the structural and governance matters set out in clauses S7.2.3 to S7.2.11, and satisfy the operational requirements in S7.1 of the Trust Deed.²⁶

Custodian Trustee

5. Where a Dedicated Trustee is Trustee, it must appoint a Professional Trustee Company to act as the Custodian Trustee to hold legal title to the Protected Property of the Trust and provide advice to the Dedicated Trustee.²⁷ The Protected Property is all of the Trust assets not required by the Trustee for the day to day operations of the Trust.

²³ Trust Deed clause 13.2.1

²⁴ Trust Deed clause 13.2.2

²⁵ Trust Deed clause 1.1

²⁶ Trust Deed clause 1.1

²⁷ Trust Deed Schedule 10, items S10.1 and S10.4

6. A Custodian Trustee must meet the qualifications in Schedule 10. It must be a licensed Professional Trustee Company that has a current license for custodial or depositary services and has a minimum amount of relevant experience.²⁸

Transition to a Dedicated Trustee

7. Nine years after the commencement of the Trust, the NCC may request the Trustee (who will be a Professional Trustee Company) to assist with the establishment or selection of a Nominee Entity to be appointed as the Dedicated Trustee.
8. The Nominee Entity may only be appointed as the Dedicated Trustee a minimum of 2 years after being nominated by the NCC.²⁹ This is to provide the Nominee Entity with sufficient time to be ready to fulfil the role.
9. Where a written request is received by the Trustee, the Trustee must (in consultation with the NCC) assist the Noongar Community to prepare and train the Nominee Entity for appointment as the Dedicated Trustee, which may involve helping with a range of implementation and transition steps including:³⁰
 - (a) preparing an implementation plan for the nominee entity;
 - (b) working with the Noongar Community to identify and train prospective directors and employees for the nominee entity;
 - (c) considering funding the Nominee Entity during the transition process;
 - (d) holding meetings with the Nominee Entity to brief it on NBT operations; and
 - (e) seeking State consent to appoint the Nominee Entity as Dedicated Trustee.
10. The Trustee must notify the Appointors when it considers the Nominee Entity meets the eligibility requirements, at which point the Appointors must assess this, and provide written reasons if the Appointor does not consider that the Nominee Entity qualifies.³¹

²⁸ Trust Deed Schedule 10, item S10.2

²⁹ Trust Deed clause 13.2.3(c).

³⁰ Trust Deed clause 13.2.4

³¹ Trust Deed clause 13.4(c) and NGS Manual Part 6

Part 6 - Appointment and Removal of Trustee

Purpose

The Appointors of the NBT have the important power to appoint and remove the Trustee.

Appointors

1. The Appointors have the critical role of appointing and removing the Trustee. The Appointors are the Noongar Appointor and the Attorney General of the State, acting jointly.³²
2. The NCC is to appoint an individual to be the Noongar Appointor, but if it fails to do so within 3 months of that office becoming vacant, the NAC may do so.

Appointment and Removal

3. The Appointors have the power at any time in writing to remove the Trustee, appoint an additional Trustee or appoint a new Trustee in place of a removed Trustee.³³
4. The Appointors must consult with the NAC and the Trustee before exercising their power. Before removing a Trustee, they must consider whether the Trustee has breached or failed to act satisfactorily in accordance with the Trust Deed.
5. The Appointors can request the current Trustee to undertake a selection process for a new Trustee, in consultation with the NAC. The Trustee also needs to do this where it wishes to resign. If there is no Trustee, the Appointors undertake this process.
6. If any of the NCC, NAC or the State suspect that the Trustee has ceased to meet any of the eligibility requirements in the Trust Deed, they may inform the Appointors.³⁴ The Appointors must engage an independent expert to investigate whether this is in fact the case.
7. If the Trustee has ceased to meet one or more requirements, the Appointors will give the Trustee a reasonable time to remedy, failing which the Appointors will meet to consider removing the Trustee. The Trustee must provide full cooperation throughout this process.
8. Incoming and outgoing Trustees must execute a Deed of Appointment (excluding the first Trustee). There is a template form of Deed of Appointment in the Trust Deed.³⁵

³² Trust Deed clause 13.3

³³ Trust Deed clause 13.4

³⁴ Trust Deed clause 13.5

³⁵ Trust Deed Schedule 8

Part 7 - Trustee's Costs and Remuneration

Purpose

The Trustee is entitled to charge and be paid out of the Trust Fund its remuneration, costs and expenses.

1. All matters relating to the Trustee's costs and remuneration are addressed in the Trust Deed.³⁶ In particular, the first Trustee's remuneration will be included as a Schedule to the Trust Deed.³⁷
2. The Schedule to the Trust Deed will also be developed to record the Trustee's service standards, processes and service offerings as committed by the Trustee in its tender response.

Costs / Remuneration and Tender Process

3. It is extremely important that the Trustee confirms, as part of its response to tender, which activities, tasks and services it will provide or deliver within its remuneration fee, as compared to those items for which the Trustee will seek reimbursement as a cost or expense from the Trust Fund separate from the remuneration. This will be an influential factor in the Selection Panel's tender assessment.
4. The precise terms of the Trustee's remuneration will need to be settled and documented prior to the Trustee's appointment. In the case of the first Trustee, this will occur via the tender process and will be set out in Schedule 9 of the Trust Deed. For subsequent Trustees, this will occur via a schedule to the Deed of Appointment.

Trustee Remuneration

5. The Trustee is entitled to charge fair and reasonable remuneration. This can be paid from income or capital of the Trust.³⁸
6. The Trustee's remuneration must not exceed the remuneration of trustee companies provided for in Part 5D.3 of the Corporations Act. **The relevant rate of remuneration in this circumstance is an annual management fee not exceeding 1.056% of the gross value of the Trust's assets.**³⁹
7. It is expected that the remuneration terms will include:
 - (a) a definition of 'gross value'; and
 - (b) exclusions of certain assets from the pool of Trust assets for the purpose of calculating remuneration.
8. The Corporations Act alternatively permits the Trustee to charge a maximum one-off capital commission (5.5%) or an annual income commission (6.6%).

³⁶ Trust Deed clause 23

³⁷ Trust Deed Schedule 9

³⁸ Trust Deed clause 23.1

³⁹ Corporations Act section 601TDD(1)

9. Section 601TBB permits a trustee company to agree with the recipient of the service to an alternative fee arrangement (i.e. over and above the rate specified in the Corporations Act).
10. The Trustee must carefully consider and confirm what activities, services and tasks will be provided within the remuneration fee (i.e. accounting, auditing, meeting costs, secretariat costs, investment management and investment policy preparation).
11. As part of the tender process, the stakeholders will propose a model for calculation of the Trustee's annual remuneration fee. In its tender response, the Trustee will need to explain, in relation to the proposed financial model, how it will charge, and what its rates will be. This will be a relevant factor that will likely set apart the professional trustee tender responses from one another.
12. The Selection Panel will be looking to identify genuine value in respect of the Trustee's remuneration and calculation of costs.

Trust Costs and Expenses

13. In addition to its remuneration, the Trustee is permitted to reimburse itself from the Trust Fund for costs and expenses reasonably incurred in undertaking its role.⁴⁰
14. The Trustee must prepare an annual budget of Trust expenses, broken down with a quarterly budget, and must consult with the NAC and NRC regarding the budget. The Trustee's own remuneration must be an item in the budget.
15. The Trustee must endeavour to keep administration costs to a minimum. The Trustee must carefully monitor the Trust expenditure each quarter to remain within the budget.
16. If the Trustee's expenditure exceeds the budget in a quarter, then the Trustee must take remedial steps, including a review of the Trust's activities and costs, and prepare a report to the NAC and the NRC setting out its proposals for reducing expenditure.

⁴⁰ Trust Deed clause 23.2

Part 8 - Preliminary Trustee Services

Purpose

As soon as the Trustee is selected and before the NBT Deed is signed, it will be required to deliver certain services in order for key aspects of the Trust to be up and running as soon as the Trust Deed is executed.

1. The Trustee will be formally appointed as trustee upon execution of the Trust Deed. The State will determine any appropriate services to be delivered by the Trustee prior to this, during the Trustee's preliminary engagement. The Trustee Selection Taskforce will engage with the selected Trustee to implement this arrangement.
2. The fees and costs associated with these preliminary services will be a matter for negotiation between the Trustee and the State, including the Trustee's "establishment costs". They will not be sourced from the Trust Fund. The agreement reached between the State and the Trustee will be formalised by way of a separate contract, independent on the Trust Deed.
3. The preliminary services of the Trustee may include the preparatory work that is necessary for the following:
 - (a) appointment process for RCs, including engaging with nominee entities regarding their progress;⁴¹
 - (b) appointment process for CSC, including engaging with the nominee entity regarding its progress;⁴²
 - (c) establishing the Trust Sub Funds;⁴³
 - (d) establishing the Land Sub;⁴⁴
 - (e) establishing the NAC;⁴⁵
 - (f) establishing the various Trust committees;⁴⁶
 - (g) developing the first Strategic Plan for the Trust during the first year;⁴⁷
 - (h) developing the Budget for the first year;
 - (i) developing Funding Guidelines for the ENEs for the first year;
 - (j) developing and entering into a Funding Agreement with the ENEs;

⁴¹ Trust Deed clause 4 and ILUA Annexure Y

⁴² Trust Deed clause 5 and ILUA Annexure Y

⁴³ Trust Deed clause 6

⁴⁴ Trust Deed clause 22

⁴⁵ Trust Deed clause 14

⁴⁶ Trust Deed clauses 15, 16 and 20

⁴⁷ Trust Deed clause 21

- (k) determining the process for developing the Land Register, and considering what assistance the Trustee may require from the CSC and third parties regarding land and housing matters; and
- (l) developing an interim Code of Conduct and Procedures Manual for the Trustee, NAC and each committee established by the Trustee to adopt in the first year.

Good Preparation and Shared Costs

- 4. The Trustee's preparation prior to formal appointment as Trustee and engagement with the Noongar Community and other stakeholders is expected to be intensive and substantial. The ability to "hit the ground running" and achieve early success is reliant on these preparations.
- 5. The preliminary services described at paragraph 3 above is not a complete list of the preparation required. The funding available for the preliminary services is limited. Further additional preparation work of the Trustee is to be borne by the Trustee.

Part 9 - Ongoing Trustee Services

Purpose

The Trustee has an extensive list of services that it must provide on an ongoing basis in support of the Trust purpose.

1. The Trustee has a significant role to play in the success of the South West Settlement and must ensure that it recognises this role. The Trustee will be just one entity within the broader NGS, and will need to work collaboratively and cooperatively with many other entities, committees and stakeholders.
2. The Trustee's ongoing services, in support of the Trust purpose include to:⁴⁸
 - (a) support each RC to represent the interests of and deliver services to the Noongar Community living in the Region;
 - (b) support the CSC to represent the interests of all the Noongar Community and all the Noongar Boodja Traditional Lands, deliver services to the Noongar Community and RCs and undertake other core services;
 - (c) support the CSC to establish and maintain the NCC, which is the primary source for consultation amongst the ENEs;
 - (d) hold and manage the cultural land, in consultation with the relevant RCs in a manner that has regard to the spiritual and cultural connection of the relevant Agreement Group or Groups;
 - (e) hold, manage, invest and develop the Development Land, in consultation with the IC in a manner that aims to generate positive returns for the Trust Fund;
 - (f) hold, manage, invest and develop the Housing Land (**Housing Land**), in consultation with the IC and the NAC in a manner that aims to achieve improved housing outcomes for the Noongar Community;
 - (g) hold, manage and invest the Noongar Future Fund, in consultation with the IC in a manner that aims to ensure adequate income to support the operations and projects of the ENEs in the future;
 - (h) hold, manage and invest the Operations Fund, in consultation with the NAC, in a manner that ensures, in the Trustee's opinion, adequate funds for the operations of the CSC and the RCs each year, on a fair and equitable basis;
 - (i) accept monies, land or other property from a Contributor, or allocations by the Trustee from the Trust Fund, to hold, manage and invest in the Special Projects Fund to provide funding for the CSC and the RCs for Special Projects from time to time;

⁴⁸ Trust Deed clause 2.3

- (j) generally receive, hold, manage, invest and deal with monies, land or other benefits payable to the Trust for the benefit of the ENEs to assist in the promotion and advancement of the Noongar Community, and manage and maintain other Sub Funds that the Trustee may establish from time to time;
- (k) manage and maintain the NAC to provide advice and assistance to the Trustee in accordance with the Trust;
- (l) manage and maintain the Noongar Relationship Committee to facilitate and streamline a process for the Trustee and the NAC to have direct, regular and meaningful engagement with the ENEs who are the key beneficiaries of the Trust;
- (m) establish, manage and maintain the IC to provide advice and assistance to the Trustee regarding the investment of the Trust Fund in accordance with the Trust Deed;
- (n) manage and maintain the Nominations Committee to provide assistance for all ENEs that wish to use this committee to “pre-qualify” candidates for positions on the CSC board, the RC boards and for positions on the NAC, the IC or any other subcommittee of the Trust;
- (o) establish internal controls of expenditure, including by compiling annual budgets;
- (p) maintain and act in accordance with a Reconciliation Action Plan;⁴⁹ and
- (q) provide support to the CSC and RCs to develop the capacity of Noongar Persons and Noongar Community organisations.⁵⁰

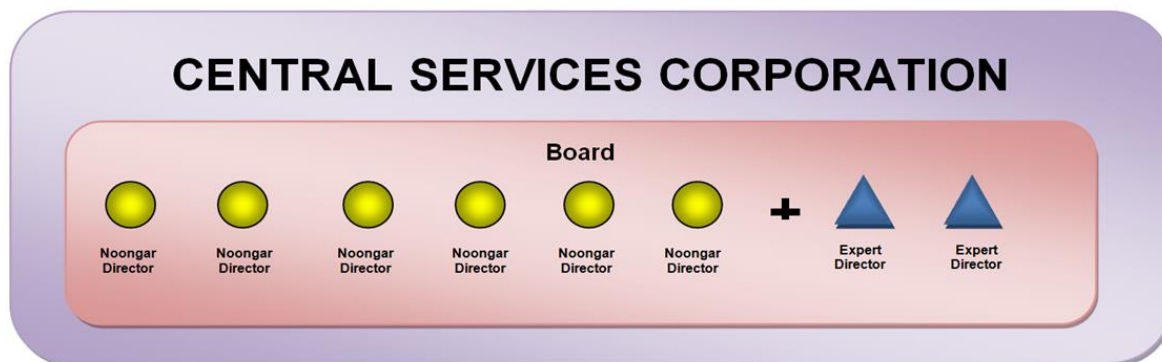
⁴⁹ Trust Deed clause 13.2.2(b)

⁵⁰ Trust Deed clause 3.5

Part 10 - Central Services Corporation (CSC)

Purpose

The CSC represents the interests of all the Noongar Community and delivers services to the Noongar Community and RCs.



1. The NGS includes one CSC, which will provide support to the RCs including financial, administrative and legal services. This will be of particular importance during the first few years of the NGS whilst the RCs are building their own capacity.
2. SWALSC may transition to become the CSC, but this needs endorsement of the majority of the Agreement Groups.
3. The CSC must meet the CSC Principles, which are set out in the ILUA.⁵¹ These are key principles for the structure, rulebook and operations of the CSC.
4. The CSC must be established by following the Transition Principles⁵². This will ensure the active participation of the Noongar People in the critical establishment process.

