

NOTICE OF FILING

Details of Filing

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Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 59

Rule 29.02(1)

Affidavit

No. VID622 of 2021

Federal Court of Australia

District Registry: Victoria

Division: General

PABAI PABAI AND GUY PAUL KABAI

Applicants

COMMONWEALTH OF AUSTRALIA

Respondent

Affidavit of: **Pabai Pabai**

Address: [REDACTED]

Occupation: Labourer

Date: 13 December 2022

I, **PABAI PABAI** of [REDACTED] labourer, say on oath:

1. I am the First Applicant in proceeding VID622/2021.
2. I make this affidavit from my own knowledge unless otherwise stated. Where I make statements on the basis of information provided to me, I set out the source of my information and my belief that that information is true.

Filed on behalf of	Pabai Pabai and Guy Paul Kabai, Applicants
Prepared by	Brett Spiegel, Phi Finney McDonald
Law firm	Phi Finney McDonald
Tel	[REDACTED] Fax
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Address for service	Phi Finney McDonald, Level 3, 325 Flinders Lane, Melbourne VIC 3000




Personal Background

3. My full name is Pabai Pabai. I am from the Guda Maluyligal nation in the Torres Strait.
4. I was born on [REDACTED] 1969, and I am currently 53 years old. I was born on Thursday Island (because there is a hospital there), but I have lived almost my entire life on Boigu Island.
5. I attended school on Boigu until year 7. I then went to school on Thursday Island for years 8 and 9. In year 10, I attended boarding school at Herberton State High School in the tablelands. I finished my schooling (Year 12) at Cairns High School. Aside from the time that I was away from Boigu to do my schooling, I have otherwise lived on Boigu.
6. My family has lived on Boigu for at least 5 generations. My dad was a teacher. He taught at local schools for about 43 years. He passed away in 1998. He is buried in the Boigu cemetery. My mum is still alive, and she lives in Cairns. She is aged about 83 years old.
7. I have 6 brothers and 5 sisters. I am the fifth eldest. One of my older brothers passed away. He is buried in the cemetery on Boigu. One of my brothers now lives in Brisbane, but all of the rest of my sisters and other brothers live on Boigu.
8. I am married to Waimed Pabai. We got married in 2001 on Boigu. My wife and I have 5 children: 1 son (who lives in Townsville) and 4 daughters (who all live in Boigu). I have 2 grandchildren: my son has a 1 year old (who lives in Townsville with my son), and one of my daughters has a 7 month old.
9. People in my community refer to me as 'Waduam (maternal uncle) Pabai', because of the role I hold in our community as a leader and representative of my clan. Waduam is the same as saying Uncle in English. Non-Torres Strait Islanders refer to me as 'Uncle Pabai' as a sign of respect, as I am a leader in my community.
10. I am a leader of the crocodile clan. I have the experience and the authority to run cultural ceremonies on Boigu. For example, I was recently the master of ceremonies for a cultural ceremony to welcome the all the Torres Strait Island Regional Council (TSIRC) councillors to have a meeting on Boigu. I also do cultural ceremonies for funerals, weddings, tombstones and men's business. When we make decisions on Boigu, we need to engage with the elders. I can't do the decisions on my own, so I get information from the elders before I make decisions.

11. I am a Native Title rightsholder (pursuant to determination QUD6199/1998 (*Gibuma on behalf of the Boigu People v State of Queensland* [2004] FCA 1575), as well as a traditional owner of Boigu. These rights include possession, occupation, use and enjoyment of the land; and the right to hunt and fish in or on, and gather from, take, use and enjoy the water for the purpose of satisfying personal, domestic or non-commercial communal needs.
12. I am a director of the Prescribed Body Corporate (PBC), which deals with the land issues and native title. It's like the board that manages the rights of communities. If I have a dispute on my land, I need to go to the PBC to manage the dispute. Our native title rights are impacted by climate change because Boigu and the surrounding islands are being impacted by climate change, as I describe below.
13. My ancestors have lived on Boigu for many many years. My ancestors have lived in this area for over 65,000 years. Boigu has supported my ancestors for generations. Our stories, which are all linked to special areas and places on Boigu, have been passed down from elders to younger generations year after year.
14. *Ailan Kastom* is a way of saying that this is what we do, what I do. I do it my way, this is how I teach my kids and my family. That is an acknowledgment of me, and it will never be taken away from me. These teachings are for my family's own betterment.
15. Boigu culture is very connected to the land, to our country. All of our stories are connected to specific places on the land. They tell the story of my people. I and my people are tied to the land. Separation from the land breaks us from that culture and identity.

Boigu

16. Boigu is an island in the Torres Strait. It is also known as *Malu Kiyay* or *Malu Kiwai*. It is part of the north western group of islands of the Torres Strait, and is about 6 km south from Papua New Guinea. Saibai Island is located about 30 km to the south east of Boigu. They are marked on the map at 18 below in yellow text.
17. Also marked is the location of *Warul Kawa* (which is also known as Deliverance Island), on the map at 18.

18.



19. Boigu is about 18kms long. It is very low lying. It is mostly flat land. The Story River (also called the Boigu River) divides the island in two from north to south. It is located to the south east of the village.
20. There are other creeks and smaller rivers too. In the middle of the island, there are mainly swamps. There are also mangroves all over the island, they are mostly around the coasts and the rivers. Below at 21 is a map which shows the entire island.

21.



22. The main village is located on the northern most point of the island, in the centre (i.e., where the word "Boigu Island" is shown in white on the map at 21 above).
23. The next map at 33 below is a zoomed in map of the village on Boigu. This is the only area on the island where people live.
24. The airport is located at the back (or south) side of the village. The airport is the orange square shown on the map at 33 below. The airport runway runs most of the length of the village.
25. Originally, the village was located around the Saint Saviour Church on the northern point of the island (which is the red circled area on the map at 33 below). This is the highest part of the island.
26. The wharf is located around the middle of the village. It is shown as a blue line on the map at 33 below, and is located just behind the supermarket, which is on Toby Street, and is the green rectangle shown on the map at 33 below. The current jetty was built in about the 1990s.
27. The cemetery is located on the western-most side of the village. I have marked that area with a yellow oval on the map at 33 below.
28. My house is on [REDACTED], on the south side of the street. I have marked my house with a purple square on the map at 33 below. There is a dirt road behind my house, and to the

south of that road, an area of mangroves. This mangrove area is a sacred place that is culturally important to the people of Boigu. I have marked that mangrove area in grey on the map at 33 below.

