

First Peoples of the Millewa-Mallee consent determination 2025

Public fact sheet for publication on FPSR website

On 18 July 2025, the Federal Court recognised that the First Peoples of the Millewa-Mallee hold native title over Crown land and waters in the north-western corner of Victoria along the Murray River. This is an historic consent determination as it is the first time the Federal Court has recognised native title in Victoria along the Murray River. It is also the first time in Victoria that the Federal Court has recognised exclusive possession native title rights over certain freehold land owned by Aboriginal organisations. This is the highest form of native title rights and brings Victoria in line with other Australian jurisdictions.

First Peoples of the Millewa-Mallee

The First Peoples of the Millewa-Mallee are the Traditional Owners of Country in the north-west of Victoria that runs south of the Murray River to the Mallee Highway and west from the Calder Highway to the South Australian border, including part of the Murray-Sunset National Park.

The First Peoples of the Millewa-Mallee are a community of family groups associated with the Murray River Region. Some individuals within the group identify as Latji Latji, Ngintait and Nyeri Nyeri, while others identify themselves through their connections to the area, and as part of the community of Native Title Holders. All members of the First Peoples of the Millewa-Mallee are descended from identified ancestors who occupied the area around the time of European settlement.

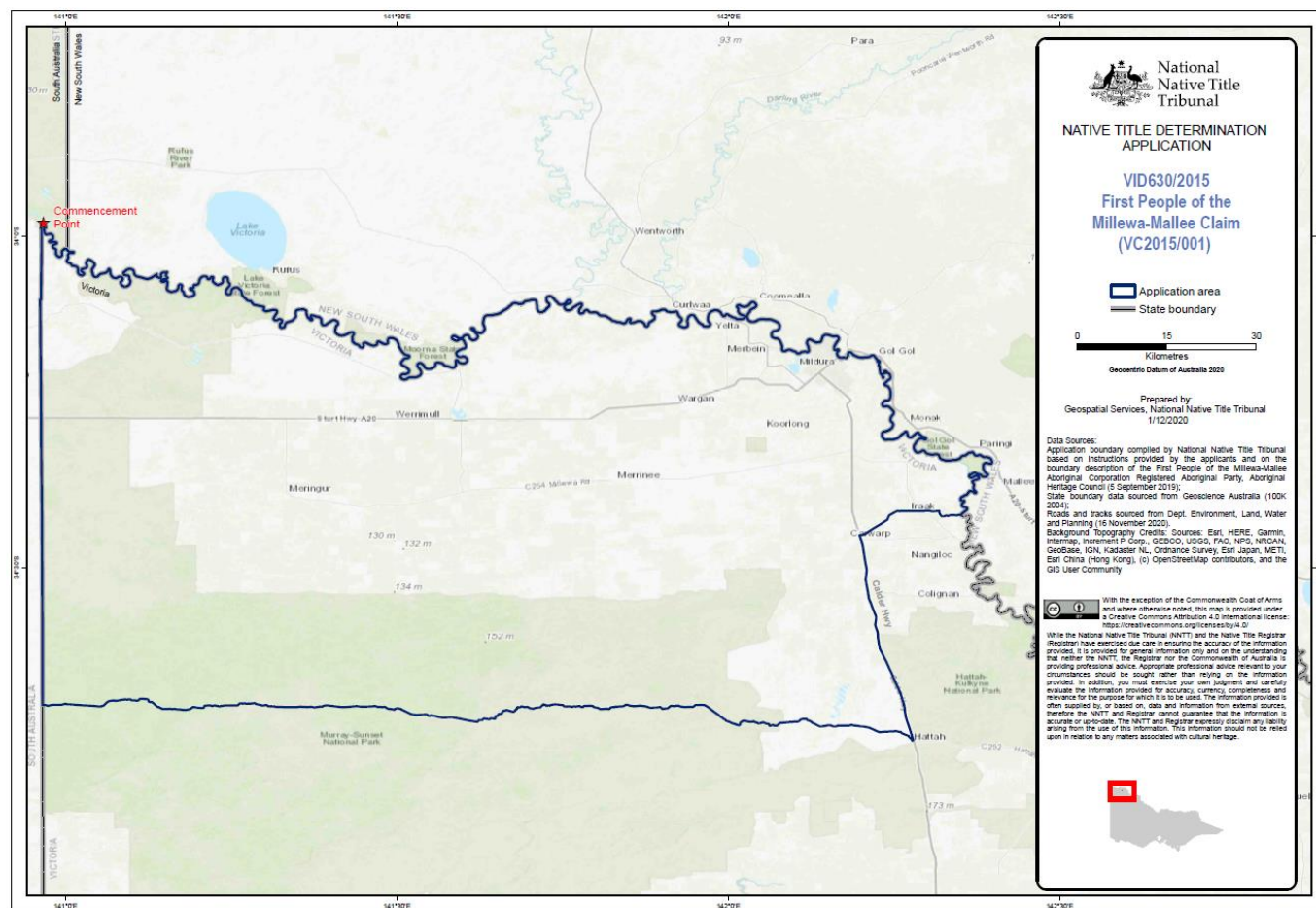
The First Peoples of the Millewa-Mallee native title holders chose the First Peoples of the Millewa-Mallee Aboriginal Corporation (FPMMAC) to represent them. FPMMAC was recognised as a Registered Aboriginal Party on 5 December 2018.

