National Native Title Tribunal

Extract from the National Native Title Register

Determination Information:

Determination Reference:	Federal Court Number(s): WAD6001/2004; WAD49/1998 NNTT Number: WCD2005/003
Determination Name:	Sampi on behalf of the Bardi and Jawi People v State of Western Australia (No. 2)
Date(s) of Effect:	30/11/2005
Determination Outcome:	Native title exists in parts of the determination area

Register Extract (pursuant to s. 193 of the *Native Title Act 1993*)

Determination Date:	30/11/2005
Determining Body:	Federal Court of Australia

ADDITIONAL INFORMATION:

1. On 25 November 2005, His Honour Justice French ordered the consolidation of the main native title determination application WAD 49 of 1998 and the Brue Reef application WAD 6001 of 2004 so that a single determination could be made. 2. On 30 November 2005, French J determined that native title existed in part of the determination area and was held by the Bardi Jawi People: Sampi on behalf of the Bardi and Jawi People v State of Western Australia (No. 3) [2005] FCA 1716. The determination was registered on this Register on 9 December 2005. 3. On 19 June 2006, that determination was varied so that the areas referred to in Order A were included in Schedule 2 thereof. 4. On 18 March 2010 an appeal by the Bardi Jawi People was allowed in part by Justices North and Mansfield: Sampi on behalf of the Bardi and Jawi People v State of Western Australia [2010] FCAFC 26. 5. On 18 August 2010 the primary judge's determination was set aside and the following determination made in lieu thereof.: Sampi on behalf of the Bardi and Jawi People v State of Western Australia (No. 2) [2010] FCAFC 99.

REGISTERED NATIVE TITLE BODY CORPORATE:

Bardi and Jawi Niimidiman Aboriginal Corporation RNTBC
Trustee Body Corporate
Unit 3 - 4/9 Short Street
BROOME Western Australia 6725

Note: current contact details for the Registered Native Title Body Corporate are available from the Office of the Registrar of Indigenous Corporations www.oric.gov.au

COMMON LAW HOLDER(S) OF NATIVE TITLE:

The native title is held by the Bardi and Jawi people being

(a) the descendants of the following people:

Agimo, Albert Balib, Banalm, Bayid, Bidnid, Bulam also called 'Plum', Daygan; Dibi, Dilay, Dingga or Tinker also known as Jungurinjan, Emilie Amilij Williams, Ernest Ralph Anij, Gagi, Gardad also known as Gardada, Gawrri, Gregory Girrigwarr also known as Ngalgun, Igab also known as Igabo, Irene Nyunggu, Irrigul, Jambu, Jarni also known as Johnny Wangal, Jinerrb, Jurni, Malumbo Jack Junduwarra, Mandirr aka Judunbur, Mandirr, Marraliny, Miyardi, Nayp, Nayard, Ngunya, Nubul also known as Mardinganbur, Nyamwa, Panj also known as Ngarlgarrman, Peter Wambalag, Raphael Phillips, Willie Gunggunbur and Benedict Dilay; and

(b) those persons adopted by those descendants, in accordance with the traditional laws and customs of the native title holders.

MATTERS DETERMINED:

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

ORDER

1. The appeal is allowed in part.

2. The primary judge's Determination made in Order B on 30 November 2005 is set aside and the Determination that follows is made in lieu thereof.

3. The cross-appeals by the State of Western Australia and the Western Australian Fishing Industry Council are dismissed.

DETERMINATION

EXISTENCE OF NATIVE TITLE (s 225)

1. Native title rights and interests exist in relation to those parts of the Determination Area described in Schedule 3, Schedule 4 and Schedule 4A.

2. Native title does not exist in relation to those parts of the Determination Area described in Schedule 5.

THE NATIVE TITLE HOLDERS (s 225(a))

3. The native title is held by the Bardi and Jawi people being the persons described in Schedule 6 (native title holders).