Objects and Purpose

5. The proposed objects and purpose of the CSC have been developed in a draft rulebook for the CSC as follows:⁵³
 - (a) maintain, protect, promote and support the culture, customs, languages and traditions of the Noongar People;
 - (b) provide cultural, social, economic and environmental benefits to or for the Noongar People;

⁵¹ ILUAs Schedule 10, Annexure E, Part A

⁵² NGS Manual Part 3

⁵³ CSC Rulebook paragraph 3

- (c) plan, manage and use the land and waters to which the Noongar People have Traditional Connection,⁵⁴ including by:
 - (i) consulting with, undertaking research and advising the Noongar People about matters affecting such land and waters;
 - (ii) providing representation and resources to ensure that the Noongar People are consulted about and involved in matters affecting such land and waters; and
 - (iii) assisting the Noongar People to exercise their rights, functions and responsibilities under agreements made in relation to such land and waters;
- (d) support, assist and provide services to the RCs; and
- (e) centralise administrative systems, professional experience and expertise amongst the ENEs.

Appointment and Removal

6. There must be only one CSC at any time.⁵⁵ Once an appropriate entity has been established, the nominated entity must deliver a written notice to the Trustee requesting appointment as the CSC.⁵⁶ The Trustee must appoint the entity as CSC if it is satisfied it meets the eligibility criteria discussed below.
7. The Trust Deed provides a back-up, interim process if there is unlikely to be an eligible entity capable of being appointed as CSC within the first six months.⁵⁷
8. If the CSC ceases to meet one of the eligibility requirements, the Trustee must issue a default notice to the CSC. It must provide assistance to the CSC to remedy the issue and if this is not possible, it must terminate the CSC's appointment.⁵⁸
9. If the CSC's appointment has been terminated, the Trustee must (amongst other things) suspend all distributions to the CSC and must seek to recover any unused Special Projects Funding.⁵⁹
10. Where the CSC has ceased to exist, there is a process in the Trust Deed for the Trustee to (amongst other things) assist the Agreement Groups to establish a new CSC, and for the Trustee to provide any necessary services of the CSC.⁶⁰

⁵⁴ See CSC Rulebook paragraph 25.1

⁵⁵ Trust Deed clause 5.1(c)

⁵⁶ Trust Deed clause 5.1(a)

⁵⁷ Trust Deed clause 5.1(b)

⁵⁸ Trust Deed clause 5.2(a)

⁵⁹ Trust Deed clause 5.3

⁶⁰ Trust Deed clause 5.2(b)

Eligibility

11. An entity must meet certain criteria in the Trust Deed to be eligible to be (and continue being) the CSC:⁶¹
 - ✓ an Aboriginal Corporation incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006
 - ✓ solvent
 - ✓ satisfies the CSC Principles and Transition Principles
 - ✓ endorsed by a majority of the Agreement Groups
 - ✓ endorsed by the State
 - ✓ endorsed as an income tax exempt charity by the Commissioner of Taxation
12. The CSC Principles establish certain minimum guidelines for the structure and operation of the CSC.⁶² The CSC's rulebook must be consistent with the CSC Principles. A proposed CSC rulebook has been developed.
13. The CSC Principles address matters such as the CSC's objects, not-for-profit status, prohibited activities, membership, board of directors, relationship with the Trust, relationship with the RCs and consultation on cultural matters.
14. Membership of the CSC must be open to all adult members of the Noongar Community.⁶³
15. The CSC will have between 6 and 8 directors which includes up to 6 directors who are Noongar People elected by the Agreement Group members (**Member Directors**), and up to 2 expert directors appointed by the Member Directors. A Member Director cannot also be a director of an RC. The Nominations Committee will be responsible for determining eligibility of directors.⁶⁴

Assessment and Reporting

16. The Trustee is able to request a special report from the CSC each financial year regarding the CSC's activities, services provided, expenditure and budget. The Trustee can rely on the report of the CSC's auditor if it wishes to.⁶⁵
17. Each financial year the Trustee must assess the CSC's delivery of all CSC services. The Trust Deed includes a process for this assessment, which involves consultation and feedback with the RCs, the CSC, the NAC and the NRC Committee.⁶⁶

⁶¹ Trust Deed clause 5.4

⁶² ILUAs Schedule 10, Annexure E, Part A

⁶³ ILUAs Schedule 10, Annexure E, Part A, item 6

⁶⁴ ILUAs Schedule 10, Annexure E, Part A, item 7

⁶⁵ Trust Deed clause 5.6

⁶⁶ Trust Deed Schedule 2, item S2.6

18. The Trustee must raise concerns or queries with the CSC and provide the CSC a reasonable opportunity to respond.⁶⁷

⁶⁷ Trust Deed Schedule 2, item S2.6(d)

Part 11 - CSC Services

Purpose

The CSC's services to the Noongar Community and the RCs include core services, services to the RCs, and optional services. The Trust provides funding to deliver these services.

1. The CSC is responsible for delivering the **CSC Core Services**, the **CSC Regional Services** and, at the request of the RCs, the **CSC Optional Services**:
 - (a) **CSC Core Services** - the CSC is always required to deliver the CSC Core Services, at no cost to the RCs.⁶⁸
 - (b) **CSC Regional Services** – the CSC is required to deliver the CSC Regional Services during the Start-Up Period, at no cost to the RCs. After the Start-Up Period, the CSC may be requested by the RCs to continue delivering the CSC Regional Services.⁶⁹
 - (c) **CSC Optional Services** – the CSC may be requested by the RCs to deliver additional services, at a cost recovery basis.⁷⁰
2. The CSC and RCs must enter into a service agreement that sets out the nature, timing, conditions and any other relevant aspects of the service delivery.⁷¹
3. The Trust Deed includes some service delivery principles to guide the CSC.⁷²
4. Each year, the Trustee must assess the CSC's delivery of its CSC Services and may modify its services for the forthcoming year. This may involve changing the nature and scope of the services, or providing alternative funding for services.⁷³

Operations Funding for the CSC Services

5. **CSC Core Services** – If the Trustee is satisfied that the CSC is in a position to deliver the CSC Core Services, it must distribute sufficient Operations Funding each year to the CSC in order to allow it to deliver these services at no cost.⁷⁴
6. **CSC Regional Services** – During the Start-Up Period (discussed below), if the Trustee is satisfied that the CSC is in a position to deliver the CSC Regional Services, it must distribute sufficient Operations Funding to the CSC in order to allow it to deliver these services.⁷⁵ Whether the CSC is funded by the Trustee to deliver the CSC Regional Services after the Start-Up period, is a matter for agreement between the Trustee, the CSC and the RCs.

⁶⁸ Trust Deed Schedule 2, item S2.3

⁶⁹ Trust Deed Schedule 2, item S2.4

⁷⁰ Trust Deed Schedule 2, item S2.5

⁷¹ Trust Deed Schedule 2, item S2.8

⁷² Trust Deed Schedule 2, item S2.2

⁷³ Trust Deed Schedule 2, items S2.6 and S2.7

⁷⁴ Trust Deed clause 5.5(b)

⁷⁵ Trust Deed clause 5.5(b) and Schedule 2, item S2.4

7. **CSC Optional Services** – The Trustee must not distribute any funding to the CSC for CSC Optional Services (these services must be paid for by the RCs on demand on a cost recovery basis).⁷⁶ The RCs can apply to the Trustee for funding to pay for CSC Optional Services.

Start-Up Period

8. The Start-Up Period commences on the date the Trust Deed is signed and ends 5 years after the establishment of the Trust.⁷⁷
9. During the Start-Up Period, the CSC must deliver all CSC Regional Services to the RCs, in addition to the CSC Core Services.⁷⁸ The RCs are not obligated to accept the CSC Regional Services from the CSC, but the RCs will not receive additional funding from the Trust to alternatively source these services elsewhere.
10. The CSC Regional Services are to be delivered by the CSC as a central entity as between all the RCs during the Start-Up Period. They will be delivered via the ENE Common Platform. The intention of the CSC Regional Services during the Start-Up Period is to:
- (a) ensure consistency between the RCs;
 - (b) create cost effective outcomes;
 - (c) facilitate the RCs becoming operational as soon as possible; and
 - (d) assist the RCs to build their own capacity.

CSC CORE SERVICES	
ILUAs: Support and assist the RCs to comply with the ILUAs, including support for compliance with, and implementation of, the Cultural Advice Policy.	NCC: Establish and maintain the NCC, including providing secretariat support.
Communication: Communicate information regarding the Noongar Settlement, ILUAs and the Trust to the ENEs and the Noongar Community in a culturally appropriate manner, and through a range of mediums.	Advocacy: Be an advocate for the Noongar Community with key stakeholders.
Engagement: Develop and implement engagement strategies for the ENEs to liaise and work with all levels of government (Local, State and Federal) on matters regarding the Noongar Community, Noongar Settlement, ILUAs or the Trust.	Cultural Development: Conduct research into Noongar Traditional Laws and Customs, history, culture, language, genealogy and further developing cultural resources to service the needs of the RCs.

⁷⁶ Trust Deed clause 5.5(c) and Schedule 2, item S2.5

⁷⁷ Trust Deed Schedule 2, item S2.1(b)

⁷⁸ NGS Manual Part 12 item 1

CSC CORE SERVICES

Programs: Develop and manage cultural and community programs, providing delivery support and evaluation services and developing partnerships with service delivery providers.	Economic Development: Provide support to the RCs in identifying economic development opportunities, by way of advice and linkage with public and private service providers.
Land Register: Maintain the Land Register on behalf of the Trustee (if engaged to do so) and make it accessible at all times to the Trustee and the RCs.	Housing Land: Manage activities associated with the Housing Land Fund (if engaged to do so) on such terms and conditions as the Trustee may agree with the CSC.

CSC REGIONAL SERVICES

ENE Common Platform: Develop and maintain the ENE Common Platform for adoption by the RCs on an opt-in basis.	Secretariat: Provide company secretarial support to the RCs.
Compliance Advice: Provide legal advice to the RCs regarding compliance with the ILUAs, Trust Deed or the CATSI Act.	External Funding: Assist the RCs to identify and source external funding.
Budgets and Funding: Assist to prepare budgets and applications for Operations Funding.	Reports: Assist to prepare reports pursuant to the CATSI Act and the Trust Deed.
Cultural Land: Provide legal and strategic advice regarding the grant of an interest in Cultural Land.	Development Land: Provide legal and strategic advice regarding conversion of Cultural Land into Development Land within the Region.

CSC OPTIONAL SERVICES - EXAMPLES

An RC has land assets outside the Trust and wishes to bring them into the Trust. The RC requires the CSC's assistance to undertake this. The RC will prepare a budget and scope of work for the project.	An RC has been receiving services from SWALSC prior to the ILUA and this service arrangement is continued by the CSC.
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Part 12 - Building ENE Capacity

Purpose

The Trustee is to support the CSC and RCs to develop effective strategies that allow for and encourage capacity building, including promoting training and development within the Noongar Community, and good governance and administration of Noongar Community organisations.

Capacity Development

1. The long term aim is for the RCs to have the capacity to either provide or source the CSC Regional Services for themselves.⁷⁹ The CSC must work with the RCs to enhance their capacity in this area.⁸⁰
2. The Trustee's role is to support the CSC and RCs to develop effective strategies that allow for and encourage capacity building, including promoting training and development within the Noongar Community, and good governance and administration of Noongar Community organisations.⁸¹
3. The specific mechanisms or policies that the Trustee adopts in relation to ENE capacity are a matter for the Trustee to develop and determine in its discretion.
4. In addition, one of the key focuses of the South West Settlement is building capacity within the Noongar community, particularly around government tendering and contracting policies, and tender submissions.⁸²

ENE Common Platform

5. The ENE Common Platform is one of the key Regional Services which the Trustee will fund the CSC to deliver during the Start-Up Period (the first 5 years).⁸³ During this period, the ENE Common Platform must be available to the RCs on an opt-in basis at no cost.⁸⁴
6. The ENE Common Platform is a set of centralised administrative services and functions, delivered by the CSC, which each of the RCs can utilise to increase efficiency, to reduce costs and develop capacity.

⁷⁹ Trust Deed Schedule 3, item S3.1(b) and ILUAs Schedule 10, Annexure T

⁸⁰ Trust Deed Schedule 2, item S2.2(b) and ILUAs Schedule 10, Annexure S

⁸¹ Trust Deed clause 3.5(b)

⁸² DPC Fact Sheet "Economic Community Development", 7 July 2015

⁸³ Trust Deed Schedule 2, items S2.4(a) and S2.4(c)

⁸⁴ Trust Deed Schedule 2, item S2.4(b)

ENE Common Platform Components ⁸⁵	
Policies and procedures for general office administration.	Job description forms and enterprise bargaining agreements.
Accounting systems, including accounts processing, payroll processing and financial reporting.	IT systems, including file management and communications.
Membership database systems.	Policies and procedures for conducting elections for director positions.
<p>Arrangements with third party service providers to provide the following at a group rate as amongst the ENEs:</p> <ul style="list-style-type: none"> Financial, auditing and tax services. IT and communications services and equipment. Vehicle leasing contracts. Insurance policies, including through one or more group insurance policies amongst the ENEs. Office equipment. 	

7. During the Start-Up Period, the CSC must deliver the CSC Regional Services consistently as amongst the RCs to ensure the RCs receive a cost effective and consistent level of service.⁸⁶
8. The RCs are not obligated to use the ENE Common Platform, however during the Start-Up Period the Trustee cannot fund an RC to obtain these services from a third party.⁸⁷
9. After the Start-Up Period, the Trustee will fund the RCs to source these services for themselves (which they may continue to source from the CSC if they choose).
10. It is important that the interim ENE Common Platform is developed during the Transition Period (as part of the Trustee's preliminary services), so that the Trustee is ready and able to fund the supply of services to the ENEs during the first year.