29. Further east from my house is another area of mangroves and swamps. This area of mangroves is located behind the dirt bund wall. I talk about the dirt bund wall more below.
30. I am responsible for 6 blocks of land on Boigu, including my house. This is cultural ownership. Cultural ownership was handed down to my father, who passed away. Cultural ownership then was handed to my mum, who recommended that I be the cultural owner of the land. I negotiated with my mother to have these pieces of land and they were passed to me by way of traditional protocol, and I am responsible for looking after these blocks of land for my family. This means I am the caretaker for these blocks of land. I also decide who is going to live on those lands. If anyone needs to build a house, they come to me and I decide where they can build a house. Once I have decided that someone can live on a block of land, I leave them alone to make decisions about the land. I have marked them on the map at 33 below in pink.
31. In about 2021, the Commonwealth Government, in collaboration with the Queensland Government and the TSIRC, constructed a new concrete seawall around the front of the Boigu village, as well as a dirt bund wall around the eastern and the western sides of the village. The concrete seawall runs along most of the northern part of the village, from the end of the cemetery on the west up to the old village area in the east. I have marked the approximate location of the concrete seawall in dark blue on the map at 33 below.
32. There are also dirt bund walls at the very end of the cemetery, that continue from the seawall for another 20-30m or so, and curve around. There is also a dirt bund wall that runs in a north-south line, from the old village beach area, down past the dirt road behind my house, behind the mangrove area. The dirt bund wall runs to about basically where the town ends. I have also marked the approximate location of the dirt bund wall in brown on the map at 33 below. I talk about the seawall and the dirt bund wall more below.





34. On the south side of the island there are sandy beach areas. Many of these areas are used by Boigu people for camping. Families have a specific spot which is their campsite, and which they have used for many years. I have camp sites on the south side of the island. I have marked the location of my camp sites on the maps which are included below, under the heading "*Camping*".

People

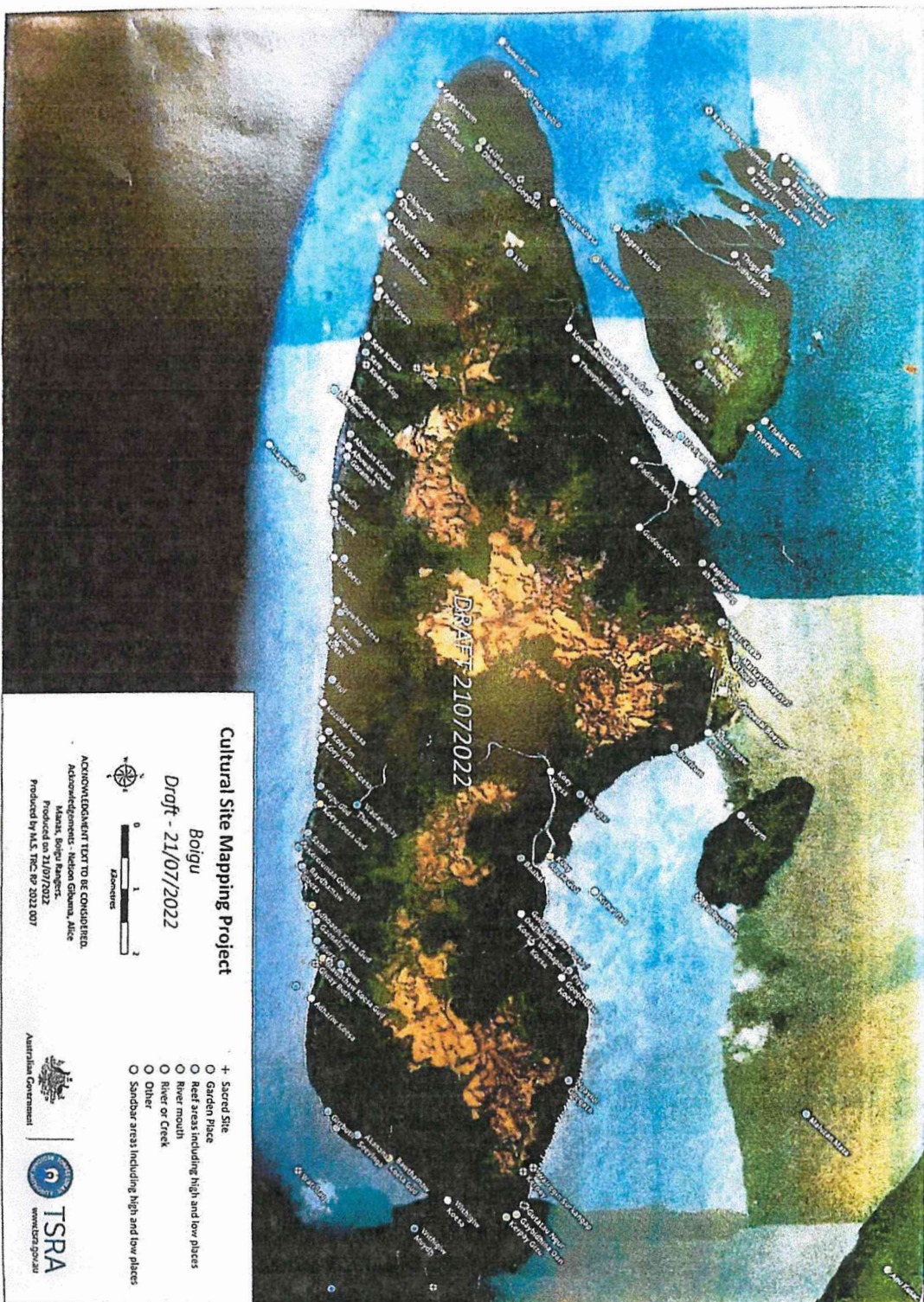
35. There are about 200-300 people who live on Boigu. They are mostly *Boigulgal* (people native to Boigu). My people speak KKY (*Kala Kawaw Ya*) language.
36. There are 6 different clans on Boigu. Clans are basically family groups. Usually, you will belong to the same clan as your father. However, sometimes the mother can choose for members of the family to join other clans.
37. On Boigu, the 6 clans are: Crocodile (*Koedal*), Emu (which is the same as Cassowary) (*Samu*), Shark (*Baidam*), Vine (*Dhoeybaw*), Crane (*Karbai*) and Snake (*Thabau*). I am part of the Crocodile clan. This is my father's clan too. My mother was born into the Vine clan.
38. Each clan has an area of land on Boigu which is their lands. As I said above, the Story (Boigu) River splits the island in two (this is shown on the map at 21 above). The river helps divide the lands for the clans. Crocodile lands are located to the west of the river, and Emu lands are on the east of the river. Shark, Vine, Crane and Snake lands are all located in the middle of the island.
39. All the clans have specific sites which are important to them, where they practice ceremonies. I talk about this more below.