THE NATURE AND EXTENT OF NATIVE TITLE RIGHTS AND INTERESTS (s 225(b) and s 225(e))

4. Subject to paragraphs 6 and 7 the nature and extent of the native title rights and interests in relation to each part of the Determination Area referred to in Schedule 3 [being areas where there has been no extinguishment of native title or areas where any extinguishment must be disregarded] is the right of possession, occupation, use and enjoyment of that part as against the whole world, including the following rights:

(a) the right to live on the land;

(b) the right to access, move about on and use the land and waters;

(c) the right to hunt and gather on the land and waters;

(d) the right to engage in spiritual and cultural activities on the land and waters;

(e) the right to access, use and take any of the resources of the land and waters (including ochre) for food, shelter, medicine, fishing and trapping fish, weapons for hunting, cultural, religious, spiritual, ceremonial, artistic and communal purposes;

(f) the right to refuse, regulate and control the use and enjoyment by others of the land and its resources;

(g) the right to have access to and use the water of the land for personal, domestic, social, cultural, religious, spiritual, ceremonial and communal purposes.

5. Subject to paragraphs 6 and 7, the nature and extent of the native title rights and interests held in relation to each part of the Determination Area referred to in Schedule 4 [being areas seaward of mean high watermark other than the features known as Lalariny and Alarm Shoals] are:

(a) the right to access, move about in and on and use and enjoy those areas;

(b) the right to hunt and gather including for dugong and turtle;

(c) the right to access, use and take any of the resources thereof (including water and ochre) for food, trapping fish, religious, spiritual, ceremonial and communal purposes.

5A. Subject to paragraphs 6 and 7, the nature and extent of the native title rights and interests held in relation to those parts of the Determination Area referred to in Schedule 4A [being the features known as Lalariny and Alarm Shoals] is the right to care for, maintain and protect those parts, but not including the following rights:

(a) the right to access, move about in or on, and use those parts;

(b) the right to hunt and gather on those parts;

(c) the right to access, use or take any of the resources on those parts.

6. The native title rights and interests are exercisable in accordance with and subject to the:

(a) traditional laws and customs of the native title holders; and

(b) laws of the State and the Commonwealth, including the common law.

7. Notwithstanding anything in this determination there are no exclusive native title rights or interests in:

(a) waters which flow, whether permanently, intermittently or occasionally, within any river, creek, stream or brook;

(b) any natural collection of water into, through, or out of which a river, creek, stream or brook flows; and

(c) waters from and including an underground water source, including water that percolates from the ground.

NATURE AND EXTENT OF OTHER RIGHTS AND INTERESTS IN RELATION TO THE DETERMINATION AREA (s 225(c))

8. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 7.

RELATIONSHIP BETWEEN THE NATIVE TITLE RIGHTS AND INTERESTS AND OTHER INTERESTS (s 225(d))

9. The relationship between the native title rights and interests described in paragraphs 4 and 5 and the other interests referred to in paragraph 8 ('the other rights and interests') is that:

(a) to the extent that any of the other rights and interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title rights and interests continue to exist in their entirety, but the native title rights and interests have no effect in relation to the other rights and interests to the extent of the inconsistency during the currency of the other rights and interests; and otherwise,

(b) the existence and exercise of the native title rights and interests do not prevent the doing of any activity required or permitted to be done by or under the other rights and interests, and the other rights and interests, and the doing of any activity required or permitted to be done by or under the other rights and interests, prevail over the native title rights and interests and any exercise of the native title rights and interests, but do not extinguish them.

AREAS TO WHICH s 47A AND s 47B apply

10. Sections 47A and 47B of the Native Title Act respectively apply to the areas described in Schedule 9.

DEFINITIONS AND INTERPRETATION

11. In this determination, unless the contrary intention appears:

'Determination Area' means the land and waters described in Schedule 1 and excluding those areas described in Schedule 2. In the event of an inconsistency between the written descriptions of areas in the Schedules and the areas depicted on the Maps in Schedule 8, the written descriptions shall prevail;

'land' and 'waters' respectively have the same meanings as in the Native Title Act; and

'Native Title Act' means the Native Title Act 1993 (Cth).