⁸⁵ Trust Deed Schedule 2, item S2.1(a)

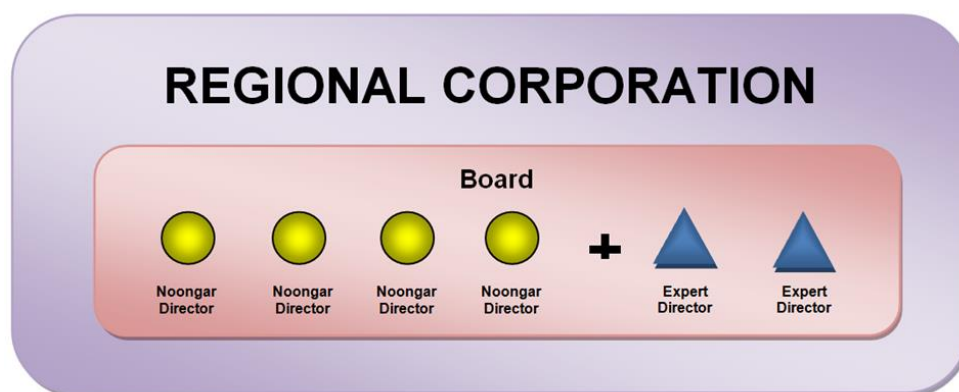
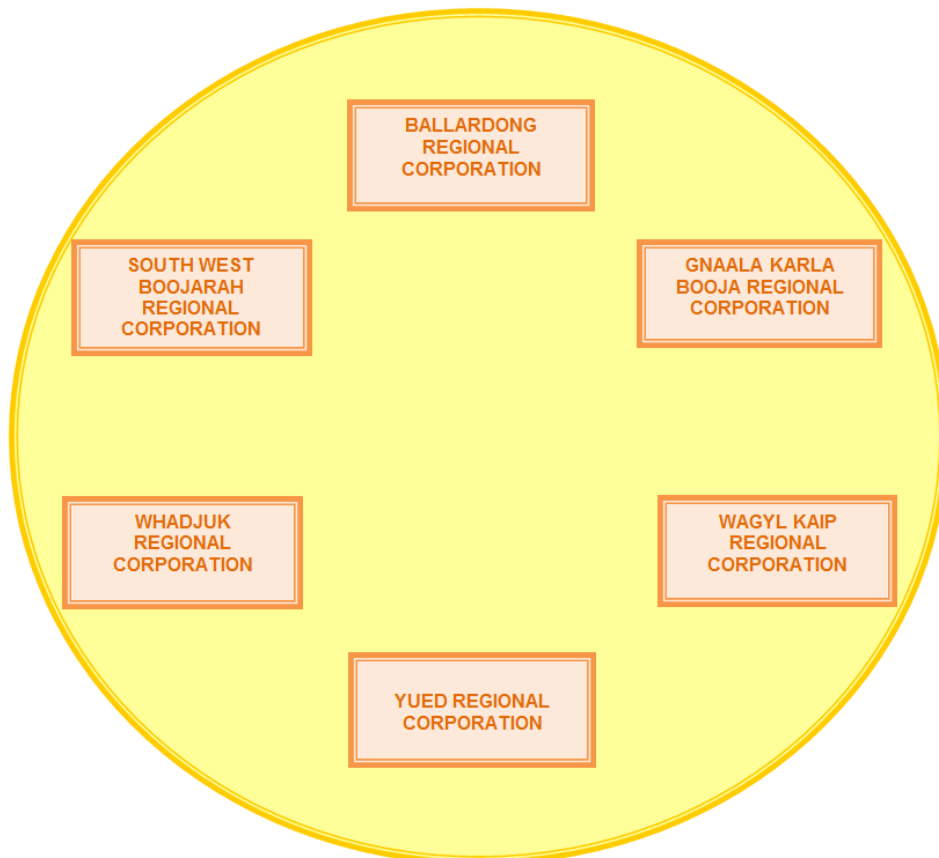
⁸⁶ Trust Deed Schedule 2, item S2.2(b)

⁸⁷ Trust Deed Schedule 2, item S2.4(d)

Part 13 - Regional Corporations (RCs)

Purpose

The RCs represent the interests of and deliver services to the Noongar Community of that Region.



1. The NGS includes one RC for each Region, to be appointed by the relevant Agreement Group.
2. The RCs must meet the RC Principles which are set out in the ILUA.⁸⁸ These are the key principles for the structure, rulebook and operations of the RCs.
3. The RCs must be established by following the Transition Principles.⁸⁹ This will ensure the active participation of the Agreement Group members in the critical establishment process. It is intended that this process will take place during the Transition Period.
4. The NGS Documents include clear rules regarding the eligibility criteria, selection process and appointment process for the RCs. The Trustee will need to closely consider the Transition Principles to determine if an RC is eligible for appointment. The “Framework of Assessment of Transition Principles” has been developed to assist in this process.
5. The Trust will continue to function, even if one or more RCs have not been established or have ceased to function.

Objects and Purpose

6. The proposed objects and purpose of the RCs have been developed in a draft template rulebook for the RCs as follows:⁹⁰
 - (a) principally for the purpose of supporting the interests of an Agreement Group under the Noongar Settlement;
 - (b) directly assist the Agreement Group to:
 - (i) maintain, protect, promote and support their culture, customs, language and traditions; and
 - (ii) manage and use the land and waters within the Region to which they have a Traditional Connection;⁹¹
 - (c) directly assist and support the Agreement Group to manage their native title benefits arising under the Regional ILUA including to:
 - (i) exercise the rights and comply with the obligations of an RC under the Regional ILUA and the Trust Deed if the corporation is appointed by the Trustee to be the RC for the Region; and
 - (ii) if the Agreement Group assign their contractual rights and obligations under the Regional ILUA to the corporation, to exercise their rights and comply with their obligations under the Regional ILUA; and
 - (d) only act in a manner that is for charitable purposes.

⁸⁸ ILUAs Schedule 10, Annexure E, Part B (note that the Gnaala Karla Booja ILUA and the South West Boojarah #2 ILUA contain slight modifications in relation to cultural decisions)

⁸⁹ NGS Manual Part 3

⁹⁰ RC Rulebook paragraphs 1.2(c) and 3

⁹¹ See RC Rulebook paragraph 25.1

Appointment and Removal

7. There must be only one RC for each Region at any time.⁹² Once an appropriate entity has been established, the nominated entity must deliver a written notice to the Trustee requesting appointment as the RC.⁹³ The Trustee must appoint the entity as RC if it is satisfied it meets the eligibility criteria discussed below.
8. The Trust Deed provides a back-up, interim process if there is unlikely to be an eligible entity capable of being appointed as RC within the first six months.⁹⁴
9. If the RC ceases to meet one of the eligibility requirements, the Trustee must issue a default notice to the RC. It must provide assistance to the RC to remedy the issue and if this is not possible, it must terminate the RC's appointment.⁹⁵
10. If the RC's appointment has been terminated, the Trustee must (amongst other things) suspend all distributions to the RC and must seek to ensure that the RC's interests in Cultural Land revert back to the Trustee, and seek to recover any unused Special Projects Funding.⁹⁶
11. Where the RC has ceased to exist, there is a process in the Trust Deed for the Trustee to (amongst other things) assist the Agreement Group to establish a new RC, and for the Trustee to provide any necessary services of the RC.⁹⁷

Eligibility

12. An entity must meet certain criteria in the Trust Deed to be eligible to be (and continue being) the RC for a Region:⁹⁸
 - ✓ an Aboriginal Corporation incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006
 - ✓ solvent
 - ✓ satisfies the RC Principles and Transition Principles
 - ✓ endorsed by the relevant Agreement Group
 - ✓ endorsed by the State
 - ✓ endorsed as an income tax exempt charity by the Commissioner of Taxation
13. The RC Principles establish certain minimum guidelines for the structure and operation of the CSC.⁹⁹ An RC's rulebook must be consistent with the RC Principles. A template RC rulebook has been developed.

⁹² Trust Deed clause 4.1(c)

⁹³ Trust Deed clause 4.1(a)

⁹⁴ Trust Deed clause 4.1(b)

⁹⁵ Trust Deed clause 4.2(a)

⁹⁶ Trust Deed clause 4.4

⁹⁷ Trust Deed clause 4.2(b)

⁹⁸ Trust Deed clause 4.5

14. The RC Principles address matters such as the RC's objects, not-for-profit status, prohibited activities, membership, board of directors, relationship with the Trust, relationship with the ENEs, cultural land access and cultural decisions.
15. Membership of the RC will be open to all adult members of the Agreement Group.¹⁰⁰ Members are permitted to be members of other ENEs.¹⁰¹
16. The RC will have between 4 and 6 directors which includes up to 4 directors who are RC members elected by the members, and up to 2 expert directors appointed by the board. A member director cannot also be a director of another RC or the CSC. The Nominations Committee will be responsible for determining eligibility of directors.¹⁰²

Assessment and Reporting

17. The Trustee is able to request a special report from the RC each financial year regarding the RC's activities, services provided, special projects, expenditure and budget. The Trustee can rely on the report of the RC's auditor if it wishes to.¹⁰³
18. Each financial year the Trustee must assess the RC's delivery of all RC functions. The Trust Deed includes a process for this assessment, which involves consultation and feedback with the RC, the CSC and the NAC.¹⁰⁴
19. The Trustee must raise concerns or queries with the RC and provide the RC a reasonable opportunity to respond.¹⁰⁵

⁹⁹ ILUAs Schedule 10, Annexure E, Part B

¹⁰⁰ ILUAs Schedule 10, Annexure E, Part B, item 6

¹⁰¹ ILUAs Schedule 10, Annexure E, Part B, item 6

¹⁰² ILUAs Schedule 10, Annexure E, Part B, item 7

¹⁰³ Trust Deed clause 4.7

¹⁰⁴ Trust Deed Schedule 3, item S3.3

¹⁰⁵ Trust Deed Schedule 3, item S3.3(d)

Part 14 - RC Core Functions

Purpose

The RCs must undertake the RC Core Functions to or for the benefit of the relevant Agreement Group of that Region.

1. The RCs are responsible for delivering the **RC Core Functions**. The Trustee must only distribute Operations Funding to the RC each year if the Trustee is satisfied that the RC is in a position to deliver these functions.¹⁰⁶ The initial Core Functions are summarised below.
2. The Trust Deed includes some service delivery principles to guide the RC.¹⁰⁷
3. The Trustee must distribute enough funding to an RC each year to enable the RC to deliver the Core Functions.¹⁰⁸ The RCs will otherwise be provided with services (Regional Services) at no cost by the CSC during the Start-Up Period. After the Start-Up Period an RC could apply to the Trustee for funding to secure Regional Services from a third party.¹⁰⁹
4. There is the opportunity for the Trustee to modify the RC Core Functions following the assessment process discussed above. This may involve changing the nature and scope of the services, or providing alternative or additional funding for functions, to develop the RC's organisational capacity, experience and expertise.¹¹⁰

RC CORE FUNCTIONS	
ILUA: Implement the ILUA for the Region.	Advocacy: Be an advocate for the Agreement Group with key stakeholders.
Communication: Communicate information regarding the Noongar Settlement, ILUAs and the Trust to the RC and Agreement Group members in a culturally appropriate manner, and through a range of mediums.	Programs: Develop cultural and community programs within the Region.
Governance Compliance: Comply with all governance requirements in accordance with the RC's constitution and the CATSI Act.	Land Management: Manage lands and develop land management programs for the NLE within the Region.
NCC: Participate in the NCC.	Conservation Land: Engage in co-operative and joint management of the conservation estate, and other lands where appropriate.

¹⁰⁶ Trust Deed clause 4.6(a)

¹⁰⁷ Trust Deed Schedule 3, item S3.1

¹⁰⁸ Trust Deed clause 4.6(b)

¹⁰⁹ Trust Deed Schedule 2, item S2.4(d)

¹¹⁰ Trust Deed Schedule 3, item S3.4

RC CORE FUNCTIONS	
<p>Cultural Decision Making: Facilitate cultural decision making processes to ensure that, as best as possible, the right people speak for country in accordance with Traditional Laws and Customs.</p>	<p>Heritage: Develop heritage programs and ensure proper implementation of the heritage provisions of the ILUA.</p>
<p>Economic Development Opportunities: Provide support to the Agreement Group in identifying economic participation opportunities.</p>	<p>Property Development Opportunities: Work with the Trustee and the CSC to identify and progress property development opportunities across the NLE within the Region.</p>

Part 15 - Budget and Distribution Process

Purpose

The purpose of the budgeting processes in the Trust Deed are to ensure that long term capacity and sustainability of the Trust Fund is considered, with a view to supporting the ENEs.

Annual Budget

1. The Trustee must prepare a budget each financial year of how much will be available for Operations Funding, Special Projects Funding and Trustee expenses.¹¹¹
2. The Trustee must then determine how much of the Operations Funding will be available for distribution to the ENEs, and allocate it to their respective ENE Operations Account.¹¹² These steps must be done in consultation with the IC and the NAC.
3. When the Trustee determines the annual budget, and the amount allocated to each entity, it must consider certain **budget principles**:¹¹³
 - (a) ensure that distributions do not exceed levels which would reduce the long term capacity of the Trust Fund to support the expected Operations Funding needs of the ENEs;
 - (b) the area and population of the Noongar Community of each Region;
 - (c) the reasonable costs of supporting the core functions of the ENEs;
 - (d) determine a fair, just and equitable (which does not necessarily mean equal) allocation of the Operations Funding that is available for distribution between the ENEs having regard to the:
 - (i) number of members in each Agreement Group;
 - (ii) scope and nature of Cultural Land in which the ENE has an interest, and the cost of administering and managing that Cultural Land;
 - (iii) needs and aspirations of the Region and the ENEs, having regard to the entity's most recent annual plan and strategic plan;
 - (iv) capacity of the ENE to undertake the activities proposed in its most recent annual plan and strategic plan;
 - (v) current status of the ENE having regard to the entity's most recent audited annual report and any Special Purpose Report; and

¹¹¹ Trust Deed clause 18.1; NGS Manual Part 26, Part 27 and Part 7

¹¹² Trust Deed clause 18.2(a)

¹¹³ Trust Deed clause 18.3

- (vi) that a minimum of 70 percent of the State Contribution to the Operations Fund available for distribution in any financial year must be available for allocation to the RCs.

Distributions

4. The ENEs will be the only recipients of distributions. The Trustee has the discretion to accumulate and retain income and capital of the Trust in any financial year. The Trustee will not breach the terms of the Trust Deed because some ENEs receive different kinds or amounts of distributions to other ENEs in any year.¹¹⁴
5. Funding applications are made by the ENEs following the Funding Guidelines in Schedule 1 of the Trust Deed. An ENE can only apply for distributions of Operations Funding from their respective ENE Operations Account in the Trust Fund.¹¹⁵
6. The Trustee must consult with the NAC when considering funding applications.¹¹⁶
7. Once the Trustee has approved a distribution, it must hold the relevant funds on trust in a distribution account for that ENE (**ENE Distribution Account**) and reduce the amount in the respective ENE Operations Account. The amounts in the ENE Distribution Account will be the property of the ENE, subject to any Payment Conditions or suspension of payments (discussed below).
8. The Trustee may put conditions on the release of a distribution to an ENE, having regard to a number of factors including the size of the distribution, the proposed use, the ENE's previous use of distributions and whether the ENE owes any money to the Trustee.¹¹⁷ These are called **Payment Conditions**.
9. The Trustee may **suspend payment** of a distribution to an ENE for a fixed period in certain circumstances, such as previous breaches of a Payment Condition by the ENE, breach by the ENE of its budget or the ENE ceases to meet its eligibility requirements. The Trustee will need to liaise with the ENE regarding the details of the suspension, and the action required to remove the suspension.¹¹⁸
10. The Trustee must report on all distributions in the **Trustee's Annual Report** which must include the:¹¹⁹
 - (a) recipient of the distribution;
 - (b) amount of the distribution;
 - (c) purpose for which the distribution is being applied;
 - (d) relevant factors the Trustee has taken into consideration in assessing the application for distribution;
 - (e) reporting requirements that apply to the distribution; and

¹¹⁴ Trust Deed clause 17.1

¹¹⁵ Trust Deed clause 17.4

¹¹⁶ Trust Deed clause 17.4(a)

¹¹⁷ Trust Deed clause 17.5.

¹¹⁸ Trust Deed clause 17.7

¹¹⁹ Trust Deed clause 17.12

- (f) outcome of the distribution, if known.

