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Project Resource 3: Identifying land subject to native title

This resource forms part of the Native title, legal right and eligible interest-holder consent guidance.

Released June 2018



Project Resource 3: Identifying land subject to native title

The National Native Title Tribunal's Native Title Vision¹ (NTV) mapping tool can be used to check whether a project area overlaps with land subject to native title.

This process² is outlined below:

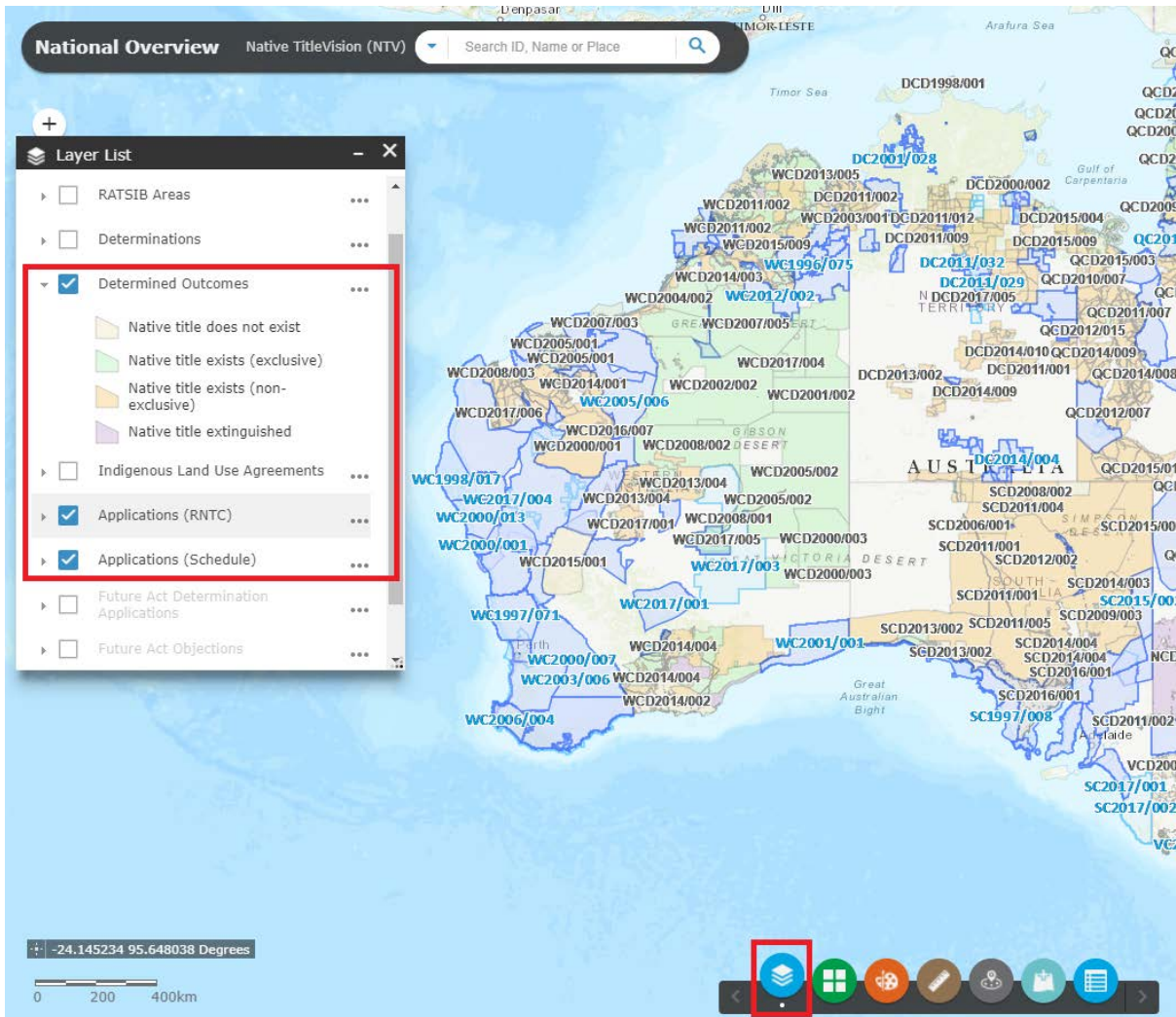
1. To open the NTV mapping tool, visit <http://www.nntt.gov.au/assistance/Geospatial/Pages/NTV.aspx>. Select the relevant state, or choose the 'National Overview' for a complete map of Australia. The bottom of the page has training and help documents for more detailed instructions on how to use the NTV mapping tool.
2. As demonstrated in figure 1, select the blue 'Layer List' button on the far left of the selection bar. This will open a box where the user can select what map 'layers' (information) to display. Select the following layers:
 - » Determined Outcomes—shows native title determinations, coloured by outcome.
 - » Applications (RNTC)—shows registered native title claims.
 - » Applications (Schedule)—shows all shows all scheduled native title claims.
3. Find the project area on the map. The user may do this by searching for an address in the search bar, uploading map files of a project using the 'Add Data' button, or manually navigating to the appropriate area of the map. Check whether the project area overlaps with any native title determinations or claims.
4. If a native title determination or claim overlaps with the project area, further information is required. A user can find details about an area's determination or claim by clicking on the region. A box will appear with information about the determination/claim's name, Tribunal number, Federal Court number, status, and more.
 - » The bottom of the information box contains links to the Register Extract and Determination Document (for determined native title land), or the Register Extract or National Native Title Tribunal website (for native title claims). These documents provide further details about the application or decisions made.
 - » The 'Federal Court Name' can be used to search for the full determination document on the Australasian Legal Information Institute (AustLII) website³.