12. The native title is to be held in trust by Bardi and Jawi Niimidiman Aboriginal Corporation.

SCHEDULE 1 - DETERMINATION AREA PERIMETER

EXTERNAL PERIMETER

The external perimeter of the Determination Area is described in this Schedule and generally shown on the Maps in Schedule 8.

AREA 1

Commencing at the point of Latitude 16.130035deg.S, Longitude 123.122964deg.E, and extending generally southerly, passing through the following points:

Latitude Sdeg.	Longitude Edeg.
16.166376	123.136837
16.311724	123.251283
16.333598	123.268504
16.466374	123.301283
16.599152	123.201283
16.748595	123.378165
16.782207	123.417948
16.794801	123.417959

Then west to a point on the northern boundary of Reserve 1834 (as it was at 1st September 1995) at Longitude 123.140564deg.E, then generally westerly along the northern boundaries of that reserve to Longitude 122.663627deg.E.

Then north to a point in Pender Bay at Latitude 16.751355deg.S, then west to intersect the three nautical mile limit, then generally north-easterly along the three nautical mile limit to a southern boundary of Alarm Shoal at Latitude 16.322907deg.S, then generally westerly and generally north-easterly along the boundaries of Alarm Shoal to again intersect the three nautical mile limit, passing through the following points:

Latitude Sdeg	Longitude Edeg.
16.322907	122.916127
16.324328	122.910444
16.323144	122.908550
16.320776	122.908550
16.318172	122.911155
16.315330	122.918732
16.315093	122.926072
16.315162	122.928403

Again, generally north-easterly along the three nautical mile limit back to the commencement point.

AREA 2

That part of Brue Reef that lies within the 12 nautical mile limit.

Note that "Area 2" includes the part of Brue Reef that was included in Proceeding WAD 49 of 1998 as well as the part that was included in proceeding WAD6001 of 2004, which parts fall respectively west and east of a line defined by the following coordinate points:

Longitude Edeg. Latitude Sdeg.

123.034613 15.898597

123.136837 16.166376

Note Reference Data and Source:

Geographical coordinates have been provided by the NNTT Geospatial Unit and are referenced to the Geocentric Datum of Australia 1994 (GDA94), in decimal degrees and are based on the spatial reference data acquired from the various custodians at the time.

SCHEDULE 2 - DETERMINATION AREA EXCLUSIONS

Exclusions from the area described in Schedule 1

[Areas and things not covered by the native title determination application]

The following are not included in the Determination Area:

(a) minerals, petroleum and gas wholly owned by the Crown;

(b) Reserve 34257 for the purpose of 'Conservation of Flora and Fauna' vested in and held in trust by the National Parks and Nature Conservation Authority pursuant to s 33 of the Land Act 1933 on 5 May 1989 generally shown on the Maps in Schedule 8;

(c) Reserve 39002 for the purpose of hospital and allied purposes vested in and held in trust by the Minister of Public Health pursuant to s 33 of the Land Act 1933 on 15 February 1985 generally shown on the Maps in Schedule 8;

(d) Reserve 41904 for the purpose of camping vested in the Shire of Broome pursuant to s 33 of the Land Act 1933 on 18 October 1991 generally shown on the Maps in Schedule 8;

(e) Reserve 45490 (formerly comprised in Certificate of Title Volume 1744 Folio 119) generally shown on the Maps in Schedule 8;

(f) the Leveque Radio Site located on Dampier Location 297, being a square shaped area of four hectares (200 metres x 200 metres), the right side corner points of which are located 138.59 metres from a station mark located at Longitude 122054'52.6 Latitude 16032'25 and the left side corner points of which are located 141.42 metres from the same station mark, generally shown on the Maps in Schedule 8;