Special Places or Ceremonies

40. There are a number of places which are important on Boigu. Some of these I can talk about, but others I cannot for cultural reasons.



41. Below at 42 is a map with a number of culturally important sites listed on Boigu.
- 42.



43. The places which are important depends a little bit on which clan you belong to. Each clan has sites which are important to them. There are also a couple of areas which are important to all the clans on Boigu. These include:
- a) The special trees that are located around the old village area (near the Saint Saviour Church, which is marked in red on the map at 33 above). They are called the Skull Tree (which is a sea almond tree that is located out the front of the church) and the Spy Tree (which is a large fig tree located a little bit to the north west of the church);
 - b) The cemetery, which as I said earlier, is located on the north western side of the village (and is marked in yellow on the map at 33 above);
 - c) The mangrove area that is located behind my house and the council buildings (and is marked in grey on the map at 33 above);
 - d) A red sandbank about one kilometre off the western part of the island, where initiation ceremonies with the boys take place. This is not shown on the map above.

Special Trees – Skull Tree and Spy Tree

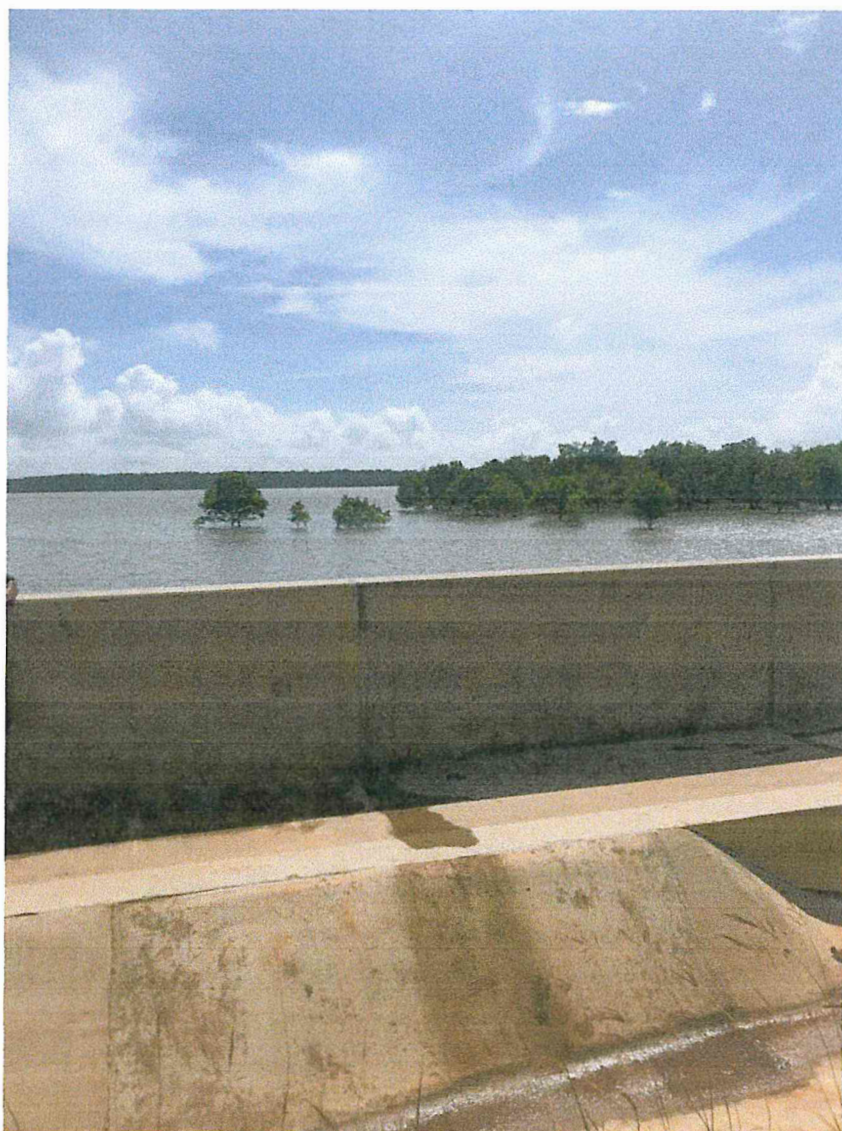
44. These trees were used by the Boigu warriors many years ago, to protect the original (or “old”) village from invading warriors from Papua New Guinea and other islands. The Skull Tree was used to bury skulls of Papua New Guinean warriors who raided the old village. The Spy Tree had a “lookout” permanently stationed up in the tree, to watch out for invading warriors (both from Papua New Guinea and other islands). They have great significance to the island.
45. The old village, which as I have said is the area around the Saint Saviour Church and is marked in red on the map at 33 above, is located on slightly higher ground than the rest of the island. This area used to be the centre of the town.
46. When I was a very young boy, this area used to extend out by about 20m into where the ocean is today. The shoreline was a sandy beach.
47. The photos below show what that area looks like today. The photo below at 48 shows the area in front of the Saint Saviour Church. You can see the seawall that was constructed in 2021. I talk about this seawall further below. You can see that the area that was once the centre of town is now next to the seawall.

48.



49. In the next photo at 50 below, you can again see the seawall. The photo is looking north east from the Saint Saviour Church. To the right of the photo is the entrance to the river. The beach in front of the old village used to extend out to the mangroves that are shown in the ocean in the middle of the photo below. This was before I was a kid. The elders have told me about this.

50.



51.

[REDACTED]

52.

[REDACTED]

*AA**CS*

53.



54. With the seawall and the rising sea, our kids don't have anywhere to play on the beach in front of the village anymore.

55. The photo from a newspaper clipping at 56 below was provided to me from Aunty Rose Gibuma, another Boigu elder. I am not sure when this photo was taken, but believe it to be sometime in the 1930s or 1940s. It is taken from the ocean at the front of the old village, facing south toward the land. In the photo you can see the old Saint Saviour Church, which used to be just near where the seawall in front of the Church is now, but has since been replaced a bit further back. The old Church is the building at the far left of the photo. You can see in this photo that there is no seawall, and the sand continues a long way before the old Church. As shown at 48 above, there is now a small space in front of the Church before the seawall.

56.