The Funding Guidelines

11. The Funding Guidelines address the following:
 - (a) the timing of when ENEs apply for funding, and when the Trustee determines applications;
 - (b) what must be included in an application for Operations Funding;
 - (c) what must be included in an application for Special Projects Funding;
 - (d) the process for the Trustee to consult with the NAC in relation to distribution applications;
 - (e) general rules for the Trustee's assessment of all funding applications;
 - (f) rules for assessment of Operations Funding applications (what the Trustee must have regard to);
 - (g) rules for assessment of Special Projects Funding (what the Trustee must have regard to); and
 - (h) the rules for ENEs to report to the Trustee on the use of the distribution.
12. Applications for Operations Funding will look closely at the ENE's objects, activities, plans, budgets, expenditure and previous reporting.¹²⁰
13. Applications for Special Projects Funding will look closely at the timing of the project, the intended outcomes, the anticipated benefit and the assistance obtained from other sources.¹²¹
14. The Funding Guidelines refer to the concept of Special Project Guidelines, which are the principles or guidelines that apply just to a particular Special Project.¹²²
15. ENEs must report within 12 months of receiving a distribution, and the Trustee can ask the ENE to provide a certificate from the ENE's auditor confirming the amount of the distribution actually spent for the purposes of the distribution.¹²³
16. The Trustee will need to have close regard to the Funding Guidelines as part of the distribution process. The Trustee will be working closely with the ENEs to ensure compliance by both the ENEs and the Trustee.

Preparing and Changing the Funding Guidelines

17. The Trustee is responsible for maintaining the Funding Guidelines, with the initial guidelines in Schedule 1 of the Trust Deed.

¹²⁰ Trust Deed Schedule 1, item S1.1.2

¹²¹ Trust Deed Schedule 1, item S1.1.3

¹²² Trust Deed clause 9.1(d)(ii)

¹²³ Trust Deed Schedule 1, item S1.3

18. The Funding Guidelines must have regard to the Funding Principles in the Trust Deed, and include rules and procedures for administering funding applications.¹²⁴ The Funding Guidelines must be consistent with the Strategic Plan for the Trust.¹²⁵
19. The Trustee can change the Funding Guidelines, provided it consults with the NAC, and seeks consent of the State during the State Contribution Period.¹²⁶
20. The **Funding Principles** which must be considered when designing the Funding Guidelines are:
 - (a) the principal source of distributions is the Operations Fund;
 - (b) distributions should be made in a way that supports the ENEs to benefit a broad cross-section of the Noongar Community but without limiting the Trustee's discretion as to the manner in which it will seek to balance distributions between ENEs;
 - (c) distributions should, in the Trustee's opinion, be just, fair and equitable as between ENEs (which does not necessarily require equal distributions);
 - (d) distributions must only be applied by ENEs in furtherance of their objects;
 - (e) it is a matter for each ENE to determine how it will pursue its objects; and
 - (f) each ENE will have different goals, plans, pathways and timelines that should not be compared or measured against other ENEs.

¹²⁴ Trust Deed clause 17.9(c)

¹²⁵ Trust Deed clause 17.11(b)

¹²⁶ Trust Deed clauses 17.11(c) and 17.11(d)

Part 16 - Planning Process

Purpose

The Strategic Plan sets out the long term objectives to facilitate the advancement of the Trust and the Trust Purpose.

1. Strategic planning for the Trust will focus on how the Trustee will meet its obligations and most effectively support the ENEs. The ENEs' own strategic plans will be closely connected with Noongar vision and priorities. The strategic plans will influence the annual planning and budget process across the NGS.
2. The Trustee is required to prepare a Strategic Plan during the first year of the Trust and then every 3 years thereafter¹²⁷ for the purpose of setting the long term objectives of the Trust and providing recommendations on the Funding Guidelines, Investment Policy and the administration of the Trust.¹²⁸
3. When formulating the Strategic Plan, the Trustee must have regard to the following¹²⁹:
 - (a) the Trustee's Annual Reports from previous years (if any);
 - (b) Funding Guidelines and Investment Policy;
 - (c) actual and anticipated administration, overheads and operating expenses of the Trust;
 - (d) the Trust Fund and the financial position of the Trust; and
 - (e) findings of any Auditor's review of the Trust's performance.
4. Before the Trustee can finalise or modify the Strategic Plan, the Trustee must consult with:¹³⁰
 - (a) any Advisory Committees (if applicable);
 - (b) the ENEs;
 - (c) the IC;
 - (d) the State, during the State Contribution Period;
 - (e) the NCC; and
 - (f) the NAC.

¹²⁷ Trust Deed clause 21.2

¹²⁸ Trust Deed clause 21.1

¹²⁹ Trust Deed clause 21.2(a)

¹³⁰ Trust Deed clause 21.2(b)

5. Once the Strategic Plan is finalised, the Trustee must administer the Trust in accordance with the Strategic Plan and implement any recommendations contained in the Strategic Plan.¹³¹
6. The Trustee must make a copy of the finalised Strategic Plan available to the ENEs, the IC, the State and the NAC.

¹³¹ Trust Deed clause 21.4

Part 17 - Communication Framework

Purpose

In recognition of the importance of the Trust within the NGS and the Noongar Community, the Trust Deed includes various obligations regarding the Trustee's communications with stakeholders.

1. The Trustee must recognise the fundamental connection between the Noongar People and the Trust and acknowledge that the Trust Funds were provided to the Noongar People by the State as a settlement for certain acts that have affected the Noongar People's native title rights.¹³²
2. This recognition is central to the Trustee understanding its obligations to engage with the Noongar People regarding the Trust's activities.
3. As part of the Trust's communication framework, the Trustee is required to:
 - (a) prepare annual reports for dissemination to the Trust's auditor, the State, the ENEs and the NAC;¹³³ and
 - (b) conduct periodic reviews of the Trust in consultation with the ENEs and their members.¹³⁴

Communications with the Noongar Community¹³⁵

4. At least once in each financial year (excluding the first financial year), the Trustee is required to consult with the Noongar Community regarding the Trust's activities, through the ENEs.
5. In order to ensure that the Trustee communicates in an appropriate manner, it must seek recommendations from the NCC and, together with the ENEs, must develop mechanisms for the consultation and dissemination of information within the Noongar Community.
6. The Trust Deed lists considerations that the Trustee and the ENEs must take into account¹³⁶ including:
 - (a) effective participation by the Noongar Community in operating the ENEs;
 - (b) ENE decision making to take into account cultural sensitivities, and follow the principle that decisions about land be made by Noongar persons who have a right to speak for the land under traditional law and custom;
 - (c) ensuring transparency and accountability in decision making; and
 - (d) ensuring operations of the Trust are just, fair and equitable.

¹³² Trust Deed clause 3.1

¹³³ Trust Deed clause 25

¹³⁴ Trust Deed clause 26

¹³⁵ Trust Deed clause 3.3

¹³⁶ Trust Deed clause 3.3(a)

Communications with the ENEs¹³⁷

7. Where matters relate solely to an ENE or an Agreement Group, the Trustee must consult directly with the relevant ENE.
8. If the Trustee has made 2 attempts to seek a decision from, or consult with, the ENE and the ENE has not made a valid decision, the Trustee is entitled to act without the ENE's consent.

Agreement Group Endorsements

9. Certain provisions in the Trust Deed require formal endorsement of the Agreement Group, by way of an Agreement Group Endorsement. For example, an organisation may only be a RC where there is in place a valid Agreement Group Endorsement.¹³⁸
10. Schedule 6 of the Trust Deed provides the formal requirements that must be satisfied in order to have a valid Agreement Group Endorsement and provides a sample form.
11. If the Trustee reasonably and in good faith believes that an Agreement Group Endorsement is valid, it is entitled to rely on that Agreement Group Endorsement without having to make any of its own enquiries as to its validity.¹³⁹

¹³⁷ Trust Deed clause 3.4

¹³⁸ Trust Deed clause 4.5(ii)A

¹³⁹ Trust Deed Schedule 6(f)

Part 18 - Trust Committees and Decision Making

Purpose

The Trustee is required to facilitate the establishment of the Noongar Advisory Company, Noongar Relationship Committee, Nominations Committee and Investment Committee.

1. The Trustee, NAC and each committee established by the Trustee (including the NRC and NC) must adopt and comply with a central Code of Conduct and Policies and Procedures Manual. These materials are developed by the Trustee in consultation with the NRC.¹⁴⁰
2. The NCC is a committee separate from the Trust, that is established by the CSC¹⁴¹ under the CSC's constitution and comprises representatives from the CSC and each RC.¹⁴²
3. Each committee is discussed in the following sections.¹⁴³

¹⁴⁰ Trust Deed clause 3.2(c)

¹⁴¹ Trust Deed Schedule 2, item S2.2(h)

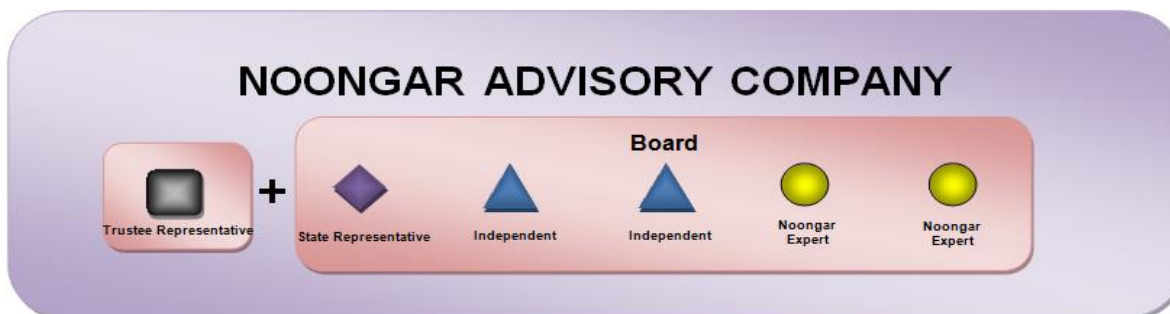
¹⁴² Trust Deed clause 1.1

¹⁴³ NGS Manual Part 19, Part 20, Part 21, Part 22 and Part 35

Part 19 - Noongar Advisory Company (NAC)

Purpose

The NAC has a fundamental role to play in the Trust as it is the primary decision-making body and relationship manager. The NAC is central to building corporate capacity amongst the ENEs and developing effective systems and processes.



1. The NAC is to be established as a wholly owned subsidiary of the Trust (not a subsidiary of the Trustee itself) in the form of a public company limited by guarantee.

NAC GENERAL FUNCTIONS ¹⁴⁴	
Assisting the Trustee to manage its relationship with, and to liaise with, the Noongar Community, the NCC, the CSC and the RCs.	Fostering mutual respect and cooperation between the Trustee, the Noongar Community, the CSC and the RCs.
Making recommendations to the Trustee as to the fulfilment by the Trustee of the Trust Purpose and terms of the Trust Deed generally.	Providing guidance to the Trustee regarding its dealings with the Traditional Laws and Customs relevant to the Noongar Community.


2. The above are all general functions of the NAC. In addition, the NAC has a wide range of other functions in which it makes recommendations to, consults with or provides consent to the Trustee on various matters including in particular, land and funding matters.¹⁴⁵
3. It is envisaged that the Trustee would utilise the NAC for day-to-day NGS activity. The Trustee would need to develop a robust system of delegation to the NAC and implement effective communication and reporting protocols. It will be important to ensure the Trustee does not duplicate the work of the NAC and vice versa.
4. During any time where the Trustee is a Dedicated Trustee, the NAC is no longer required (subject to the written approval of the State and the NRC). At such time, the functions of the NAC will be assumed by the Dedicated Trustee.¹⁴⁶

¹⁴⁴ Trust Deed clause 14.2(a)

¹⁴⁵ Trust Deed clause 14.2

¹⁴⁶ Trust Deed clause 14.3

5. At any time where there is no Trustee, the Directors of the NAC will be the Members of the NAC until a new Trustee is appointed.¹⁴⁷
6. The Board of the NAC will comprise a maximum of 6 Directors being:¹⁴⁸
 - (a) 2 Noongar Directors;
 - (b) 2 Independent Directors;
 - (c) 1 State Director; and
 - (d) 1 Trustee Director.
7. A Director is only eligible for appointment to the Board of the NAC if they can demonstrate the qualifications in paragraph 7.4 of the template Constitution contained in Schedule 13 of the Trust Deed.
8. In the case of the Noongar Directors and Independent Directors, the Board must request the Nominations Committee to undertake the recruitment process and make recommendations to the Board for the appointments.¹⁴⁹ After the Board has considered and evaluated the candidates selected by the Nominations Committee, it will pass a resolution nominating the candidates for appointment.¹⁵⁰ All Directors are appointed by an ordinary resolution of the Members of the NAC at a general meeting.¹⁵¹

	<p><u>Board Meetings</u> - A quorum consists of a majority of the Directors which must include 1 Noongar Director and 1 Independent Director.¹⁵²</p> <p><u>General Meetings</u> – A quorum of at least 75% of the Members must be present at a general meeting.¹⁵³</p> <p><u>Annual General Meetings</u> – A quorum of at least 75% of the Members must be present at an AGM.</p>
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¹⁴⁷ Trust Deed Schedule 13, paragraph 3.3

¹⁴⁸ Trust Deed Schedule 13, paragraph 7.2




¹⁴⁹ Trust Deed Schedule 13, paragraph 7.5.1(a)

¹⁵⁰ Trust Deed Schedule 13, paragraph 7.5.1(b)

¹⁵¹ Trust Deed Schedule 13, paragraph 7.5.2

¹⁵² Trust Deed Schedule 13, paragraph 7.18(b)

¹⁵³ Trust Deed Schedule 13, paragraph 6.8(b)

	<p><u>Board Meetings</u> - The Board must attempt to make decisions or resolutions by consensus but if consensus cannot be reached, the question must be determined by a majority of votes of the Directors present and voting on that question.¹⁵⁴</p> <p><u>General Meetings</u> - Each Member of the NAC has the right to 1 vote at a general meeting.¹⁵⁵ A corporate Member may have more than 1 representative attend a general meeting but only 1 representative may exercise the Member's powers.¹⁵⁶ Decisions of the Members must be made by consensus, but if consensus cannot be reached, the decision or resolution must be put to a vote and decided by a simple majority of votes.¹⁵⁷</p> <p><u>Annual General Meetings</u> – If the NAC has only 1 Member, that Member may pass a resolution by signing a written record of the resolution.</p>
	<p><u>Board Meetings</u> – The Board may regulate their own meetings and a Director may convene a meeting of the Board at any time.¹⁵⁸</p> <p><u>General Meetings</u> – Any Director may convene a general meeting of Members at any time or at the request of a Member.¹⁵⁹</p> <p><u>Annual General Meetings</u> – The NAC must hold its first AGM within 18 months of registration. Thereafter, AGMs must be held within 5 months after the end of each Financial Year.¹⁶⁰</p>
	<p>The Board of Directors must appoint a Secretary and determine the terms and conditions of the Secretary's appointment and removal (including remuneration).¹⁶¹</p>

¹⁵⁴ Trust Deed Schedule 13, paragraph 7.20

¹⁵⁵ Trust Deed Schedule 13, paragraph 3.4(b)(ii)

¹⁵⁶ Trust Deed Schedule 13, paragraph 6.6(b)

¹⁵⁷ Trust Deed Schedule 13, paragraph 6.9

¹⁵⁸ Trust Deed Schedule 13, paragraphs 7.15(a) and 7.16

¹⁵⁹ Trust Deed Schedule 13, paragraphs 6.1 and 6.2

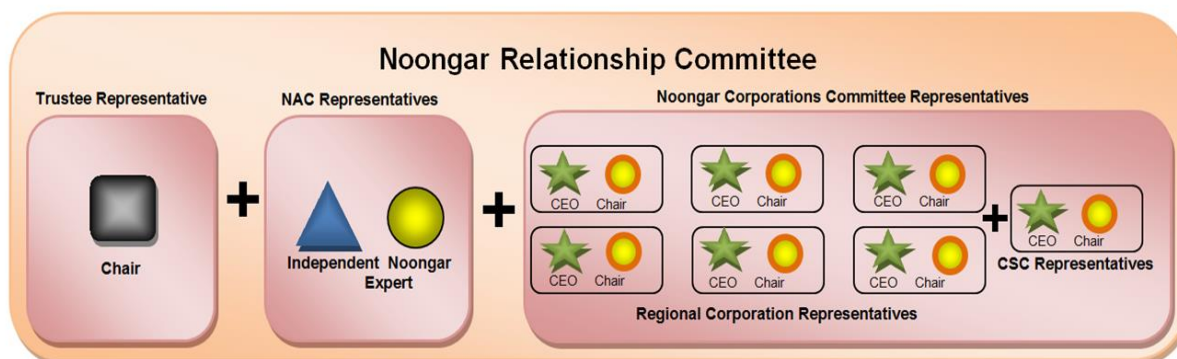
¹⁶⁰ Trust Deed Schedule 13, paragraph 5.1

¹⁶¹ Trust Deed Schedule 13, paragraph 8.1

Part 20 - Noongar Relationship Committee (NRC)

Purpose

The purpose of the NRC is to facilitate and streamline a process for the Trustee and the NAC to have direct, regular and meaningful engagement with the ENEs.



