

## Yamatji Nation Southern Regional Agreement

# YNSRA | 03



## Background

In 2017, the Southern Yamatji, Hutt River, Mullewa Wadjari and Widi Mob claim groups entered into negotiations with the State of Western Australia (WA) about a Geraldton Alternative Settlement Agreement (“GASA”) – now known as the Yamatji Nation Southern Regional Agreement (“YNSRA”) – that would settle native title claims in the region.

The area, the subject of these negotiations (YNSRA Area) is presented in this newsletter.

Issue 01 and 02 of the YNSRA (GASA) newsletter were an introduction to the Traditional Owner Negotiation Team (TONT), and outlined the key negotiation points and conditions in the YNSRA agreement. Copies of both newsletters are available for download online at: [ymac.org.au/ynsra/](http://ymac.org.au/ynsra/).

In Issue 03, you will read about topics relating to:

- the nine priority negotiation points;
- role of the TONT;
- land parcels;
- the pre-conditions that need to be met for the negotiations to proceed;
- the change of name from GASA to YNSRA;
- the changes to the TONT meeting structure,
- difference between a Native Title and a Settlement Agreement;
- progress of the negotiations;
- anthropological research; and
- the planned community information sessions.

I hope you enjoy reading this edition and looking forward to the exciting times ahead for the YNSRA group.

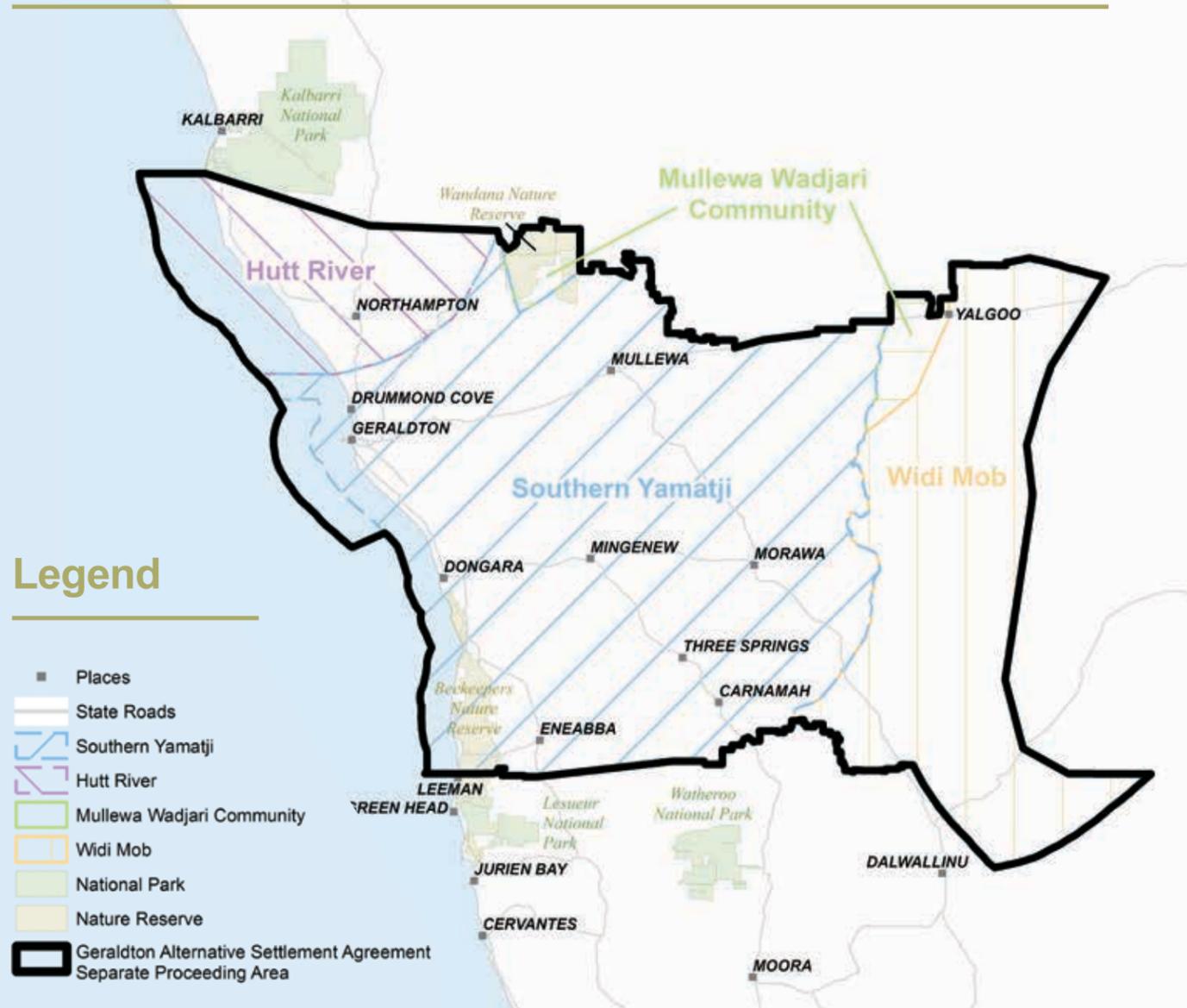
Simon Hawkins,  
CEO Yamatji Marlpá Aboriginal Corporation