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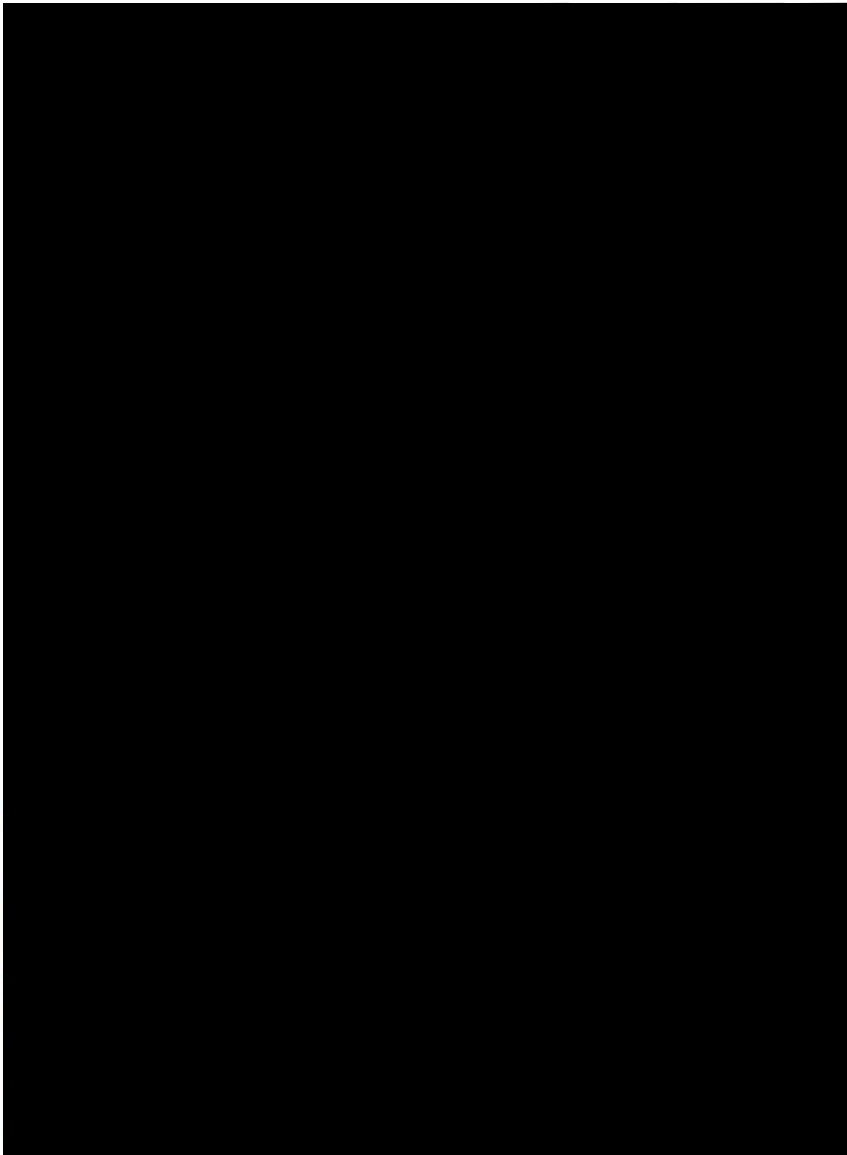
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57. In the next photo at 58 you can see Uncle [REDACTED] (on the right) and Reverend Father Banu (on the left), two elders of the Boigu community. The shoreline used to be where the mangroves are in the background, on the far side of the water, and the area where Uncle [REDACTED] and Reverend Father Banu are standing used to be a sandy beach. Now this area is muddy mangroves and the sandy beach is gone.

58.

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59. This area is located just to the east of the Saint Saviour Church. You can see in the photo at 58 that behind Uncle [REDACTED] and Reverend Father Banu there is a river. When the tides are high, the water from that river runs up through these mangroves, into the island, and the village.
60. As I have already said, the new concrete seawall runs along most of the northern part of the village, but it stops just a bit to the north-west of this area. The level of the land rises up a little bit, just to the south of this photo, and there are a lot of mangroves behind this area.

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61. The next photo at 62 shows the southern view of the old beach area. This photo is looking in the opposite direction from the photo at 58 above and is looking towards the middle of the island. You can't see it in this photo, but there is a dirt bund wall built just behind the mangroves, on the right hand side of the picture.

62.



63. When the water comes in from the sea, it flows in a southerly direction, over this beach, and into the mangroves and swamps that are behind it. It then flows back towards the

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town to the west, including my street and house. The blue arrows drawn on the map at 64 below shows roughly the way in which the water comes inland in this area.

64.



65. The next photo at 66 is taken near the back of my house in Army Street. This is a few streets south (behind) the old village area. The dirt road runs east to west behind my house, before turning towards the north. This photo is taken at the turn, looking north.

A *EF*

66.



67. The photo at 66 above also shows the dirt bund wall (which is the green mound on the right hand side of the photo). As the map above at 33 shows, the bund wall starts at the old village beach area, and runs in a north/south direction to about the airport runway area. This dirt bund wall was constructed around the same time as the new concrete seawall, and its purpose is to try and keep the water that flows inland from the sea, which I described above, from flowing further inland and into our houses. It is supposed to help direct the water into the swamps and mangroves.
68. The next photo at 69 also shows this dirt bund wall. It shows the view looking east from the dirt road behind my house. The dirt bund wall is the green matting that is shown in the middle of the photo.

AS *CS*

69.



70. I talk about the seawall and the dirt bund wall more below.
71. Just like the water comes in from the sea at the east of the village, it also comes in on the other side of the seawall, beyond the cemetery to the west. The water travels around the western side of the airport landing strip (just south east of the light green circle shown to the west of the cemetery at 33 above) and makes its way east toward the back of the airport and the village.
72. Below at 73 is a photo (facing south) of the small bund wall that travels south from the western end of the cemetery, part way across the western end of the airport strip.
- 73.

Handwritten signatures in blue ink.



74. The photo below at 75 is taken a little further south, facing east toward the airstrip. To the right of the airstrip is where the water comes in.

75.



AP GF

Cemetery

76. As I set out above, the cemetery is located on the western side of the village, just a little bit north of the western end of the airstrip.
77. Originally, there was a beach in front of the cemetery, which went out about 20m or so past where the mangroves now are. Now, the beach is gone and the area is all mangroves. I remember the beach being there in the early 80s when I was a kid. After that, the mangroves took over. The mangroves are shown in the photo at 78 below, which shows the seawall just to the north of the cemetery, as it looks today.

78.



Handwritten signatures in blue ink.