(g) the areas comprised in Certificates of Title Volume 1711 Folio 767, Volume 1436 Folio 128, Volume 1436 Folio 176, Volume 1523 Folio 196 (Dampier Location 10) and Volume 2096 Folio 847 (Dampier Location 134), generally shown on the Maps in Schedule 8;

(h) the areas comprised in Special Leases 3116/10384, 3116/11169 and 3116/11749, generally shown on the Maps in Schedule 8;

(i) the following gazetted and dedicated roads as generally shown in the Maps in Schedule 8:

(i) Road No. 6241, the Broome to Cape Levique (sic) road, gazetted pursuant to the Lands Act 1911 on 5 September 1919 (page 1566) and 12 September 1919 (page 1600);

(ii) Road No. 15970, Cape Leveque Road, gazetted pursuant to the Local Government Act 1960 on 1 July 1988 (page 2138);

(iii) Road No. 16387, within Reserve 20927, gazetted pursuant to the Local Government Act 1960 on 24 April 1980 (page 1197);

(iv) Road No. 18047, Kinney Road, gazetted pursuant to the Local Government Act 1960-1979 on 2 June 1989 (page 1613);

(v) Road No. 18048, Kinney Road, gazetted pursuant to the Local Government Act 1960-1979 on 2 June 1989 (page 1613);

(vi) Crown Survey OP 16514, Pender Bay Road, dedicated pursuant to s 294A of the Local Government Act 1960-1979;

(j) those portions of Dampier Location 25 as were comprised in Certificate of Title Volume 1670 Folio 883 when the

native title determination application the subject of proceeding WAD 49 of 1998 was made, including Dampier Locations 371, 372, 373, 374, 404 and 405 generally shown on the Maps in Schedule 8; and

(k) the areas comprised in Certificates of Title Volume 1744 Folio 116 (Portion of Dampier Location 19), Volume 1744 Folio 117 (Portion of Dampier Location 69) and Volume 1744 Folio 118 (Dampier Location 21) generally shown on the Maps in Schedule 8.

SCHEDULE 3 - WHERE NATIVE TITLE IS EXCLUSIVE POSSESSION

Areas where native title comprises the rights set out in Order 4

[No extinguishment or extinguishment disregarded]

The parts of the Determination Area where native title comprises the rights and interests set out in Order 4 are those parts landward of mean high water mark that lie north of the southern boundary, and are generally shown on the Maps in Schedule 8.

In this and other Schedules, 'southern boundary' means a line commencing at the commencement point then proceeding easterly to the centre point of the line of closure of Pender Bay, generally south-easterly along a line bisecting Pender Bay to the mouth of Kelk Creek, then generally south easterly along the centre line of Kelk Creek to the point of intersection between that line and the northern boundary of Reserve 1834, then easterly following that boundary for approximately 10 kilometres to Longitude 122.935502 Edeg. then north easterly to a point on the mean high watermark of the mainland coast on the eastern side of the Dampier Peninsula at Latitude 16.714603 Sdeg. and then due east to the point of intersection with the external perimeter of the Determination Area, as generally shown on the Maps in Schedule 8.

In the definition of the southern boundary 'commencement point' means a point on the western side of the Dampier Peninsula at which a line drawn due west from the centre point of the line of closure of Pender Bay intersects the 3 nautical mile limit.

SCHEDULE 4 - WHERE NATIVE TITLE IS NOT EXCLUSIVE POSSESSION

Areas where native title comprises the rights set out in Order 5

[Areas seaward of mean high water mark other than the features known as Lalariny and Alarm Shoals]

Those parts of the Determination Area seaward of mean high water mark that lie north of the southern boundary, other than those included in Schedule 4A or Schedule 5, as generally shown on the Maps in Schedule 8.