NRC FUNCTIONS¹⁶²





Forum for review of the nature and delivery of CSC Regional Services and CSC Optional Services.	Forum for the CSC to review and implement a service agreement with each RC relating to the CSC Regional Services and CSC Optional Services (if any).
Consulting with the Trustee or NAC on matters relating to the CSC and RCs generally.	Supporting general administrative and operational matters between the Trustee, CSC and RCs.
Providing guidance to the Trustee regarding its dealings with the Traditional Laws and Customs relevant to the Noongar Community.	Reviewing the Trustee's compliance with its obligations under the Trust Deed, and providing recommendations to the Trustee as to how those obligations may be met.
Monitoring the ENEs' compliance with the service agreements.	

1. The NRC must comprise up to 17 persons consisting of 3 directors of the NAC Board (appointed by the NAC) and all of the members of the NCC.¹⁶³
2. An NRC member may be removed if the person fails to attend 3 consecutive meetings without reasonable excuse or is in breach of the Code of Conduct or Policy and Procedures Manual and is ineligible for reappointment.¹⁶⁴
3. If the Trustee has issued an ENE Termination Notice, the representatives of the relevant ENE are automatically removed as members of the NRC.¹⁶⁵

¹⁶² Trust Deed clause 15.2(a)

¹⁶³ Trust Deed clause 15.3

¹⁶⁴ Trust Deed clause 15.6

	A quorum of the NRC consists of not less than half of the NRC members. ¹⁶⁶
	Decisions of the NRC must be determined by a majority of votes of the NRC members present and voting on that question.
	The NRC must meet at least once each Financial Year or as otherwise directed by the Trustee. ¹⁶⁷
	At the first meeting of the NRC, the committee members will elect a Secretary of the NRC. The Secretary is responsible for keeping minutes of each meeting. ¹⁶⁸

¹⁶⁵ Trust Deed clause 15.7

¹⁶⁶ Trust Deed Schedule 4, item S4.4

¹⁶⁷ Trust Deed Schedule 4, item S4.2

¹⁶⁸ Trust Deed Schedule 4, item S4.1

Part 21 - Nominations Committee (NC)

Purpose

The purpose of the NC is to facilitate and streamline the process of selecting and securing candidates for positions as directors and committee members in respect of the Trust and the ENEs.



NC FUNCTIONS¹⁶⁹

Calling for nominations for appointment to the CSC board, RC boards, NAC board, IC and Dedicated Trustee.	Specifying the form in which applications must be made.
Considering applications for appointment and interviewing candidates and referees.	Making inquiries and investigations to confirm the eligibility of candidates for the relevant boards or committees of the Trust or ENEs.
Making recommendations to the Trustee or other relevant entity for appointments, including positions caused by casual vacancies.	Creating a transparent and fair process for applicants and incumbent officeholders to apply for positions.





1. The NC only acts upon an instruction or request from the Trustee.¹⁷⁰
2. The NC must comprise 6 persons consisting of:¹⁷¹
 - (a) 1 person nominated by the Trustee who shall be the chair of the NC;
 - (b) 1 person nominated by the NRC who must not be a current director or employee of an ENE;
 - (c) 2 representatives of the Noongar Community that have experience with directorships and boards; and
 - (d) 2 Independent persons that have experience with directorships and boards.

¹⁶⁹ Trust Deed clause 16.2

¹⁷⁰ Trust Deed clauses 16.1(a) and 16.1(c)

¹⁷¹ Trust Deed clause 16.3(a)

3. The Trustee will appoint NC members **for a 3 year term** in accordance with the selection process set out in clause 16.5 of the Trust Deed. A committee member is only eligible for appointment if they can demonstrate the qualifications set out in clause 16.4 of the Trust Deed.
4. An NC member may be removed if the person fails to attend 3 consecutive meetings without reasonable excuse or is in breach of the Code of Conduct or Policy and Procedures Manual and is ineligible for reappointment.¹⁷²

	A quorum of the NC consists of not less than half of the NC members. ¹⁷³
	Decisions of the NC must be determined by a majority of votes of the NC members present and voting on that question.
	The NC must meet at least once each Financial Year or as otherwise directed by the Trustee. ¹⁷⁴
	At the first meeting of the NC, the committee members will elect a Secretary of the NC. The Secretary is responsible for keeping minutes of each meeting. ¹⁷⁵

¹⁷² Trust Deed clause 16.8

¹⁷³ Trust Deed Schedule 4, item S4.4

¹⁷⁴ Trust Deed Schedule 4, item S4.2

¹⁷⁵ Trust Deed Schedule 4, item S4.1

Part 22 - Noongar Corporations Committee (NCC)

Purpose

The NCC is established as the primary source for consultation amongst the ENEs.



1. The Trustee is required to support the CSC to maintain the NCC¹⁷⁶ which must comprise the CEO and chair of the CSC, and the CEO and chair of each of the RCs.¹⁷⁷ The NCC members also sit on the NRC.¹⁷⁸

NCC FUNCTIONS	
Make recommendations to the Trustee on how it should consult with the Noongar Community. ¹⁷⁹	Consult with the Trustee in relation to: <ul style="list-style-type: none"> • Investment Policy;¹⁸⁰ • Strategic Plan;¹⁸¹ • Trust Deed amendments; and¹⁸² • winding up of the Trust.¹⁸³
Appointing the Noongar Appointor. ¹⁸⁴	Nominating a Dedicated Trustee. ¹⁸⁵
Nominate 2 members to the IC. ¹⁸⁶	

¹⁷⁶ Trust Deed clause 2.3(k)

¹⁷⁷ CSC Rulebook paragraph 14.1

¹⁷⁸ Trust Deed clause 15.3(b)

¹⁷⁹ Trust Deed clause 3.3(c)

¹⁸⁰ Trust Deed clause 19.5(a)

¹⁸¹ Trust Deed clause 21.2(b)

¹⁸² Trust Deed clause 27(b)





¹⁸³ Trust Deed clause 28.2(a)

¹⁸⁴ Trust Deed clause 13.3

¹⁸⁵ Trust Deed clause 13.2.4

¹⁸⁶ Trust Deed clause 20.2(a)(ii)

2. In addition to the above functions, the NCC provides a forum for the CSC and RC executives to:¹⁸⁷
- (a) consider matters relating to the Trust;
 - (b) consider matters of ILUA implementation;
 - (c) provide a forum for programme and policy prioritisation and development;
 - (d) develop partnerships between the corporations;
 - (e) provide a support network for operational policy and programme matters amongst the ENEs; and
 - (f) encourage the sharing of knowledge to improve effectiveness and efficiency.

	Not specified in CSC Rulebook
	Not specified in CSC Rulebook
	The NCC must meet at least twice a year, or more often if necessary. The Directors of the CSC will aim to meet with the NCC at least quarterly to brief the CSC on the activities and issues involving the CSC. ¹⁸⁸
	The CSC will provide secretariat support to the NCC. ¹⁸⁹

¹⁸⁷ CSC Rulebook Schedule 2, item 2.1(a)

¹⁸⁸ CSC Rulebook Schedule 2, item 2.3.1

¹⁸⁹ Trust Deed Schedule 2, item S2.3(a)(ii)

Part 23 - Role of the State

Purpose

The State's continued involvement in certain important trust matters recognises the rights and obligations arising between the State and the Agreement Groups under the ILUAs.

State Consent

1. The Trustee must obtain the State's **prior written consent** on a range of important matters:¹⁹⁰

State Consent Required For:		
Issuing an ENE Termination Notice	Modifying the Future Fund Capital Base	Accessing the Future Fund Capital Base
Accessing income or capital from the Noongar Future Fund	Appointing a Dedicated Trustee	Approving that the NAC is not required
Modifying Funding Guidelines	Determining minimum % of State Contribution to Operations Fund available for allocation to RCs	Modifying the Trust Deed
Winding up or terminating the Trust under clause 28.2(a)(ii)	Applying assets of Trust Fund following winding up under clause 28.2(b)(ii)	

2. The NGS Documents do not mandate the process or timing around the State providing its consent. The Trustee cannot proceed without the State's consent.

State Contribution Period

3. The State Contribution Period commences on the ILUA Commencement Date and ends 12 years after the ILUA Commencement Date.
4. The Trustee has certain obligations to the State that are only relevant during the State Contribution Period.
5. These include consulting with the State on certain matters, and providing documents and information to the State.

¹⁹⁰ Trust Deed clause 6.5(a)

Appointor Role

6. The Attorney-General of WA is one of the Appointors for the Trust.¹⁹¹ This is discussed further under the section **Appointment and Removal of Trustee**.

Noongar Land Estate

7. The Trustee must work closely with the State in relation to implementation of the Land Base Strategy, including attending regular meetings with the State for this purpose.¹⁹² There are a number of State departments that will be involved in the allocation of land to the Trust to form part of the Noongar Land Estate. The Department of Lands will have primary responsibility for the Land Base Strategy and will be the liaison point for the Trustee.

Trustee's Preliminary Services

8. The Trustee will be engaged to provide appropriate preliminary services prior to its formal appointment as trustee.¹⁹³ The fees and costs for delivery of the preliminary services will be negotiated between the State and the Trustee.

¹⁹¹ Trust Deed clauses 13.3 and 6.5(b)

¹⁹² See NGS Manual Part 28 for more information

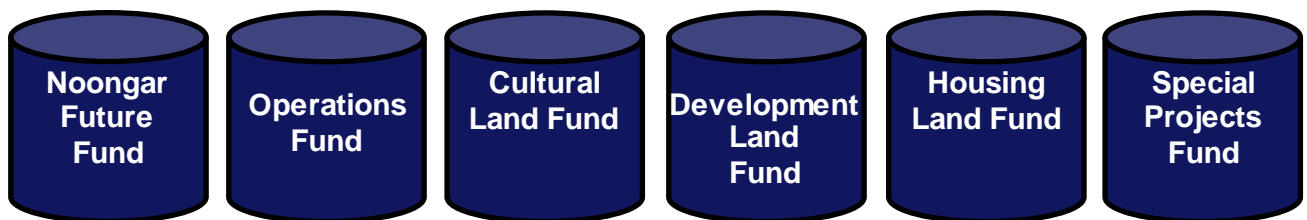
¹⁹³ See NGS Manual Part 8 for more information

Part 24 - Trust Sub Funds

Purpose

The Trustee is required to establish a number of Sub Funds to hold different parts of the NBT funds.

1. The Trust Fund includes a number of Sub Funds that the Trustee is required to establish:¹⁹⁴



2. The Trustee has the power to establish additional sub funds to hold any part of the Trust Fund for ease of management and identification.¹⁹⁵ Where the Trustee has established an additional sub fund, the Trustee may develop specific investment or distribution policies relating to that sub fund. The Trustee may also establish specific committees relating to such sub funds.
3. Any sub fund forms part of the Trust Fund, however, for the purposes of identification only, the Trustee may maintain separate management accounts for each sub fund.
4. The Trustee is required to prepare separate reports and audited accounts for each sub fund, in addition to those required for the Trust Fund.¹⁹⁶ Each sub fund report must be prepared in a similar manner and must include similar detail to the Trust Fund report.
5. Each Sub Fund is discussed in the following sections.

¹⁹⁴ Trust Deed clauses 6.2 and 6.3

¹⁹⁵ Trust Deed clause 6.3(a)(ii)

¹⁹⁶ Trust Deed clause 6.3(c)

Part 25- Noongar Future Fund

Purpose

The purpose of the Noongar Future Fund is to grow its capital in order to achieve and maintain a sustainable amount within the fund, such that its income may be applied towards the Trust Purpose in perpetuity. This target capital amount is referred to as the Future Fund Capital Base.

1. During the State Contribution Period, the State will make 12 annual payments of \$50,000,000 to the Noongar Future Fund (adjusted yearly according to the CPI).¹⁹⁷
2. The State will make the first payment to the Trustee no later than 60 business days after the Trust Effective Date, provided that the Trustee enters into a Security Deed and renders an invoice, prepared in accordance with the terms of the ILUA.¹⁹⁸
3. The Trustee may also decide to make additional contributions to the Noongar Future Fund.

Future Fund Capital Base¹⁹⁹

4. The Trustee is responsible for growing the capital of the Noongar Future Fund to reach and maintain the Future Fund Capital Base. The Trustee will achieve this by:
 - (a) investing the Noongar Future Fund wisely; and
 - (b) accepting profits from the Development Land Fund into the Noongar Future Fund.²⁰⁰
5. The Future Fund Capital Base for the first Financial Year after the end of the State Contribution Period is 90% of the total value of the Noongar Future Fund as at the end of the State Contribution Period. It is anticipated that the total value of the Noongar Future Fund will be approximately \$1 billion.
6. The Trustee must adjust the Future Fund Capital Base at the end of each Financial Year according to the Consumer Price Index. An adjustment is not a modification (as discussed below).
7. The Trustee may modify the Future Fund Capital Base if the Trustee determines that it is in the best interests of the Trust:
 - (a) in consultation NAC, NRC, IC; and
 - (b) with the consent of the State.

¹⁹⁷ Trust Deed clause 7; ILUA Schedule 10, clause 5.1

¹⁹⁸ ILUAs Schedule 10, clauses 5.1 and 5.3; NGS Manual Part 37

¹⁹⁹ Trust Deed clause 7.4

²⁰⁰ NGS Manual Part 31

Distributions during the State Contribution Period

8. The income and capital of the Noongar Future Fund may only be distributed during the State Contribution Period in the following situations:
 - (a) in order to pay the Trustee's remuneration or reasonable costs incurred in relation to the Noongar Future Fund; or
 - (b) where the Trustee determines that it is in the best interests of the Trust and with the consent of the NAC, NRC, IC and the State.

Distributions after the State Contribution Period

9. After the State Contribution Period, the Trustee may only distribute the:
 - (a) income or capital of the Noongar Future Fund, that exceeds the Future Fund Capital Base, to the Operations Fund or the Special Projects Fund; and
 - (b) Future Fund Capital Base, if the Trustee determines that it is in the best interests of the Trust and with the consent of the NAC, NRC, IC and the State.
10. It is anticipated that the Noongar Future Fund will be capable of distributing \$30 million per year after the State Contribution Period (based on the Future Fund Capital Base being approximately \$1 billion).