79. The cemetery is important to me and my people, for many reasons, including because it is used in ceremonies. One of the main ceremonies the clans do in the cemetery is asking permission from the ancestors for any decisions that are made about the island or the community. For example, before this case was brought, the community went to the cemetery and sought permission from the ancestors to bring the case. Normally we do ceremony like this before big events like the case. The amount of times we do it depends on what's happening on Boigu. The community has been doing ceremony like this for a very long time.
80. The ceremony involves the clans attending at the cemetery, and then talking to their ancestors, at their respective gravesites. So, for example, for the crocodile clan, I would go and talk to my ancestors, such as my grandfather, by going to his gravesite and talking to him. Each clan has to ask permission from their own ancestors – I can only ask on behalf of crocodile clan, I cannot ask permission on behalf of Emu clan – and all of the clans must get that permission before anything can be done.
81. In my culture, when a person dies and you bury them, you are not supposed to move them again. If you move someone who has died, or expose their remains, it disturbs the person's rest. It is like waking them up again.
82. Funerals are arranged by the immediate and extended families of the person who has passed. Each family must stick with the protocol that has been handed down. For example, if my wife's brother passed, I'm the person you need to talk to. I would do all the organising for the funeral. I would need to make sure everyone off the island is notified and make sure the right church is involved.
83. I would also need to approach the elders to get permission to lay someone in the cemetery. They will tell me where a person can be buried. Sometimes if there is a lot of rain or there is a high tide, the water can come into a grave that has been dug, so this would mean the ceremony has to be delayed until the water is gone.
84. After about 2-3 days, we do some more ceremonies for the people who have passed. This includes washing the person's clothes and sorting their belongings. After the funeral we organise a ceremonial dinner for everyone to give thanks to the families who have given their support.
85. One or two years down the track, we do the tombstone opening. Everyone gathers down at the cemetery when this happens, and ceremony is conducted.



86. As a community, we often spend time at the cemetery, talking to our ancestors. We look after the graves and fix them up if they need it. We have a very strong connection to our ancestors.
87. In the last 20 years, the sea water has inundated the cemetery on a number of occasions. It happens almost every monsoon season, which is usually in January and February. This has caused erosion of the gravesites, and other areas, as well as flooding. In some cases, the gravestones have washed away, and the community was not able to find those stones again. This means that we don't know where that person's grave is. Some other gravestones have broken because of the flooding.
88. Flooding and erosion of the cemetery causes a lot of sadness in the community. If we do not know where our ancestors are, we cannot talk to them properly. We are worried that our ancestors won't be safe to rest in the future.
89. As I said earlier, in 2021, the new seawall was built and it runs all along the northern side of the village, to about the end of the cemetery. The photo at 78 above, and the photos at 91, 93, 95 and 97 below show how the cemetery looks today.
90. The photo at 91 below shows how close the seawall has been built to the graves. The photo shows the cemetery looking towards the west. The entire width of the graveyard is not very big. It is maybe 10m across. You can see in this photo, especially in between the coconut trees, that some of the gravestones have toppled over. [REDACTED]
[REDACTED]

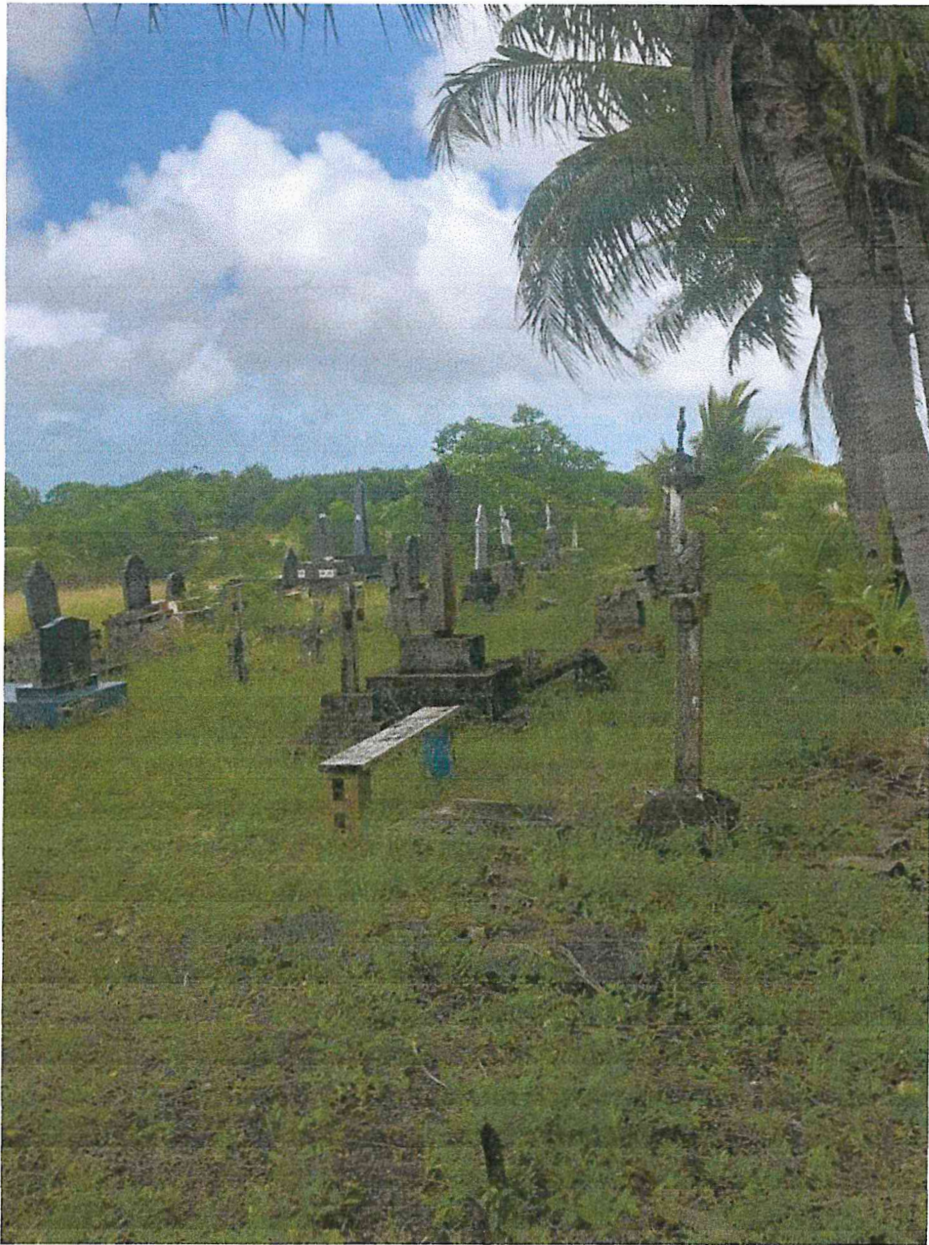


91.