SCHEDULE 5 - WHERE NATIVE TITLE DOES NOT EXIST

[Areas not excluded but where native title does not exist]

The parts of the Determination Area where native title does not exist are the lands and waters of the Determination Area other than those described in Schedules 3, 4 and 4A.

SCHEDULE 6 - NATIVE TITLE HOLDERS

The Native Title Holders referred to in Order 3

The persons referred to in Order 3 are:

(a) the descendants of the following people:

Agimo, Albert Balib, Banalm, Bayid, Bidnid, Bulam also called 'Plum', Daygan; Dibi, Dilay, Dingga or Tinker also known as Jungurinjan, Emilie Amilij Williams, Ernest Ralph Anij, Gagi, Gardad also known as Gardada, Gawrri, Gregory Girrigwarr also known as Ngalgun, Igab also known as Igabo, Irene Nyunggu, Irrigul, Jambu, Jarni also known as Johnny Wangal, Jinerrb, Jurni, Malumbo Jack Junduwarra, Mandirr aka Judunbur, Mandirr, Marraliny, Miyardi, Nayp, Nayard, Ngunya, Nubul also known as Mardinganbur, Nyamwa, Panj also known as Ngarlgarrman, Peter Wambalag, Raphael Phillips, Willie Gunggunbur and Benedict Dilay; and

(b) those persons adopted by those descendants, in accordance with the traditional laws and customs of the native title holders.

SCHEDULE 7 - OTHER INTERESTS

OTHER INTERESTS REFERRED TO IN PARAGRAPH 8

The nature and extent of other interests in relation to those parts of the Determination Area described in Schedules 3 and 4 are the following as they exist as at the date of this determination:

RESERVES

1. The interests of persons who have the care, control and management of the following reserves, and the interests of persons entitled to access and use these reserves for the respective purposes for which they are reserved, subject to any statutory limitations upon those rights:

(a) Reserve 20927 for the 'Use and Benefit of Aborigines' vested pursuant to s 33 of the Land Act 1933 (WA), in the Aboriginal Lands Trust on 29 June 1973, for the designated purpose of 'Use and Benefit of Aborigines'; and

(b) Reserve 38931 for the 'Use and Benefit of Aboriginal Inhabitants' vested pursuant to s 33 of the Land Act 1933 (WA) in the Aboriginal Lands Trust on 30 November 1984.

LEASES

2. The rights and interests of the holders of the following leases:

(a) Special Lease 3116/10633 in Dampier Location 297 for the special purpose of 'Use and Benefit of Aboriginal Inhabitants' granted pursuant to s 116 of the Land Act 1933 for a term commencing on 1 July 1991; and

(b) Special Lease 3116/10656 in Dampier Location 290 for the special purpose of 'Use and Benefit of Aboriginal Inhabitants' granted pursuant to s 116 of the Land Act 1933 for a term commencing on 1 July 1991.

FISHING AND AQUACULTURE LICENCES

3. The interests of the holders of statutory interests and exemptions granted under the Fisheries Management Act 1991 (Cth), the Fish Resources Management Act 1994 (WA) and the Pearling Act 1990 (WA), including the following aquaculture licences granted under the Fish Resources Management Act 1994 (WA):

LICENCE NO	HOLDER
IDCA 1546	Bardi Aborigines Association Inc
IDCA 1549	Gudumul Aboriginal Corporation
IDCA 1550	Gumbarnun Aboriginal Corporation
IDCA 1593	Nyumwah Aboriginal Corporation
IDCA 1594	Ngamakoon Aboriginal Corporation
IDCA 1597	Djarajung Aboriginal Corporation
IDCA 1598	Mudnun Aboriginal Corporation
IDCA 1601	Chile Creek Aboriginal Corporation

PEARL OYSTER FARM LEASES

4. The rights and interests of the holders of Pearl Oyster Farm Leases granted under the Pearling Act 1990 (WA), including (to the extent that they are wholly or partly within either of the area described in Schedule 3 or the area described in Schedule 4):