Part 26 - Operations Fund

Purpose

The Operations Fund is intended to hold funds for the Trustee to distribute to the ENEs, to fund their operations each year.

1. During the State Contribution Period, the State will make available to the Trustee 12 yearly payments of \$10,000,000 to be deposited into the Operations Fund (adjusted yearly according to the CPI).²⁰¹
2. The State will make the first payment to the Trustee no later than 60 business days after the Trust Effective Date, provided that the Trustee enters into a Security Deed and renders an invoice, prepared in accordance with the terms of the ILUA.²⁰²
3. Funds held in the Operations Fund are to be applied by the Trustee to the ENEs for Operations Funding, which comprises:
 - (a) operational and administrative expenditure, including expenditure incurred in complying with constitutional objects and ILUA terms;
 - (b) with respect to the CSC, its expenditure incurred in providing the CSC Core Services and the CSC Regional Services (during the Start-Up Period); and
 - (c) with respect to the RCs, their expenditure incurred in providing the RC Core Functions.
4. After the State Contribution Period, income or capital from the Noongar Future Fund may be applied by the Trustee to the Operations Fund.²⁰³ This would require careful consideration, given the perpetual nature of the Noongar Future Fund.

Distributions of Operations Funding

5. As part of its yearly budgeting process, the Trustee must determine its Annual Operations Budget and the amount of the Annual Operations Budget that is available for each ENE for Operations Funding (**ENE Allocation**).²⁰⁴
6. Each ENE's Allocation will depend on a number of factors, including the Entity's needs and proposals.²⁰⁵ However, a minimum of 70% of the total yearly amount allocated to the Operations Fund by the State must be available for allocation to the RCs.²⁰⁶
7. The ENE Allocations are to be held separately in their respective ENE Operations Account (discussed below).

²⁰¹ ILUAs Schedule 10, clauses 5.2; Trust Deed clause 8

²⁰² ILUAs Schedule 10, clauses 5.2 and 5.3; NGS Manual Part 37

²⁰³ Trust Deed clause 7.3

²⁰⁴ Trust Deed clause 18.2; NGS Manual Part 15

²⁰⁵ Trust Deed Schedule 1, items S1.1.2 and S1.2.2

²⁰⁶ Trust Deed clause 18.3(vi)

8. After the Trustee has determined the ENE Allocations, the ENEs must apply for Operations Funding by providing projected budgets to the Trustee.²⁰⁷

ENE Operations Account

9. The Trustee is to establish an ENE Operations Account the Operations Fund for each ENE. Each ENE Operations Account may be named by the Trustee so that the Trustee can identify the relevant ENE for which it is intended to support.
10. Distributions to a particular ENE are to be made from their allocated ENE Operations Account. At the end of each financial year, any funds remaining in an ENE Operations Account will accumulate in that account and be held for subsequent years.

²⁰⁷ Trust Deed Schedule 1; NGS Manual Part 15

Part 27 - Special Projects Fund

Purpose

The Trustee may receive and hold funds or assets from Contributors, or funds allocated by the Trustee, to be held in the Special Projects Fund in order to fund Special Projects to be undertaken by the ENEs.

1. The South West Settlement Package does not provide for a State Contribution directly to the Special Projects Fund.²⁰⁸ The Special Projects Fund may receive funds from other Contributors, or the Trustee may allocate funds. After the State Contribution Period, income or capital from the Noongar Future Fund may be applied by the Trustee to the Special Projects Fund.²⁰⁹
2. The Trustee may wish to use the Special Projects Funds for projects such as returning specific landholdings to particular communities, accepting and managing lands from the Aboriginal Lands Trust or bringing existing 'legacy' Noongar trust funds across to the Trust.
3. The Trustee must prepare an Annual Special Projects Budget, from which distributions may be made to ENEs.²¹⁰ Distributions may be made by the Trustee at any time.
4. When administering funds from the Special Projects Funds, the Trustee must have regard to any recommendations of a relevant Contributor. Additionally, the Trustee must have regard to a series of factors set out in Schedule 1 of the Trust Deed when assessing applications for Special Projects Funding.²¹¹
5. The Trustee may provide the ENE with Special Project Guidelines with respect to a Special Project which the Trustee has funded.
6. The Trustee may develop specific committees or policies that relate to the Special Projects Fund or a project funded from it.

²⁰⁸ Trust Deed clause 9

²⁰⁹ Trust Deed clause 7.3

²¹⁰ Trust Deed clause 18.2(a)(i)

²¹¹ Trust Deed Schedule 1, item S1.2.3

Part 28 - Noongar Land Estate

Purpose

Land will be allocated to the Noongar community as part of the Settlement package for cultural or economic development purposes. Land is intrinsically linked to the spiritual, social and economic wellbeing of the Noongar community. The establishment of the NLE is intended to provide a significant opportunity for the Noongar community to achieve sustainable economic, social and cultural outcomes.

The Land Estate

1. The land forming the NLE will be held in two sub funds of the Trust – the Cultural Land Fund²¹² and the Development Land Fund.²¹³ The management of these sub funds is discussed further under the Trust Sub Funds heading earlier in this document.
2. The process for the Trust receiving the NLE is set out in the ILUA in Annexures J, K and L – the Land Base Strategy. Prior to receiving parcels of the NLE, the Trustee will need to determine, in consultation with relevant stakeholders (eg the NAC), whether the land will be held in the Cultural Land Fund or the Development Land Fund.
3. The land is sourced from unallocated Crown land (**UCL**), unmanaged reserves (**UMR**), managed reserves (**MR**) and the Aboriginal Lands Trust. It will include a maximum of 20,000 hectares to be transferred as freehold, and a maximum of 300,000 hectares of reserves which will be subject to lease or management order. These are ‘maximum hectare targets’ set out in the Land Base Strategy which the parties must work towards over the first 5 years. There are corresponding minimum targets being 10,000 hectares transferred as freehold and 200,000 hectares transferred as reserves.
4. The freehold land will be owned by the Trust in the same manner as any other private land owner. There is potential for the land to be developed, used for commercial purposes, used as security against loans or sold.²¹⁴ There may be freehold land that is designated as Cultural Land.
5. The reserves are areas of Crown land reserved for particular purposes. The reserves will be placed under management order with the Trustee and may include a power to lease, subject to the terms of the management order.²¹⁵ The Trustee will need to consult with the Noongar People regarding the use of the individual reserves.²¹⁶
6. The NLE will not include any Crown land that is currently leased to a third party (e.g. pastoral or farming leases).²¹⁷

²¹² NGS Manual Part 28

²¹³ NGS Manual Part 31

²¹⁴ DPC Fact Sheet, “The Noongar Land Estate”, 7 July 2015

²¹⁵ ILUAs Schedule 10, Annexure L Part B

²¹⁶ DPC Fact Sheet, “The Noongar Land Estate”, 7 July 2015

²¹⁷ DPC Fact Sheet, “The Noongar Land Estate”, 7 July 2015

The Trustee's Role

7. The Trustee's Role in relation to the NLE is critical. There are targets set in the Land Base Strategy for the Trustee for selection and acceptance of the land identified as eligible.²¹⁸ If the Trustee does not meet the set targets, then the State will not guarantee that a minimum of 10,000 hectares of freehold and 200,000 hectares of reserve/leasehold will be allocated to the Trust.²¹⁹
8. Just as the State has minimum annual targets for identifying eligible land, the Trustee has minimum targets for selecting and accepting land for Allocation. The overall total is a minimum of 210,000 hectares and a maximum of 320,000 hectares by the end of the 4th year after the Trust Effective Date.²²⁰
9. The Trustee is required to select and accept the first minimum amount by the Trust Effective Date. SWALSC is currently performing the role of the Trustee in selecting land under the Land Base Strategy prior to the Trust Effective Date.²²¹ Although SWALSC can select land, it cannot accept the terms of allocation on behalf of the Trustee, so as to bind the Trustee. An important aspect of the Trustee's preliminary services will be for the Trustee to provide input to SWALSC in relation to accepting the terms of allocation in order to meet the first minimum target for the selection and acceptance of land by the Trust Effective Date.²²²
10. The consequence of the Trustee not meeting the relevant targets is serious. This will result in the amount of the deficiency being subtracted from the minimum amount of land that must be transferred by the State overall.²²³
11. It will be extremely important for the Trustee to closely consider the Land Base Strategy and understand the obligations of all parties, and monitor their activities.

The Land Base Strategy

12. All of the rules and processes regarding selection and allocation of land to the Trust (i.e. creation of the NLE) are found in the Land Base Strategy.
13. The State's role is to identify a certain amount of land that is potentially eligible to be selected by the Trustee for Allocation to the Trust over the first 5 years. The total to be identified is 20,000 hectares of freehold and 300,000 of reserve/leasehold, with a certain amount to be identified each year within that period.²²⁴
14. There is a process in the Land Base Strategy that will apply if the maximum amount of land has not been allocated by the end of 5 years.²²⁵ This will allow for further allocations over the following years.

²¹⁸ ILUAs Schedule 10, Annexure J, item 7.2

²¹⁹ ILUAs Schedule 10, Annexure J, items 6(e) and 6(f)

²²⁰ ILUAs Schedule 10, Annexure J, item 7.2(a)

²²¹ ILUAs Schedule 10, Annexure J, item 14

²²² ILUAs Schedule 10, Annexure J, item 7.2(b)(i)

²²³ ILUAs Schedule 10, Annexure J, items 7.2(c) and 7.2(d)

²²⁴ ILUAs Schedule 10, Annexure J, item 7.1

²²⁵ ILUAs Schedule 10, Annexure J, items 6(b) and 6(c)

15. After the initial 8 years of the Trust, there is also the requirement for the State to convert 5000 hectares of the reserve or leasehold land to freehold, on certain conditions.²²⁶
16. There are several government departments who have roles in relation to the Land Base Strategy – the Department of Aboriginal Affairs, the Department of Lands, the Department of Mines and Petroleum and the Department of Premier and Cabinet. The State agency with primary responsibility in relation to the NLE will be the Department of Lands (**DoL**). DoL is required under the ILUA to work closely with the Trustee to create the NLE.²²⁷ If the Trustee has any queries relating to the NLE, then it must direct them to DoL.²²⁸
17. Annexure K of the ILUA includes helpful flow charts showing the following implementation processes for the NLE. These are referred to as “supporting documents” in the Introduction to this document. There are three separate processes being for:
 - (a) freehold;
 - (b) UCLs and UMRs; and
 - (c) MRs.
18. For each of these processes the following steps will apply:
 - (a) Identification;
 - (b) Selection;
 - (c) Assessment; and
 - (d) Allocation.
19. The Trustee will be asked to attend 3 monthly meetings with the State and DoL during the first 5 years, to discuss the allocation of land.²²⁹ The aim of these meetings is to discuss priority land issues relating to the ways of accommodating the Noongar People’s request that land of significance to the Noongar community be included in the NLE.
20. The Trustee is entitled to receive reasons from DoL if land is deemed ineligible for inclusion in the NLE.²³⁰ There is the opportunity to make a further request for inclusion of that land.
21. If the Trustee needs to negotiate with other government agencies or local government in relation to the inclusion of land, it must report to the State on the outcome of those negotiations.²³¹

²²⁶ ILUAs Schedule 10, Annexure J, item 6(d)

²²⁷ ILUAs Schedule 10, Annexure J, item 5.1(d)

²²⁸ ILUAs Schedule 10, Annexure J, item 5.3(a)

²²⁹ ILUAs Schedule 10, Annexure J, item 5.2(a)

²³⁰ ILUAs Schedule 10, Annexure J, item 5.2(c)

²³¹ ILUAs Schedule 10, Annexure J, item 5.2(g)

22. Under the **Identification** step, the Trustee will receive from DoL a list of identified lands which will include the potential range of tenures for the land.
23. The Trustee must then, within 60 business days, select parcels for inclusion in the NLE and specify the preferred tenure for each parcel.²³² This will involve consultation with the Noongar People via the CSC and RCs. This is the completion of the **Selection** step.
24. DoL will undertake the **Assessment** step, which involves a number of consultations.
25. The **Allocation** step will involve either the transfer of Crown land or freehold to the Land Sub, the creation of a reserve with a management order, or the grant of a lease.²³³
26. If the land can be allocated, DoL will prepare “Terms of Allocation” and ask the Trustee to accept these. These will include:²³⁴
 - (a) for freehold – a “Deed in Relation to Allocation on Freehold” in the terms of Annexure L (Part A) of the ILUA;
 - (b) for leasehold – terms and conditions agreed between DoL and the Trustee; and
 - (c) for reserves – a “Deed in Relation to Management Order for Reserve” in the terms of Annexure L (Part B) of the ILUA.
27. Under the terms of allocation for reserve land under management order, the Trustee and the Management Body (Land Sub) are required to indemnify and release the State and to maintain public liability insurance.²³⁵ There are currently no terms of allocation for leasehold land.
28. As part of the Allocation step, there are time frames within which the Trustee must cause the Land Sub to execute relevant documents to give effect to the allocation.²³⁶

Using the Land

29. The Trust will need to meet all costs connected with holding the freehold land, including rates and service charges. The Trust will be able to seek an exemption from rates where the land is used exclusively for charitable purposes. However land use for a commercial purpose will not be exempt.²³⁷
30. The Trust will need to obtain planning, development and other regulatory approvals to develop or do other activities with the land. Lessees of reserve land (e.g. RCs) will also need to comply.²³⁸

²³² ILUAs Schedule 10, Annexure J, item 8.3

²³³ ILUAs Schedule 10, Annexure J, item 1.2(d)

²³⁴ ILUAs Schedule 10, Annexure J, item 8.7(a)

²³⁵ ILUAs Schedule 10, Annexure L Part B

²³⁶ ILUAs Schedule 10, Annexure J, item 8.9

²³⁷ DPC Fact Sheet, “The Noongar Land Estate”, 7 July 2015

²³⁸ DPC Fact Sheet, “The Noongar Land Estate”, 7 July 2015

Part 29 - Land Sub and Land Register

Purpose

The Land Sub is a subsidiary of the Trust that will hold the title to the land assets, so that the titles do not need to be transferred when the trustee changes. The Trustee will prepare a Land Register recording relevant land asset data.

Land Sub

1. The Land Sub is a subsidiary of the Trust which will hold the legal title to all land and Management Orders on bare trust for the Trust (not a subsidiary of the Trustee company).²³⁹ Any income or profits in connection with the land will also be held by the Land Sub for the Trustee, and is available to the Trustee.²⁴⁰
2. It is the Trustee's responsibility to establish the Land Sub. All of the Land Sub's shares will be held by the Trustee on behalf of the Trust.
3. The Land Sub will have a very minimal role, and will not have any day-to-day functions. It is likely that the Land Sub's board could be very simple, possibly just one director sourced from within the Trustee.
4. A template Bare Trust Deed has been prepared as part of the NGS Documents. The Trust is the sole beneficiary of the bare trust and will retain the beneficial interest in the land.
5. As bare trustee only, the Land Sub must act on the directions of the Trustee including in relation to the acquisition and sale of land.²⁴¹
6. Under the bare trust deed, the Trustee must warrant to the Land Sub that the Trustee will act in compliance with the Trust Deed and maintain its charitable tax status.