**Yamatji Marlpá**  
ABORIGINAL CORPORATION



## Map of the current YNSRA Area



## Legend

- Places
- State Roads
- Southern Yamatji
- Hutt River
- Mullewa Wadjari Community
- Widi Mob
- National Park
- Nature Reserve
- ▭ Geraldton Alternative Settlement Agreement Separate Proceeding Area

## Key negotiation points and conditions

The State of WA has presented a list of nine (9) priority negotiation points to be addressed in the agreement. These are summarised below:

1. Recognition of Traditional Ownership.
2. Support for the creation and operation of a suitable Traditional Owner Governance Structure.
3. A Land Base (the transfer of agreed parcels of land to the ownership or control of Traditional Owners).
4. An Economic Base (sustainable, long-term funding for certain agreed activities).
5. Joint management and joint vesting of areas managed by the Department of Biodiversity, Conservation and Attractions.
6. A ranger program to operate within the conservation estate (e.g. nature reserves or regional parks) in the area covered by the YNSRA.
7. Land management activities.
8. Support for heritage related projects.
9. An agreed heritage regime based on the Government Standard Heritage Agreement.

## Key negotiation points and conditions (continued)

The State of WA has a number of pre-conditions that need to be met for the negotiations to proceed. Three of these are:

1. **Non-native title outcome** – the agreement requires that native title that exists in the YNSRA Area is extinguished. When native title is extinguished through an agreement, the legal word for this is “surrender”.
2. **A single post-settlement structure** – one governance structure, representing all Traditional Owners of the YNSRA Area, with which the State of WA and its agencies can liaise to deliver the agreed outcomes.
3. **All or none** – each of the four claim groups must agree to the conditions of the final agreement, or the deal is off and all claim groups go to trial.

The Federal Court of Australia has set the deadline for completion of negotiations as 27 December 2019.

If the negotiations are not completed by this date, then all four claims go to trial. If any of the claims withdraw from the negotiations, all claims will proceed to trial.

## Role of the TONT

The TONT is comprised of 12 Traditional Owners who represent each of the four claim groups that are involved in the YNSRA negotiations. The TONT members are listed below:

### For Mullewa Wadjari

- Leedham Papertalk Snr
- Glenda Jackamarra

### For Widi Mob Representatives

- Shirley McPherson
- Kathleen Pinkerton

### For Hutt River Representatives

- Paul Eley
- Helen Nutter

### For Southern Yamatji Representatives

- Wayne Warner
- Fred Taylor
- Rod Little
- Carol Martin
- Ross Councillor
- Delveen Whitby
- Leedham Papertalk Snr
- Glenda Jackamarra
- Helen Nutter
- Paul Eley
- Shirley McPherson
- Kathleen Pinkerton

## Identifying Land Parcels

The TONT is identifying land parcels which the State may agree to transfer to Traditional Owners as part of a final package. The main types of lands being considered for transfer to Traditional Owners are parcels of unallocated crown land and unmanaged reserves.

There is also proposed to be joint management of the conservation estate (such as parks and nature reserves).