92. The photo at 93 below shows a similar view of the cemetery, looking west, but is taken just to the south of the coconut trees in the earlier photo. In this photo it is a little bit easier to see the eroded headstones that I was referring to above, and the toppled over headstone.

93.



94. The photo at 95 below shows part of the cemetery, looking to the east towards the town. The large gravesite in the middle of the photo has been eroded. You can see where it has been lifted and moved. Again, this is because of the sea water inundation. The new seawall is located only a couple of meters behind this grave.

95.



96. This next photo at 97 shows the same part of the cemetery as shown in the earlier photo, i.e., still looking to the east, however it shows the area between the headstone and the seawall (that is, a bit more towards the north). You can see the headstone on the right hand side. The tree that is shown in the photo is a special tree for the community. When the seawall was built, the builders wanted to remove the tree, so that the seawall could be built in more of a straight line. The community had to ask for the seawall to be built around

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this tree, which is how the seawall ended up being built. You can see in the photo that the seawall curves around the tree.

97.



98. Even when people leave Boigu, such as to work in Cairns or somewhere else, it is pretty common for them to be returned to Boigu to be buried when they die.
99. When I die, it is my wish to be buried in the cemetery on Boigu. I want to forever remain on Boigu. It is my home, and it means a lot to me to remain here.

AP CB

100. I can say that if I couldn't be buried on Boigu I wouldn't be buried on my land. I am supposed to be buried on Boigu. There are some elders that are buried in Cairns, but it is not their land, that is not cultural protocol. They are from this community and they are supposed to be here. That is the cultural protocol. We need to bring all families home. We don't belong to the families living down in Cairns.
101. We are people of the culture. We know very well our culture. Our cultural protocol is stated. Because, the ancestors, for 65,000 years they say when we are buried, we must be buried on Boigu.

Mangrove area

102. This area, marked in grey at 33 above is a sacred spot and is used for men's business, which I am not able to talk about.

Other ceremonies

103. There are initiation ceremonies for young boys. These are men's business, which I am not able to talk about.
104. The red sandbank off the western tip of the island was eroded in 2010 during a high tide in the monsoon season. This sandbank means a lot to us. That's one of our important cultural sites. We've now planted coconut trees to try and stop more erosion. If we lose this place, it's going to give us very bad luck. The spirits of our ancestors will turn back on the people of Boigu. I am very worried about losing this important place. This is the same situation as is happening on Warul Kawa.
105. According to stories from our forefathers, all people from the Torres Strait (and some from the Northern Peninsula Area too) believe that when we pass, our spirits go to this sandbank. The red sand is connected to Warul Kawa. It's a sacred place, we can't do anything there. It's a spiritual place and we don't want to disturb it. No fishing, no driving. You can visit it, but nothing else. Because we don't want to disturb the spirits.
106. Before we visit Warul Kawa, we must do a ceremony on the sandbank to ask the spirits for permission to visit. We must say what we are going there for and what we will do.

Stars and the constellations

107. My people use the stars to tell us things about the tides and seasons. The elders of the community read the constellations to tell when the seasons change. The stars can also tell my people about the tides, such as when the big tides are coming, and the movement



of the seas. The stars have also long been used as a guide for planting and harvesting crops. I talk about this a little more below.

108. My grandparents and parents taught me how to use the stars and the constellations to tell what was happening with the seas. I used to be able to look at the stars and know when the tides would be coming in, including when there would be big tides. But since about the early 2000s, I haven't been able to do that anymore, because the stars and the tides don't match anymore. What the stars say should be happening, is no longer what is happening with the tides. It is very different.

Gardening

109. When I was a child, my family would grow many things in the family garden like fruit trees (mandarins, and bananas), as well as root vegetables like cassava, taro and sweet potato.
110. We also had gardens at our houses where we would also grow things like coconuts, bananas, cassava, and taro.
111. Below at 112 is a photo of the back of my house. Along the back (roughly where the palm trees are) is where I used to grow taro and cassava.



112.



113. A few months ago, I tried to plant cassava in my home garden, using the stars to tell me when was a good time to plant, and when the tides were unlikely to be high. However, the tides came in despite what the stars said, and my garden was wrecked. The soil is too salty to grow much in it.
114. The only things that grow ok in the salty soil are the coconuts and bananas.
115. My family also had two communal gardens, which were used by my whole family. One of these gardens was located on the west side of the village, past the cemetery, at the end of the airport runway. The other garden was located just a little bit further east down the road from my house, towards the mangroves. The areas where they were located are marked with light green arrows on the map above at 33.
116. My family would spend a lot of time in the gardens when I was growing up. We would work together as a family to plant the crops, tend them and then harvest the food. We would share out the food among the family.

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117. While we were working in the garden, the elders (my grandparents, parents, aunts and uncles) would share the stories with us children. This is how we would learn about our culture and our ancestors.
118. The elders would also teach us how to read the constellations, so that we could learn about the seasons and when was a good time to plant, when was a good time to harvest. This point of time is very hard to teach our young generation because of the climate change already affecting those areas. That's very hard for us. How can we teach our young generation about all the constellations and our very own experience. When climate change is doing all this, it's very hard for us.
119. Monsoon is changing as well. We used to have monsoon during early December but in maybe the last 10 years it can come late or early, we can't predict it.
120. As a child, my family and I would spend hours in the family gardens each week. The gardens were a very big part of island life when I was growing up. Now, like my own garden at home, the soil is too salty to grow anything. It has been like this for about the last 8 years.
121. In 2013 or 2014 soil tests were done about all over the island, so that we could try and relocate the gardens, but all of the tests said the soil is too salty. I did the testing with the community, because I have training in soil testing.
122. Not being able to grow our own food means that my family has to rely much more on buying food from the supermarket. The cost of the food in the supermarket is very high, and there is not always a lot of choice. Normally, the ship delivers food every Tuesday, but during the rainy season, the food supplies at the supermarket can get very low. Sometimes it can be weeks before the supply boats are able to get to the island, which means that we don't have fresh fruit or vegetables. Things like rice and flour run out as well.
123. This affects our diet, our forefathers didn't have this problem because they ate the ground food that was fresh. They didn't have any sickness or diabetes. We are taught that the ground food is the best food for us – it is what we are supposed to eat. A lot of our people have health problems now, for example they have to be on dialysis.
124. Also, because I can no longer tell from the stars when the seasons are changing, or when the tides are going to come in, I don't know when to stock up with food.