What is a determination of native title?

Native title is the recognition in Australian law that Aboriginal and Torres Strait Islander Peoples have rights and interests in their land and waters, according to their traditional law and customs. Victoria's Traditional Owners can apply to the Federal Court to have their native title rights recognised under the *Native Title Act 1993* (Cth) (Native Title Act).

The First Peoples of the Millewa-Mallee filed a native title claim in the Federal Court on 8 October 2015. The claim was registered by the National Native Title Tribunal on 13 May 2016. The State has been in active mediation with the First Peoples of the Millewa-Mallee since 2020 to resolve their native title claim by consent. On 18 July 2025, the Federal Court recognised that the First Peoples of the Millewa-Mallee hold native title over Crown land in north-west Victoria over Mildura and surrounds and bounded to the north by the Murray River (see map below).

A 'consent determination' is a decision made by the Federal Court to recognise native title rights and interests by the agreement of the State and other parties to the claim under the *Native Title Act*. A consent determination of native title avoids lengthy litigation. All parties to the First Peoples of the Millewa-Mallee's claim have agreed to this recognition, making it a consent determination.



What native title rights has the Court determined the First Peoples of the Millewa-Mallee have?

The First Peoples of the Millewa-Mallee's native title consent determination is very similar to previous consent determinations reached in Victoria and preserves other people's existing rights and interests in Crown land.

Under the *Native Title Act*, two types of native title can be recognised: 'non-exclusive' native title and 'exclusive possession' native title.

- **Non-exclusive native title** can be recognised over areas where there are shared interests in Crown land. In these circumstances, native title co-exists alongside other people's rights, such as a pastoral lease. Examples of non-exclusive native title rights include the right to hunt or camp on the land. It does not include the right to control access to Crown land.
- **Exclusive possession native title** is the right to possess and occupy Crown land to the exclusion of all others (i.e. a right to control access to land). Exclusive possession native title rights are akin to freehold title but, unlike freehold title, they are not full legal ownership of land and waters, and they cannot be sold. Exclusive possession native title can only be recognised over limited areas where the State has not reserved the land for a purpose, or where the *Native Title Act* allows it to exist. Sometimes, the exclusive possession native title can exist but, under the law, will be wholly

suppressed by other people's rights, meaning the right to control access cannot be exercised by the native title holders.

Native title rights must be exercised in accordance with traditional law and custom and the relevant laws of Victoria and the Commonwealth.

The Federal Court has recognised that the First Peoples of the Millewa-Mallee hold non-exclusive native title rights in Crown land

- The First Peoples of the Millewa-Mallee hold the following non-exclusive native title rights, including the right to:
- have access to and remain on (including live on and belong to) Crown land
- take and use resources
 - protect and maintain areas, sites, objects and places of significance under traditional law and custom, and
 - invite spouses and partners or others onto the land in accordance with traditional law and custom, for the performance of cultural activities.
- These non-exclusive native title rights are recognised in most of the consent determination area (except where it cannot be recognised). These Crown lands are known as section 47B land under the *Native Title Act* (described below).
- The First Peoples of the Millewa-Mallee's non-exclusive native title rights co-exist with other interests in the same Crown land. This means native title rights and interests sit alongside the broader community's right to enjoy these places.