If there are areas of land that you know are of significance, either culturally or for other reasons, you are strongly encouraged to talk to your TONT representative(s) so these can be considered for inclusion in the land package.

# What is the difference between native title determination and a settlement agreement?

There are two paths that Yamatji People in the southern Yamatji region can work together to resolve their native title claims and achieve an outcome which provides tangible benefits.

The comparison table provided here aims to highlight the similarities and differences between the two options and assist Traditional Owners to understand the benefits, limitations and risks of each. This table is a GUIDE ONLY to assist the Traditional Owners in considering options available of a settlement package offered by the State or a determination of native title through the Court system.

	Recognition	Anthropological Research	Rights & Interests	Compensation	Benefits or positives	Risks or downsides
Native Title	<p>If native title is determined to exist, it includes recognition that the people who claim native title are the holders of native title rights in the land and waters in the claim area – the ‘right people’ for country. Sometimes this will only apply to parts of the claimed area depending on the evidence presented and accepted. It is recognition that these native title holders were part of a society that had, and still has a system of traditional law and custom, that gives them rights and interests in the land.</p>	<p>Generally, to obtain a positive native title outcome, the State will expect to receive a full connection research report. The connection report will set out:</p> <ul style="list-style-type: none"> <li>Who the people are who hold native title rights and interests (the society);</li> <li>The traditional laws and customs of those people; and</li> <li>The rights and interests held under those laws and customs.</li> </ul> <p>The State then considers offering a consent determination (an agreement reached on native title without going to court) or, if the case will go to trial. If the case goes to trial, claimants as well as the expert anthropologist who completed the connection research report will need to appear as witnesses before the Court and provide oral evidence.</p>	<p>If native title is recognised, native title holders will have what is referred to as a ‘bundle of rights’ over land and waters where native title exists. This bundle may include the rights to:</p> <ul style="list-style-type: none"> <li>access Country;</li> <li>conduct particular cultural activities on land – e.g. hunt, fish, gather, conduct ceremony, care for sites; and</li> <li>build shelters or live/camp on-country.</li> </ul> <p>There are also future act processes under the Native Title Act over some tenure which gives native title holders either the right to negotiate, or rights to object and be consulted, or to comment, or to be notified.</p>	<p>A positive determination of native title is needed to seek compensation under the <i>Native Title Act 1993</i>.</p> <p>If native title is recognised, compensation for past acts, which have extinguished native title or impaired native title rights, can be sought from the State or party who did the act. There is only a handful of successful compensation cases to date, and the law is still being tested in terms of the parameters of what kind of outcome can be expected.</p>	<p>Some claim group members may want their day in court and opportunity to give evidence. (The outcome of this may not be beneficial for the broader group if native title is not recognised).</p> <p>If native title is recognised, claimants would have legal rights and interests (those recognised under the Native Title Act) over areas where native title was determined to still exist.</p> <p>This provides recognition that not only was there a system of law and culture and a society at the time of settlement, but recognition that that society, law and culture has survived and that the connection has not been broken.</p>	<p>Given the level of tenure extinguishment in the claim area, there are minimal areas where native title could be found to exist. The impact of colonisation on Traditional Owners in the area has been significant. Whether a positive native title outcome could be achieved is yet to be determined and would be based on the expert anthropologist’s research report and possibly claimant witnesses if it went to trial. If it goes to trial, the standard required to prove native title is a significant hurdle each claim group will encounter. Each group is in a different position for this. The likelihood of each group succeeding at trial is unlikely given the timeframes, resources and impact of colonisation on the claims. The only other litigated claim in the neighbouring region was Badimia.</p>
Settlement	<p>Recognition that Yamatji people are the Traditional Owners of the land and waters can be achieved by legislation, through an Act in parliament.</p> <p>The closest example available is the Noongar settlement, where an Act was passed recognising the Noongar people as the Traditional Owners of the lands and waters in the South West of Western Australia. What would be recognised is still being negotiated. It is the Traditional Owner Negotiation Team’s view that recognition should not just be symbolic but also tangible. Whether and what the State agree to is still uncertain.</p>	<p>Subject to instructions from claim groups, it is intended that the applicant parties will provide to the State an executive summary and apical ancestor genealogies, sufficient for the State to be satisfied that the people comprising the claim group are the right people for the settlement area.</p> <p>If the Traditional Owners want to negotiate about an increased level of recognition, further research information, similar to a connection report may be requested by the State. It will be a decision for the claim groups about whether this should be provided in order to negotiate a broader level of recognition.</p>	<ul style="list-style-type: none"> <li>Land access will be negotiated for particular areas where Traditional Owners will not own or manage the land</li> <li>Joint management and some joint vesting of all of the conservation estate in the settlement area – this includes access and rights to conduct cultural activities for Traditional Owners.</li> <li>Ownership of various parcels of land, either in reserve or freehold by the Traditional Owner corporation (established under any settlement).</li> <li>Heritage agreements with the State or third parties will be made when conducting ground disturbing activities on country (e.g. with mining and exploration companies).</li> </ul>	<p>The State will provide a compensation package (the scale is yet to be specified) which will include:</p> <ul style="list-style-type: none"> <li>the transfer of some land and properties to the Traditional Owner corporation;</li> <li>an economic and community development package (including potential funding to assist business development);</li> <li>a cultural heritage management agreement (could include heritage management, protection and restoration opportunities);</li> <li>funding for the creation and ongoing administration of a Traditional Owner Corporation; and</li> <li>funding for administration of various elements of the overall package.</li> </ul>	<p>There are tangible benefits which could be obtained without the need for trial and the risks associated with a trial.</p> <p>Witnesses are not required to give evidence in court and cross examination by the State and other respondents.</p> <p>Areas that would otherwise have conditional use by Traditional Owners could be made freehold (can be leased or sold). Under native title this will not be possible.</p>	<p>Possibly, the package does not provide some Traditional Owners with what they want from Native Title, including recognition of particular rights and interests.</p> <p>Some members of the claims may not authorise the agreement and may object. This could possibly cause delays in receiving any benefits from the settlement package.</p>