The absence of a native title determination or claim on project land does not mean that native title rights can be ignored. Unless the land has had a determination that native title is extinguished or does not exist, it may be subject to native title claims or determinations in the future. As such, the future acts provisions still apply, and proponents will need to ensure they are complying with all native title and legal right requirements.

¹ <http://www.nntt.gov.au/assistance/Geospatial/Pages/NTV.aspx>
² Process as at June 2018. All images are screenshots taken from the National Native Title Tribunal website.

³ www.austlii.edu.au

Figure 1: Example of NTV layer selection.



Finding native title extract documents

If there is a native title determination or claim on a project area, it is important to read the Register extracts and attachments. These provide further information on the area and rights of the native title on the land.

These documents may be accessed through the NTV mapping tool, or through the search function on the National Native Title Tribunal website. Search for the determination or claim's Tribunal number and read the attached documents to see if native title affects a project area.

If required, full native title determinations can be found by searching for the determination's Federal Court Number on the Federal Court of Australia Database Search⁴. These are also linked directly in the NTV maps.

A project proponent may use the AustLII to find the required legal materials (in this case, native title determinations) by:

5. visiting www.austlii.edu.au, and
6. using the search bar located on the homepage to locate specific determinations by searching for the Federal Court determination title. This approach is recommended once native title land has been identified following the steps provided above.

As shown in figure 3, the search bar was used to identify the determination for the Birriah People in the state of Queensland. This was completed after identifying the Federal Court determination name using the NTV.

⁴ www.austlii.edu.au/cgi-bin/viewdb/au/cases/cth/FCA/.

Figure 3: AustLII determination example

The screenshot displays the AustLII website interface. At the top left is the AustLII logo and the text 'Federal Court of Australia'. To the right, there is a navigation menu with links for 'About', 'Contact', 'Copyright & Usage', 'Privacy', 'Disclaimers', 'Feedback', and 'Help'. Below this is a search bar containing the text 'Miller on behalf of the Birriah People v State of Quee'.

A red header bar contains the following metadata:

Type	Jurisdiction	Database	Year	Citation
Cases	Commonwealth	Federal Court of Australia	2016	[2016] FCA 1434

The main content area features the case title: **Miller on behalf of the Birriah People v State of Queensland (No 2) [2016] FCA 1434 (29 November 2016)**. Below the title, it states 'Last Updated: 29 November 2016' and 'FEDERAL COURT OF AUSTRALIA'. The case name is displayed with green arrows pointing left and right: **← Miller on behalf of the Birriah People v State of Queensland → (No 2)**. A blue link for the citation **[2016] FCA 1434** is provided. The following details are listed:

File number:	QUD 6244 of 1998
Judge:	REEVES J
Date of judgment:	29 November 2016

On the right side, there is a sidebar with several utility options:

- SEARCH CONTEXT**: [Show context](#), [Hide context](#)
- PRINT**: [Print \(pretty\)](#), [Print \(eco-friendly\)](#)
- DOWNLOAD**: [RTF format \(83.1 MB\)](#), [Signed PDF/A format](#)
- CITED BY**: [LawCite records](#), [NoteUp references](#)
- JOIN THE DISCUSSION**: [Tweet this page](#), [Follow @AustLII on Twitter](#)