The Court recognised that the First Peoples of the Millewa-Mallee have exclusive possession native title rights over limited areas within their consent determination area

- For the first time in Victoria, the First Peoples of the Millewa-Mallee's consent determination includes recognition of exclusive possession native title. This is the highest level of rights recognised under the *Native Title Act*.
- The First Peoples of the Millewa-Mallee have exclusive possession native title over limited areas within their consent determination area. These parcels are known as section 47A land under the *Native Title Act*. This land is described below but is essentially Aboriginal-held freehold land.
- Freehold title takes precedence over exclusive possession native title rights. The exclusive possession native title rights are suppressed under the law by the existing freehold title held by or on behalf of Aboriginal people, meaning the First Peoples of the Millewa-Mallee group has no right to control access over these titles while the freehold title is in place.
- The exclusive possession native title right to control access to the land cannot be exercised by the First Peoples of the Millewa-Mallee unless the freehold title is surrendered to the Crown and ceases to exist.

The consent determination includes a commitment from the State to negotiate in good faith with the First Peoples of the Millewa-Mallee native title holders to enter into agreements under section 47C of the *Native Title Act*

- If successfully negotiated, and following a period of public consultation, the agreements would allow native title rights and interests to be recognised over park areas where it was previously extinguished. It may include recognition of exclusive possession and non-exclusive native title rights.
- Further information about section 47C agreements is included below.

Does the native title determination affect people with existing interests in the area?

Any existing interest-holders – such as people with leases or licences over Crown land – are unaffected by this determination. Existing public access rights to Crown land in the determination area are also unaffected. Local governments and volunteer committees of management continue to manage their Crown land reserves as before.

In most cases, existing interests will co-exist with the First Peoples of the Millewa-Mallee's recognised native title rights (as is the case across other parts of Victoria where native title exists). However, where there is an inconsistency between rights held by other people and native title rights, the law provides that the other rights will prevail over native title rights.

As is already the case, people who want to undertake *new* activities on Crown land and waters in this area may be required to notify and consult with the First Peoples of the Millewa-Mallee native title holders beforehand. The *Native Title Act* sets out the processes for addressing any impacts on native title caused by any new activities.

What is section 47A land under the *Native Title Act*?

Section 47A land is freehold land, not Crown land.

Section 47A land refers to land that at the time the claim was made in 2015, was:

- freehold land owned by Aboriginal organisations which was granted under legislation to or for the benefit of Aboriginal or Torres Strait Islander Peoples, or
- areas specifically set aside, reserved, or held on trust expressly for the benefit of Aboriginal or Torres Strait Islander Peoples (e.g. under land rights legislation like the *Aboriginal Lands Act 1970* (Vic)).

The determination documents do not list the land to which it applies. It applies automatically to land which meets the criteria above.

What is section 47B land under the *Native Title Act*?

Section 47B land refers to land that was vacant, unreserved Crown land at the time the claim was made in 2015.

The determination documents do not list the land to which Section 47B applies. It applies to land which meets the criteria above.

What is section 47C of the *Native Title Act*?

- Section 47C is a provision in the *Native Title Act* which allows the State and native title holders to enter into agreements recognising native title over certain types of park or conservation areas. The First Peoples of the Millewa-Mallee consent determination requires the State to negotiate this with the native title holders.
- A section 47C agreement may include recognition of exclusive possession native title or non-exclusive native title rights (see above).
- Where a section 47C agreement applies, the *Native Title Act* protects public access to the park areas, and third-party rights and interests in the park areas, for example, leases or licenses.

- A proposed section 47C agreement must undergo a 3-month public notification process before it can be agreed. The State would notify the public and interested persons, who can then comment on the proposal. The State would consider all submissions made and may decide to modify its proposal, not proceed, or proceed as originally proposed.

The Department of Premier and Cabinet will provide further information on any future section 47C proposal with the First Peoples of the Millewa-Mallee via this website as information becomes available.

We acknowledge the Traditional Owners of Country throughout Victoria and pay our respect to them, their culture, and their Elders past and present.

© State of Victoria (Department of Premier and Cabinet)