## GASA is now known as YNSRA

In July this year, the TONT made a decision to change the name from Geraldton Alternative Settlement Agreement (GASA) to Yamatji Nation Southern Regional Agreement (YNSRA).

This change was made to reflect the view that the agreement area is bigger than just the Geraldton area and encompasses the southern region of the Yamatji nation.

## Changes to TONT meeting structure

To improve the efficiency of negotiations with the State, the TONT changed the structure of meetings to enable TONT members and legal advisors to focus their efforts on specific negotiation areas.

As a result, TONT members and legal advisors now meet in their respective portfolios which consist of the following topics:

- Governance;
- Recognition;
- Economic Development and Land;
- Conservation Estate and Rangers; and
- Heritage and Culture.

TONT members have nominated to work on portfolios which match their individual skills, knowledge and experience. Negotiations have progressed significantly with this change in structure. There remains the need for the TONT to meet collectively to understand and endorse the range of what is being negotiated.

## Community information sessions

YMAC received some valuable feedback from the community during the first round which was held in March to April this year, which will shape how future community information sessions are held.

TONT representatives and legal advisors look forward to meeting with community members again in early 2019 to provide them with an update about the YNSRA negotiations.

Visit our website for regular updates: [ymac.org.au/ynsra](http://ymac.org.au/ynsra)

## Progress of negotiations

From June to August 2018, the TONT have achieved a number of milestones towards YNSRA negotiations.

Some of these discussions across each portfolio are outlined below:

- **Governance** – the parties have reached in principle agreement about aspects of the proposed governance model for the regional governing structure, including some broad parameters for the provision of funding to ensure the governing entity can get up and running;
- **Conservation Estate and Rangers** – the parties have reached in principle agreement about management arrangements for the conservation estate in the YNSRA Area. There has been agreement about support for a ranger program to conduct land management activities in the conservation estate;
- **Economic Development and Land** – the parties have engaged in discussions about the prospects for an economic development framework which would see opportunities for the development of Yamatji businesses in the region, and the supply of some land to the regional governing structure to enable it to engage in primary industry;
- **Heritage and Culture** - the parties have agreed to two negotiation points. Firstly, a Partnership Agreement with the State, the Department of Planning, Lands and Heritage and other agencies, which focuses on projects that protect Yamatji cultural heritage. Secondly, progress has been made in negotiating a standard heritage agreement that will apply in the YNSRA Area to the activities undertaken by the State and private parties.