Camping

125. My family and I also spend quite a lot of time camping. My family has camp sites on the south side of the island. The general areas are marked with red circles on the map at 126 below. The left circle is my family's spot, and the right circle is my wife's family's spot.

126.



127. We would spend quite a lot of time camping at these spots when I was a child. There were large sandy beach areas, where we would set up our camps. Many families have camps in these areas, and over time people have built small camp structures on the land – things like small sheds and shelters.
128. The sand in these areas has eroded quite a bit now, and pretty much as soon as you set up camp, once the tide comes in, you really can't stay anymore because you will be washed away.
129. Below are some photos that show my camp area today.
130. The photo at 131 below shows the shelter that I built on my campsite. It used to be away from the shoreline, but now, when the tide comes in, it comes in right under that shelter. This sandy area used to be at the same height as the sand at the back of the photo, but now it has eroded away.

A *GF*

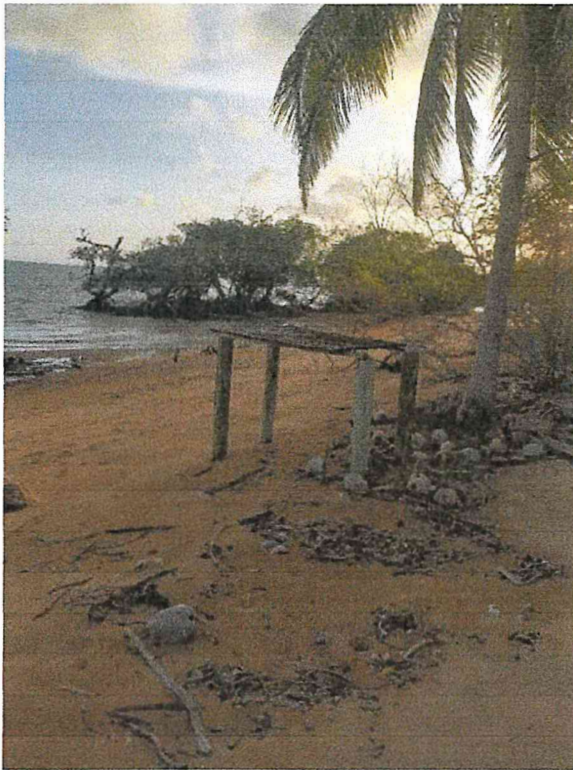
131.



132. The next picture at 133 shows the same shelter from the other direction, looking out towards the ocean. You can see the sand slopes down towards the ocean where it has been eroded away. About 10 years ago, the sand used to be at the same height as the back of the shelter and extend out to about where the mangroves are in the ocean.

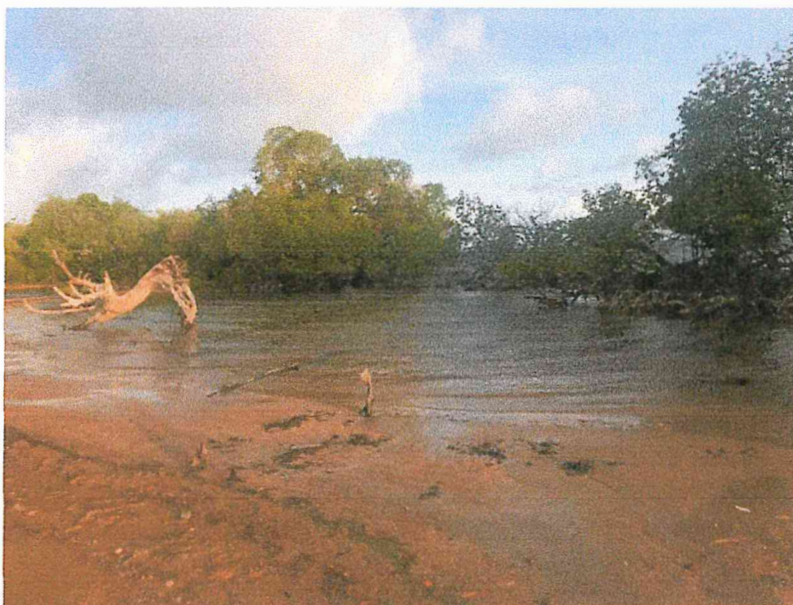
AD CJ

133.



134. You can see this again in the next picture at 135. The dead tree on the left hand side of the picture shows where the sand levels used to be. This tree is about 15-20m in front of my shelter.

135.



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Handwritten signature in black ink.

136. The next photo at 137 shows the erosion in the sand as well. It is taken at my campsite looking towards the east. The palm tree's roots have almost completely been exposed. Again, this is because the tides come in so far now, that it washes away the sand that used to be under that tree. The sand used to be higher than the coconut tree's roots and extend all the way out to the water on the right of the photo.

137.



138. My brother, Keith Pabai, has his camping spot next to mine in the same area. Below at 139 is a photo of a structure he built that is being eroded.

AP

CSF

139.



140. Below at 141 is a photo of the area in front (south) of Uncle Keith's camping spot. It has eroded about 30 metres in the last 15 or so years.

A

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141.



Crabbing

142. As a child, I would regularly go crabbing, in the swampy/muddy areas of the island. The crabs live in the muddy areas, in the middle of the island, and when I was younger you used to be able to walk through these areas.
143. Now, you cannot walk into those areas because they are often flooded.
144. The erosion of the sands on the island has also affected the mud areas where the crabs live and breed. The sand mixes into the mud, and the crabs do not like it so they move elsewhere. It is much harder to find crabs now, and therefore much harder to catch them.

Dugong Ceremony

145. Dugong ceremony is a ceremony that all the boys participate in when they are around the age of 17 or 18. Each boy must go out into the sea and catch a dugong, and then bring it back to the island. They used to do this by going out to the sea in a boat, to the seagrasses, and then building platforms to stand on, where they would wait for the dugong

[Handwritten signature] *[Handwritten signature]*

to come and graze on the seagrass. When the dugong come closer the boys will catch them and then bring them back to the island.