Land Register

7. The Trustee must prepare and maintain a Land Register of all the land and management orders held by the Land Sub.²⁴² The Land Register must record which RC is identified with the land. It must also keep track of the costs and obligations connected with the land.
8. The Trustee can contract the CSC to prepare and maintain the Land Register, on certain conditions found in the Trust Deed.²⁴³ Maintaining the Land Register is one of the CSC's core services (if engaged by the Trustee to do so).²⁴⁴

²³⁹ Trust Deed clause 22.1(a)

²⁴⁰ Land Sub Bare Trust Deed clause 3(b)

²⁴¹ Land Sub Bare Trust Deed clause 4(a)

²⁴² Trust Deed clause 22.1(b)

²⁴³ Trust Deed clause 22.1(d)

²⁴⁴ Trust Deed Schedule 2, item S2.3(a)(ix)

9. There are various databases and software products currently used by the State and SWALSC as land registers that may be a useful starting point for the Land Register. This is a matter for discussion.
10. The Trustee, the CSC and RCs must all have access to the Land Register.²⁴⁵

²⁴⁵ Trust Deed clauses 22.1(c) and 22.1(d)(ii)

Part 30 - Cultural Land Fund

Purpose

The Cultural Land Fund is established to hold any estate, right or interest (including Management Orders) in Cultural Land that is transferred to the Trustee by the State in accordance with the ILUAs, or upon the request of an ENE or an Agreement Group.

1. The Cultural Land Fund is intended to hold land and properties that form part of the NLE, which are to be held for cultural purposes and not for sale or development. Land will be received from the State via the processes in the Noongar Land Base Strategy. This may comprise freehold land and reserves.
2. Where the Trustee accepts Cultural Land in the Cultural Land Fund, the Trustee must consult with the NAC in order to appropriately classify the land, including – the Region(s) where it is located and the relevant RC(s).
3. Subject to the Title Protection Criteria, discussed below, the Trustee must grant an interest in Cultural Land (by way of lease, licence etc.) to the relevant RC of the Region in which the Cultural Land is located at its request.
4. It will then become the role of the RC to manage that parcel of Cultural Land and the RC must develop appropriate policies and procedures for doing so.²⁴⁶ The RC will receive funding from the Trust from the Operations Fund to enable it to undertake the management role as part of the RC's core functions.²⁴⁷ The Trustee will review the activities of the RC as part of the assessment and reporting mechanisms.²⁴⁸
5. The Title Protection Criteria provide that:
 - (a) the Trustee will hold title to Cultural Land (through the Land Sub) in perpetuity and must manage it in consultation with the relevant RC; and
 - (b) any interest in Cultural Land may:
 - (i) not be alienated by sale, transfer, assignment or disposal by the relevant RC, nor may it be made subject to any encumbrance, mortgage, charge or other security; and
 - (ii) only be granted on the condition that the interest will automatically terminate if an ENE Termination notice is issued with respect of the relevant RC.
6. The Trustee may only dispose of Cultural Land by converting it to Development Land at the request of the relevant RC, after consulting with the NAC and after receiving an Agreement Group Endorsement.

²⁴⁶ ILUAs Schedule 10, Annexure E, Part B, item 11

²⁴⁷ Trust Deed clause 8.2

²⁴⁸ Trust Deed Schedule 3, item S3.3

Part 31 - Development Land Fund

Purpose

The Development Land Fund is established to hold any land that is transferred to the Trustee by the State in accordance with the ILUAs, or upon the request of an ENE or an Agreement Group.

1. The Development Land Fund is intended to hold land and properties that form part of the NLE²⁴⁹, which are to be held for development purposes.²⁵⁰ Land will be received from the State via the processes in the Noongar Land Base Strategy. Alternatively, Cultural Land may be converted to Development Land following the appropriate consultation processes.
2. Development Land is land which is appropriate for commercial development, referred to as Property Development Activities or passive property investment activities, such as leasing.
3. The management or investment of Development Land must be done in consultation with the IC (if any), in accordance with the Trustee's investment powers and the Investment Policy. There will be independent representatives on the IC with specialised property development expertise.
4. Additionally, prior to making a significant decision relating to the Development Land (called a "Decision to Proceed"), the Trustee must consult with the Relevant RC (if any). A "Decision to Proceed" means a decision to enter into an agreement or arrangement to exploit the land, including by selling, leasing, licensing, mortgaging or significantly improving the land.²⁵¹
5. The Trustee must also consult with the Relevant RC (if any) at least once each financial year with respect to all Development Land within its Region.
6. The Trustee itself is prohibited from undertaking Property Development Activities and must do so via a separate entity to be established in consultation with the NAC, referred to as a Noongar Boodja Development Corporation. This is to ensure that the Trustee, and the NBT's assets, are protected from any risk associated with Property Development Activities.
7. It is envisaged that the Noongar Boodja Development Corporation would engage a professional property development organisation to provide appropriate management of any project. Ideally the Trustee would encourage any professional property developer to partner with a Noongar organisation to further build capacity within the Noongar Community.
8. Development Land may not be distributed by the Trustee. The net proceeds of Property Development Activities must be allocated in accordance with the formula in the Trust Deed.²⁵²

²⁴⁹ NGS Manual Part 28

²⁵⁰ Trust Deed clause 11

²⁵¹ Trust Deed clause 1.1

²⁵² Trust Deed clause 11.5

- (a) 10 percent to remain in the Development Land Fund if the Trustee considers it appropriate;
 - (b) to the Noongar Future Fund, where the net proceeds arise from Development Land that was accepted specifically for the purpose of increasing the Future Fund;
 - (c) to a specific Sub Fund, where the net proceeds arise from land accepted into that same Sub Fund from a Contributor for a particular purpose;
 - (d) otherwise as the Trustee determines after consulting with the NAC, NRC and the State (during the State Contribution Period); and
 - (e) where the Property Development Activity relates to land within a Region, then (unless the Trustee determines otherwise under any other provision):
 - (iii) 10 percent to the ENE Operations Account for the relevant RC;
 - (iv) 15 percent to be share equally amongst the remaining ENE Operations Accounts; and
 - (v) 75 percent to the Noongar Future Fund.
9. It is in the interests of the Trust and the Noongar Community for Property Development Activities to be pursued and be successful. The higher the returns that can be achieved from Property Development Activities, the faster the Trust can achieve the Future Fund Capital Base. This will then enable Future Fund income to be accessed for a wider range of projects and purposes.

Part 32 - Noongar Housing Properties

Purpose

As part of the South West Settlement Package, the Housing Authority will transfer the freehold title of 121 Housing Properties to the Land Sub pursuant to a Property Transfer Deed.

1. As part of the South West Settlement Package, the Housing Authority will transfer the freehold title of 121 Housing Properties to the Land Sub pursuant to a Property Transfer Deed.²⁵³
2. The Land Sub will hold the legal title for the Housing Properties on bare trust for the Trustee and the Trustee will manage the Housing Properties within the Housing Land Fund.²⁵⁴
3. The majority of the Housing Properties are intended to be made available for low income families at less than market rent, many of whom will already be the current tenants of the properties. Some of the houses may be leased at full market rent.
4. The Trustee will appoint a suitably qualified management company to manage the Housing Properties on its behalf.
5. The State (via the Housing Authority) will also make available \$10,000,000 for maintenance and upgrades to the Housing Properties under a Funding Agreement.²⁵⁵
6. The Property Transfer Deed and the Funding Agreement are both provided as annexures to the ILUA.²⁵⁶
7. The Housing Authority, the Trustee and the Land Sub will each be party to both the Property Transfer Deed and the Funding Agreement. Each document will be submitted to the Trustee for execution 60 business days after either the declaration of the Trust or the incorporation of the Land Sub, whichever is the later. The Trustee is then required to have the documents executed by itself and the Land Sub and return them to the Housing Authority within 40 business days.²⁵⁷

Property Transfer Deed

8. Pursuant to the Property Transfer Deed, transfer of each of the Housing Properties is to be made to the Land Sub within 5 years after the Commencement Date.²⁵⁸

²⁵³ ILUAs Schedule 10, item 14

²⁵⁴ Trust Deed clause 12; NSG Manual Part 32

²⁵⁵ ILUAs Schedule 10, item 14

²⁵⁶ ILUAs Schedule 10, Annexures P and Q

²⁵⁷ ILUAs Schedule 10, item 14(c)

²⁵⁸ ILUAs Schedule 10, Annexure P, clause 4.2

9. The 121 Housing Properties are identified in the Property Transfer Deed, by reference to their general features (i.e. suburb, size and valuation)²⁵⁹, however, actual addresses are not provided. The properties may be replaced for a substitute property by the Housing Authority, subject to acceptance by the Land Sub.²⁶⁰
10. The Housing Properties will be transferred to the Land Sub “as is” and the Housing Authority will bear no responsibility with respect to the title of each property, any encumbrances affecting the property and the condition or state of repair of each property.²⁶¹
11. On transfer, the Housing Authority will provide the Land Sub with a Building Condition Assessment report for each Housing Property,²⁶² which will include recommendations for works that that should be done to the property.²⁶³

Funding Agreement

12. The Trustee is responsible for any works done in relation to the Housing Properties (e.g. refurbishment, repair or demolition), referred to as **Project Works**.²⁶⁴ The Trustee may, but is not required to, undertake the Project Works recommended in the Building Condition Assessment.²⁶⁵
13. To assist the Trustee with Project Works, the Housing Authority will make available to the Trustee \$10,000,000 to form what is referred to as the **Fund**. \$500,000 from the Fund will be released to the Trustee by the Housing Authority within 20 business days after the first Housing Property is transferred to the Land Sub. This will form what is referred to as the **Float**.²⁶⁶
14. The Trustee is able to use the Float to make payments towards Project Works for the Housing Properties. Additionally, the Trustee is able to seek reimbursement from the Fund for Project Works, provided that valid tax invoices are tendered and certain conditions set out in the Funding Agreement are met.²⁶⁷
15. If the cost of the Project Works is less than \$10,000,000, the remainder of the Fund will be retained by the Housing Authority. If the costs of the Project Works exceed \$10,000,000, the Trustee will be responsible for the excess costs.²⁶⁸

²⁵⁹ ILUAs Schedule 10, Annexure P, part 2

²⁶⁰ ILUAs Schedule 10, Annexure P, clause 5

²⁶¹ ILUAs Schedule 10, Annexure P, clause 13.1

²⁶² ILUAs Schedule 10, Annexure P, clause 4.3

²⁶³ ILUAs Schedule 10, Annexure Q, clause 5

²⁶⁴ ILUAs Schedule 10, Annexure Q, clause 1.1

²⁶⁵ ILUAs Schedule 10, Annexure Q, clause 5

²⁶⁶ ILUAs Schedule 10, Annexure Q, clause 7

²⁶⁷ ILUAs Schedule 10, Annexure Q, clause 7

²⁶⁸ ILUAs Schedule 10, Annexure Q, clause 7

Part 33 - Housing Land Fund

Purpose

The Housing Land Fund is established for the general purpose of improving housing outcomes for the Noongar Community.

1. The Housing Land Fund is to consist of any interest in land accepted by the Trustee to be held in the Housing Land Fund, including the Noongar Housing Land (as referred to in the Trust Deed) or Housing Properties²⁶⁹ (as referred to in the ILUAs) transferred by the Housing Authority.²⁷⁰ The Housing Land does not form part of the NLE.
2. The Trustee is to hold, manage, invest and develop the Housing Land:²⁷¹
 - (a) by exercising its investment powers, in accordance with the Investment Policy and in consultation with the IC (if any);
 - (b) by appointing a suitably qualified housing management company; and
 - (c) where the Trustee deems it appropriate, by commercial development and works undertaken to the Housing Land by the Noongar Boodja Development Corporation(s).
3. Commercial developments and works may be funded pursuant to the Funding Agreement between the Housing Authority, the Land Sub and the Trustee.²⁷² Development activities must be undertaken by Noongar Boodja Development Corporations and not by the Trustee.²⁷³
4. The proceeds of the commercial exploitation of land in the Housing Land Fund will be retained in the Housing Land Fund, with the intent that the Housing Land Fund will continue to grow and provide improved housing outcomes.
5. Prior to the Trustee making a Decision to Proceed (as defined in the Trust Deed)²⁷⁴ with respect to Housing Land, the Trustee must consult with the Relevant RC (if any).

²⁶⁹ ILUAs Schedule 10, clause 14 and Annexure P

²⁷⁰ Trust Deed clause 12; NSG Manual Part 32

²⁷¹ Through it's Land Sub, Trust Deed clause 22.1(a)

²⁷² ILUAs Schedule 10, clause 14 and Annexure Q

²⁷³ Trust Deed clause 19.3(e)

²⁷⁴ Trust Deed clause 1.1

Part 34 - Taxation Considerations

Purpose

The Trust, the CSC and the RCs will each seek registration as a charity, under the charity sub-type “Public Benevolent Institution”. They will also be capable of being endorsed as tax concession charities.

Charitable and Tax Endorsements

1. The Australian Charities and Not-for-profits Commission (**ACNC**) is the chief regulator of charities in Australia and is responsible for registering qualifying entities as registered charities.
2. The Australian Taxation Office (**ATO**) is responsible for granting endorsement to entities for various tax concessions including income tax exempt status.
3. Prior to establishing the NBT, RCs and CSC the State has sought non-binding pre-endorsement advice from the ACNC and the ATO in relation to the concessions which may be available to the NBT, RCs and CSC. Once each of the entities has been established, relevant endorsement applications will be lodged with the ACNC and ATO.

Endorsement of NBT, RCs and CSC

4. The ACNC has indicated that its preliminary view is that each of the NBT, RCs and the CSC should be entitled to be registered as a charity with the ACNC under the charity sub-type “Public Benevolent Institution” (**PBI**).
5. As a registered charity, each of the NBT, RCs and the CSC would also be entitled to be endorsed by the ATO as a tax concession charity (**TCC**). A TCC has access to the following tax concessions:
 - (a) Income tax exemption –the NBT, RCs and CSC would not pay income tax on any income they derive; and
 - (b) GST concessions – the NBT, RCs and CSC will have access to a number of concessions under the *A New Tax System (Goods and Services) Act 2000* (Cth).
6. As each of the NBT, RCs and CSC should be eligible to be registered as charities under the sub-type “PBI”, they should also be entitled to be endorsed as Deductible Gift Recipients (**DGR**) with the ATO.
7. As a DGR, the NBT, RCs and CSC would be entitled to accept contributions from donors who can claim tax deductions in respect of those donations.
8. The NBT, RCs and CSC should also be eligible to be endorsed by the ATO as exempt from fringe benefits tax (**FBT**). FBT is a tax paid on benefits that an employer provides to their employees outside their salary or their superannuation (e.g. work cars, work phones, travel etc.). PBIs can be endorsed as exempt from FBT meaning that they do not have to pay FBT on benefits provided to employees. This can provide a significant advantage to a not-for-profit organisation.

Part 35 - Investment Requirements

Purpose

The Trust Fund must be invested in accordance with the investment principles in the Trust Deed, and an investment policy. The Trustee must establish an IC to guide the investment process.