## Summary of portfolio meetings, workshops and mediations

During the months of June to August 2018, the TONT met regularly to progress negotiations. The table below summarises the portfolio meetings, workshops and mediations that team members have completed (see table below).

Table 1.1 Summary of portfolio meetings, workshops and mediations for the period June - August 2018

Meeting Type	Date(s)	Portfolio	Number of meetings held
Portfolio Meetings	19 June	Heritage and Culture	1
	26 July & 2 August	Conservation Estate and Rangers	2
	29 August	Governance	1
	30 August	Economic Development and Land	1
Workshops	18 June, 20 July & 28 August	Land Selection	3
	3 July	Governance planning	1
	4 July	Conservation Estate planning	1
	23 July	Recognition planning	1
	24 July	Heritage and Culture planning	1
Mediations	25 June	Land Selection	1
	26 July & 9 August	Conservation Estate	2
	6 August	Governance	1
	7 August	Economic Development and Land	1
	8 August	Recognition	1
	9 August	Conservation Estate and Rangers	1
	10 August	Heritage and Culture	1

## Anthropological research update

Anthropological research has been conducted into each of the native title claims within the YNSRA Area.

In September 2018, a series of family meetings were held for Southern Yamatji and Hutt River to discuss the outcomes of the current research findings with the community. The focus of these family meetings was to discuss the 'Families and Forebears' part of Dr John Morton's research report, prepared for Hutt River and Southern Yamatji. This section of the report looks at which families have a traditional connection to the lands and waters in the claim areas and summarises the system under which connection is held. An overview presentation of this section of the report was also presented at the claim group meetings held on the 19th and 20th of September. As a result of these meetings, the Families and Forebears part of Morton's report was submitted to the State as part of the mediation negotiating an agreement on 28 September.

Dr John Morton will present the entirety of his research at further meetings in November.

If you are a member of the Southern Yamatji or Hutt River claim groups and you were not able to attend the family meetings and would like an update on the research findings related to your family, please contact **Brooke Creemers and Jeremy Brown, YMAC on (08) 9965 6222** and we will arrange a suitable time to discuss these findings as they relate to your family.

Widi Mob and Mullewa Wadjari research is also progressing, if you would like to find out more regarding the Widi research process please contact **Michael Pagsanjan, MPS Law on (08) 7221 1690**.

If you would like to know more about the Mullewa Wadjari research please contact **Greg McIntyre SC, Corser and Corser on (08) 9215 0900**.

If you are unsure which claim group you are a part of in this process, please contact **YMAC on (08) 9965 6222**.

# YNSRA Webpage

We've create a dedicated webpage so you can access relevant information about the progress of the negotiations.

Visit: [www.ymac.org.au/YNSRA](http://www.ymac.org.au/YNSRA) to read newsletters, check the dates and locations of consultation meetings, view presentations and browse photo galleries. There is also a "Contact Us" form, in case you need to ask questions about the YNSRA. You can also email your general enquiries to [YNSRA@ymac.org.au](mailto:YNSRA@ymac.org.au).

NOTE: Claim specific questions and requests should be directed to your claim lawyer.

You can also access the YNSRA webpage through [www.ymac.org.au](http://www.ymac.org.au) and then clicking on the "YNSRA – Click Here" button.



## Please get in touch!

It is important that you remain informed about the progress of the negotiations and that you can attend consultation events if you are interested. Please make sure your contact details are up to date so that you get meeting notices and other information about the negotiations.

**Please complete the form below and return it to YMAC.**

First Name \_\_\_\_\_

Last Name \_\_\_\_\_

Claim Group/s (tick)     Southern Yamatji     Hutt River     Mullewa Wadjari     Widi Mob

Mobile No \_\_\_\_\_ Landline No \_\_\_\_\_

Email Address \_\_\_\_\_

Postal Address \_\_\_\_\_

I prefer contact about the YNSRA by (tick)     Email     SMS     Post

For more information about the negotiations, please contact YMAC's Geraldton office:

171 Marine Terrace, Geraldton  
PO Box 2119 Geraldton WA 6531  
Phone: (08) 9965 6222 | Fax: (08) 9964 5646



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