LEASE NAME	HOLDER	DATE GRANTED
Catamaran Bay A, Catamaran Bay B and Catamaran Bay C	BR & LM Brown	20 July 2001
King Sound - Deep Water Point A	Blue Seas Pearling Company	25 May 2007
King Sound - Deep Water Point B	Blue Seas Pearling Company	11 December 2008

King Sound - Deep Water Point C Blue Seas Pearling 25 May 2007

Company

Pearl Oyster Farm Lease Trial Site BR & LM Brown 10 September 2009

Shenton Bluff

Mapping of Pearl Oyster Farm Leases described as King Sound - Deep Water Point A, B and C suggests that all or some of those pearling leases may extend landward of the low water mark. The holders of those Pearl Oyster Farm Leases do not contend that those leases so extend. To the extent that the Pearl Oyster Farm Leases in question extend landward of the low water mark, they are invalid to the extent that they are in an area landward of the low water mark and to the extent that they affect native title in that area.

TELSTRA

5. The interests of Telstra Corporation Limited:

(a) rights and interests as the owner and operator of telecommunications facilities installed within the Determination Area, including customer radio terminals and telecommunications cabling;

(b) rights and interests created pursuant to the Post and Telegraph Act 1901 (Cth), the Telecommunications Act 1975 (Cth), the Australian Telecommunications Corporation Act 1989 (Cth), the Telecommunications Act 1991 (Cth) and the Telecommunications Act 1997 (Cth); and

(c) rights of access by employees, agents or contractors of Telstra Corporation Limited to its telecommunications facilities in, and in the vicinity of, the Determination Area, in the performance of their duties.

OTHER

6. The following rights and interests:

(a) rights and interests held under valid and validated grants from the Crown pursuant to statute or in the exercise of its executive power or otherwise conferred by statute;

(b) rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth including the force and operation of the Rights in Water and Irrigation Act 1914 (WA) and the Aboriginal Communities Act 1979 (WA); and

(c) the right to access the Determination Area by:

(i) an employee or agent or instrumentality of the State;

(ii) an employee or agent or instrumentality of the Commonwealth;

(iii) an employee or agent or instrumentality of any local government authority

as required in the performance of his or her statutory or common law duty where such access would be permitted to private land;

(d) the rights of members of the public under the following

(i) the public right to fish in tidal waters; and

(ii) the public right to navigate over tidal waters;

(e) the rights under the international right of innocent passage;

(f) so far as confirmed pursuant to s 14 of the Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA) as at the date of this determination, any existing public access to and enjoyment of:

(i) waterways;

(ii) beds and banks or foreshores of waterways

(iii) coastal waters;

(iv) beaches

SCHEDULE 8 - THE MAPS (see NNTR Attachment 1, "Schedule 8 - The Maps")

SCHEDULE 9 - AREAS TO WHICH S 47A AND S 47B APPLY

DESCRIPTION	NAME	PURPOSES	S 47A OR 47B
Special Lease 3116/10633	Dampier Location 297	Djarindjin Corporation	s 47A
Special Lease 3116/10656	Dampier Location 290	Pender Aboriginal Corporation	s 47A
Reserve 20927	Dampier Locations 76, 89	Use and Benefit of Aborigines	s 47A
Reserve 38931	Dampier Location 145	Use and Benefit of Aboriginal Inhabitants	s 47A
Unallocated Crown land	Dampier Location 289		s 47B
Unallocated Crown land	Dampier Location 211		s 47B
Unallocated Crown land	Dampier Location 243		s 47B
All other areas of unallocated Crown land			s 47B

REGISTER ATTACHMENTS:

1. Attachment 1 - Schedule 8 - The Maps, 5 pages - A4, 30/11/2005

Note: The National Native Title Register may, in accordance with s. 195 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.