1. The Trustee may only invest the Trust Funds in accordance with the Investment Principles, an Investment Policy (or the Default Investment Policy) and in consultation with the IC (if any).²⁷⁵

Investment Policy

2. The Trust Deed provides the process by which the Trustee must prepare the Investment Policy, which incorporates the procedure for selecting the appropriate Investment Manager(s).²⁷⁶
3. Under this process, the Trustee may only finalise the Investment Policy after:
 - (a) seeking feedback and recommendations from the IC (if any); and
 - (b) incorporating the selected Investment Manager's proposals and investment mandates.
4. The Noongar Community, via the NCC, has the opportunity to participate in the design and development of the Investment Policy through the mandated consultation processes.²⁷⁷
5. Where the Trustee has not developed an Investment Policy, the Default Investment Policy applies on an interim basis.²⁷⁸

²⁷⁵ Trust Deed clause 19.1

²⁷⁶ Trust Deed clause 19.4(a)

²⁷⁷ Trust Deed clause 19.5.

²⁷⁸ Trust Deed Schedule 11

6. Where the Trustee is a Professional Trustee Company, the Trustee and its associates may be appointed as the Investment Manager with the prior written consent of the IC.²⁷⁹ Costs associated with delivering this service are to be separate from the Trustee's ordinary remuneration.

Investment Principles

7. The Investment Principles set out certain matters which must be included in the Investment Policy²⁸⁰ and also principles specific to the investment of particular assets of the Trust.²⁸¹ The Trustee and the IC must have regard to these Investment Principles when preparing or modifying the Investment Policy and when considering the exercise of the Trustee's investment powers.
8. The Investment Policy must include specific guidelines for investment of each of the Sub Funds established under the Trust and the balance of the Trust Fund not held in any particular Sub Fund.

Summary of Investment Principles	
Establish investment performance benchmarks for the Trustee to report against.	Noongar Future Fund investments must have an appropriate asset mix that reflect the long term goals of the Noongar Future Fund.
Development Land investments involving Property Development Activities must be undertaken by a Noongar Boodja Development Corporation in accordance with agreed rules.	The Housing Land must be invested in accordance with clause 12 of the Trust Deed.

Investment Committee (IC)

9. The IC has numerous functions, which are set out in the Trust Deed. These include reviewing proposals from the Investment Manager(s), reviewing the Trustee's compliance with its investment obligations and providing recommendations to the Trustee.²⁸² The IC also has specific functions and the right to be consulted with, in relation to certain acts involving:
- (a) the Noongar Future Fund;²⁸³
 - (b) the Development Land Fund;²⁸⁴ and
 - (c) the Housing Land Fund.²⁸⁵

²⁷⁹ Trust Deed clause 19.4(b)

²⁸⁰ Trust Deed clause 19.3(a) – (b)

²⁸¹ Trust Deed clause 19.3(c) – (e)





²⁸² Trust Deed clause 20.1

²⁸³ Trust Deed clauses 7.2(b)(ii), 7.4(c), 7.5

²⁸⁴ Trust Deed clause 11.2

²⁸⁵ Trust Deed clause 12.2

10. Subject to the selection process²⁸⁶ and the qualification criteria²⁸⁷ set out in the Trust Deed, the Trustee is to appoint an IC, comprising of:²⁸⁸
 - (a) 1 representative from the Trustee;
 - (b) 2 persons who have at least 5 years investment or property development experience; and
 - (c) 4 independent persons recommended by the Nominations Committee:
 - (i) 2 of whom must have at least 5 years experience in significant property transactions; and
 - (ii) 2 of whom must have at least 5 years experience in investment of funds of more than \$500 million.
11. IC members will be appointed for a 3 year term and can serve as an IC member for 2 consecutive terms.²⁸⁹
12. An IC member may be removed if the person fails to attend 3 consecutive meetings without reasonable excuse or is in breach of the Code of Conduct or Policy and Procedures Manual and is ineligible for reappointment.²⁹⁰

	A quorum of the IC consists of not less than half of the IC members. ²⁹¹
	Decisions of the IC must be determined by a majority of votes of the IC members present and voting on that question.
	The IC must meet at least once each Financial Year or as otherwise directed by the Trustee. ²⁹²
	At the first meeting of the IC, the committee members will elect a Secretary of the IC. The Secretary is responsible for keeping minutes of each meeting. ²⁹³

²⁸⁶ Trust Deed clause 20.4

²⁸⁷ Trust Deed clause 20.3

²⁸⁸ Trust Deed clause 20.2

²⁸⁹ Trust Deed clause 20.6

²⁹⁰ Trust Deed clause 20.7

²⁹¹ Trust Deed Schedule 4, item S4.4

²⁹² Trust Deed Schedule 4, item S4.2

²⁹³ Trust Deed Schedule 4, item S4.1

Part 36 - ILUAs

Purpose

The ILUAs set out the terms of the South West Settlement Package being provided by the State to the Noongar People. The Trust Deed is intended to compliment the ILUAs and provides the framework for the receipt and management of the compensation that forms part of the South West Settlement Package.

1. The full details of the South West Settlement are recorded in six ILUAs²⁹⁴ made in compliance with the Commonwealth *Native Title Act 1993* with each of the Agreement Groups known as:

- (a) Yued;
- (b) Gnaala Karla Boodja;
- (c) South West Boojarah;
- (d) Wagyl Kaip;
- (e) Ballardong; and
- (f) Whadjuk.



2. All 6 ILUAs are the same, except that they each refer to a different geographic part of the South West, reflecting the Agreement Group.
3. The ILUAs also contain key principles known as the CSC Principles, RC Principles²⁹⁵ and Transition Principles that set out the standards that the Noongar Corporations must achieve in order to be eligible for support from the NBT.
4. The 6 ILUAs have now been executed and are ready to be registered with the Native Title Registrar. Once the ILUAs have been registered and the conclusive registration period has elapsed, the State will issue a Settlement Effective Date Notice and the Trust Deed will be executed shortly afterwards.

²⁹⁴ The Settlement Terms are found in Schedule 10 of the ILUAs

²⁹⁵ Note that the RC Principles in the Gnaala Karla Boodja ILUA and the South West Boojarah #2 ILUA contain slight modifications in relation to cultural decisions

Part 37 - Termination Events and State's Recovery

Purpose

Termination of an ILUA for an Agreement Group gives the State the right to recover assets from the Trust. State recovery may also arise where the State seeks to be indemnified from the Trust Fund.

1. Termination of an ILUA for an Agreement Group will have significant consequences for the Trust and the Trustee. Most importantly the State will have a right to recover assets from the Trust.
2. There are a number of key concepts discussed under this heading including the State Contribution Condition, Conditional Period Expiry Date, ILUA Termination Notice, ILUA Termination Amount, Indemnified Amount Notice and Security Deed.

State Contribution Condition

3. The Trust Deed provides that the Trustee accepts the State Contribution (i.e. the property allocated under the South West Settlement Package) on the condition that the Trustee will be required to repay to the State an ILUA Termination Amount (under an ILUA Termination Notice), or a specified amount under an Indemnified Amount Notice.²⁹⁶ These concepts are discussed further below.
4. If the Trustee receives one of these notices, it must make the repayment within 120 days.²⁹⁷
5. The Trustee is not required to investigate whether a notice has been properly served in accordance with the ILUA. The Trustee is bound by its obligation under the Trust Deed, regardless of whether the CSC or an RC directs or requests the Trustee to act differently.²⁹⁸
6. In support of its repayment obligations, the Trustee must execute the Security Deed, to grant a security interest to the State over the Noongar Future Fund and the Operations Fund.²⁹⁹ This is discussed further below.

Termination Consequences³⁰⁰

7. The State may issue an ILUA Termination Notice if an ILUA Termination Event has occurred. This requires a termination of an ILUA under clause 3.5(a)(v) (where the ILUA is removed from the ILUA Register by the Native Title Registrar) and a Failure of Consideration.³⁰¹

²⁹⁶ Trust Deed clause 6.4(a)

²⁹⁷ Trust Deed clause 6.4(b)

²⁹⁸ Trust Deed clauses 6.4(e) and 6.4(f)

²⁹⁹ Trust Deed clause 6.4(g)

³⁰⁰ ILUAs clause 10

³⁰¹ See ILUAs clause 10.1

8. A Failure of Consideration can arise where the surrender under the ILUA was invalid or undone, or the validation of Invalid Acts in relation to an Agreement Area has been undone or is ineffective or it is apparent from a court determination that the compensation is not full and final compensation.
9. The State may only issue an ILUA Termination Notice prior to the Conditional Period Expiry Date which is 20 years from settlement effective date.
10. Where the State seeks to terminate an ILUA by issuing an ILUA Termination Notice, a copy of the notice must be provided to the Trustee.
11. The ILUA Termination Amount is, by way of summary, one sixth of the value of all money (excluding Operations Fund payments) and land paid or transferred to the Trust by the State, adjusted for CPI.
12. There may be more than 1 and up to 6 ILUA Termination Notices on issue at any single time.
13. If the Trustee fails to pay the ILUA Termination Amount, the State may enforce its security interest over the Noongar Future Fund to satisfy the unpaid amount, under the Security Deed.
14. The State has agreed in the ILUA that if the Trustee fails to pay the ILUA Termination Amount, the only avenue of recourse will be to recover the lessor of the unpaid ILUA Termination Amount and the Trust Fund (which includes assets held by the Land Sub). Whilst the whole of the Trust Fund is available for recovery, it is intended under the Security Deed that the Future Fund and Operations Fund would be accessed first, rather than land held by the Land Sub.
15. A further consequence of a termination for an Agreement Group is that compensation will cease to be paid in relevant proportions, and land will ceased to be transferred in the relevant Agreement Area.
16. In addition, the RC for the Agreement Group will cease to be eligible to be an RC on the date that the Trustee receives an ILUA Termination Notice for that Agreement Group.³⁰²

State's Indemnity³⁰³

17. Under the ILUA, the Agreement Groups indemnify the State for the "Indemnified Amount". If a court declares that native title rights over the Agreement Area are held by persons who are not members of the Agreement Groups (and were held prior to the surrender by the Agreement Groups), then the Agreement Group indemnifies the State for compensation that is payable to those native title holders (and reasonable legal costs), being the Indemnified Amount.
18. There may be more than one Indemnified Amount Notice on issue at a single time.
19. The State may issue an Indemnified Amount Notice to the Trustee (along with the RCs) seeking to recover the Indemnified Amount as a debt.

³⁰² Trust Deed clause 4.5(b)

³⁰³ ILUAs clause 12

20. The State is only entitled to recover up to the Trustee Recovery Limit, or where the Indemnified Amount exceeds this, then by reducing the annual Future Fund Payments to recover the balance.
21. The Trustee Recovery Limit is calculated, in summary, as one sixth of the value of the amounts paid to the Trustee, one sixth of the freehold and housing land transferred to the Trust, adjusted for CPI.
22. Where the Indemnified Amount exceeds the Trustee Recovery Limit, then further amounts will be deducted each year from the Future Fund Payment until the Indemnified Amount is recovered in full, or the Future Fund Payments cease (whichever is earlier). The amounts deducted each year will be, in summary, one sixth of the total Future Fund Payment, one sixth of the value of land that was allocated to the Trust in the preceding year and one sixth of the value of housing properties transferred to the Trust in the preceding year.
23. If the State has already recovered an Indemnified Amount, then this will be deducted from any relevant ILUA Termination Amount.³⁰⁴
24. The State is not entitled to recover an Indemnified Amount if the State has already issued an ILUA Termination Notice.

Security Deed

25. The Trust Deed requires the Trustee to enter into the Security Deed within 60 days of the Trust Deed being executed.³⁰⁵ The parties have agreed on a form of Security Deed which is set out in the ILUA.³⁰⁶
26. The Security Deed requires the Trustee to pay the State the Secured Debt when due.³⁰⁷ This is the Trustee's obligation to pay an ILUA Termination Amount, or an amount under an Indemnified Amount Notice.
27. To secure the payment of the Secured Debt, the Trustee grants a security interest over its right, title and interest in the Secured Property.³⁰⁸ The Secured Property means the assets of the Future Fund and the Operations Fund.³⁰⁹
28. The Security Deed has been prepared so as to operate within the framework of the *Personal Property Securities Act 2009* (Cth) (PPSA) and comply with that legislation. However the parties do contract out of certain PPSA enforcement clauses.³¹⁰
29. The security interest is released automatically on the Conditional Period Expiry Date for an ILUA Termination Amount. However, it is not released for an Indemnified Amount Notice, which continues beyond the Conditional Period Expiry Date.³¹¹

³⁰⁴ ILUAs clause 10.8

³⁰⁵ Trust Deed clause 6.4(g)

³⁰⁶ ILUAs Schedule 10, Annexure H

³⁰⁷ Security Deed clause 2.1

³⁰⁸ Security Deed clause 2.2(a)

³⁰⁹ Security Deed clause 1.1

³¹⁰ Security Deed clause 8.1

³¹¹ Trust Deed clause 6.4(h) and Security Deed clause 2.6

30. The Trustee must do everything in its power to assist the State to obtain the full benefit of its rights under the Trust Deed and the Security Deed, to obtain more effective security, or perfect a security interest.³¹²
31. The Trustee must not create any encumbrance in any Secured Property without the prior written consent of the State.³¹³
32. The Security Deed otherwise includes other requirements and processes for the Trustee relating to the security interest, and enforcement mechanisms for the State. The Trustee is also required to give a range of warranties to the State.
33. The Security Deed can be varied by written agreement between the State and the Trustee.³¹⁴
34. It will be essential for the Trustee to consider the Security Deed in detail before executing it, and to become familiar with its terms for compliance purposes.

³¹² Security Deed clause 2.7

³¹³ Security Deed clauses 3(b) and 6

³¹⁴ Security Deed clause 22

Part 38 - Changing the NGS Documents

Purpose

Each NGS Document includes rules about how it can be changed in future.

1. Each NGS Document has its own requirements for making amendments.
2. There will be the opportunity for very minor amendments to be made during the Transition Period before the NGS becomes operational. The Trustee will likely be able to provide feedback for this purpose.
3. At all other times, the process for amendments is as follows.
4. **Trust Deed** changes require:³¹⁵
 - (a) consultation with the NCC, IC and NAC; and
 - (b) prior written consent of the Commissioner of Taxation, NRC and the State.
5. **ILUA** changes require a written agreement executed by (or on behalf of):³¹⁶
 - (a) the State;
 - (b) each of the Government Parties;
 - (c) in relation to each Agreement, the RC or the relevant Native Title Agreement Group.
6. **Security Deed** changes require a written agreement executed by the State and the Trustee.³¹⁷
7. **Land Sub Bare Trust Deed** - There are no specific provisions for an amendment to the Bare Trust Deed, but the Trustee as principal would have the ability to procure changes.
8. **CSC Rulebook** changes require:³¹⁸
 - (a) seek advice from the Trustee on whether the proposed changes will affect the CSC's eligibility to remain the CSC of the Trust and provide the Trustee's advice to the CSC Members prior to the general meeting at which the proposed changes are to be considered;
 - (b) the passing of a Special Resolution by a 75% majority at a General Meeting; and
 - (c) lodgement of the relevant documents with ORIC.

³¹⁵ Trust Deed clause 27

³¹⁶ ILUAs Schedule 10, paragraph 19.5

³¹⁷ Security Deed clause 22

³¹⁸ CSC Rulebook paragraph 24

9. **RC Rulebook** changes require:³¹⁹

- (a) the passing of a Special Resolution by a 75% majority at a General Meeting;
and
- (b) lodgement of the relevant documents with ORIC.

³¹⁹ RC Rulebook paragraph 25