146. This ceremony shows that the boys are becoming men and are able to provide for their families. Every boy must do a dugong ceremony before they can be married.
147. When I was a boy, dugong ceremonies would always occur on the north side of the island, as that was where the seagrasses were. You used to always be able to hunt for dugong and turtles on the north side of the island, around the area of the jetty, when I was a child.
148. Back then, there were sandy beaches on the north side of the island, where the community would gather and wait for the boys to come in from the sea with their dugong catches.
149. Below are photos that were taken by Boigu elder Aunty Tamara, sometime in the 1970s, just outside of her house, which is now located very close to the shore on the north side of the island, near the corner of Kada Street and Toby Street, during a dugong ceremony. I have marked the location of Aunty Tamara's house on the map above paragraph 33 in light purple.
150. The photo at 151 below shows what I remember the front beaches of the islands looking like when I was a young child, in around the 1970s.



151.



152. This photo at 151 is looking towards the east of the island, and shows how the beach used to look, in about the 1970s.
153. The photo at 154 below is also looking east. Again, it is taken near Aunty Tamara's house, during a dugong ceremony (you can see the dugong lying in the middle of the photo). You can also see how far the sandy beach went.

AA

CF

154.



155. Below are photos showing the same area today.

156. This first photo at 157 was taken in October 2022, and is looking towards the east of the island, again from just outside Aunty Tamara's house. The sandy beach no longer exists. It is just the new concrete seawall.

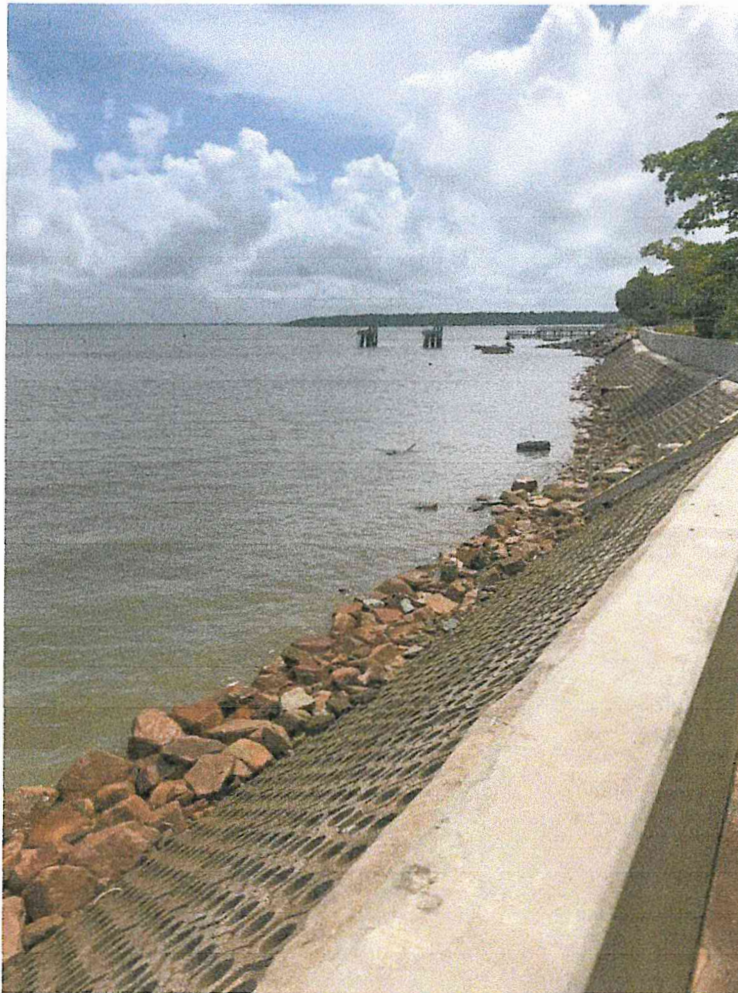
157.



158. The next photo at 159 is also taken at the same spot out the front of Aunty Tamara's house, but shows what is on the other side of the new concrete seawall. Again, the beach is completely gone. This new seawall was built on top of an old seawall that the community built in the 1970s and 80s, and another seawall that was built in 2012.

AA CF

159.



Seawalls and water inundation

160. Every few years, in about January and February, Boigu is inundated during king tides. This happens during monsoon season, and the tides can be many meters high. Depending on the height of the tides, and given how low and flat Boigu is, the sea water comes in and inundates the land. I have already described some of the impacts of that kind of inundation above.
161. There have been many attempts over the years to try and stop the seawater from inundating the town of Boigu.
162. Sometime in the 1970s when I was a small child, the community constructed a seawall to try and protect the island from the tides. I'm not sure if it was funded by the government. It was constructed mainly of rocks, you can see this in the photos at 165 and 166 below.

AA *CE*

163. Back with the old seawall, we would still get flooded. It was from both ends, the east and the west. And some water would come into the middle of the village, but at least back in the day we were able to predict the seasons better. It kept coming until we got the second wall in 2012. That gave us a bit of help.
164. The seawall that was built in the 1970s was right on the shoreline. Below at 165 and 166 are some photos that were taken, again by Aunty Tamara in the 1970s, which show the construction of the original seawall.

165.



166.




AA CF

167. The original seawall was built in the 1970s. There was a new community seawall built sometime in the 80s. The community sea wall was in the same place as where the new one is built. It was built on top of the old one. It was made out of seebee blocks (the hexagonal or honeycomb looking bricks you can see in some of the photos above). I'm not too sure how tall it was. This seawall started falling away bit by bit over the years.
168. The old community seawall was too low to provide protection for Boigu. Even in moderate high tides, the water would come in from the sea, especially around the boat ramp and jetty area. The water also washed away the material that the seawall was made of, which meant that the land behind the seawall kept getting eroded and made the seawall even less effective. Also, because water came through the seawall, it would end up sitting on the ground and it would pool there. When the water pools, there are a lot more mosquitos. In our culture, we sit outside a lot, we don't sit inside. But you can't sit outside when there are too many mosquitoes. Monsoon is mosquito breeding season. The monsoon water is all around dirty. The water would also get in the drainage systems (including the sewerage).
169. In 2007, Boigu was flooded during a high tide. This is the largest flood in my lifetime. The old seawall did not prevent the flooding. The water came in from the ocean, and also flooded into the swamps and then into village through the back of the village. The water came all the way into the village, up to the community centre, which is located to the west of my house (marked in purple) and north of the sacred mangrove area (marked in grey) on the map at 33. It was about 1m deep in the village. The water flooded the sewerage systems and caused them to overflow. The water came in for three days, then it started dropping down.
170. The toilet and laundry at the bottom of my house was flooded and the drainage system was blocked. The steel posts that my house sits on completely rusted and have been ever since. When the tides come in, the sand that I had in my backyard to backfill the yard was all moved. When the tides go away, there is a smell for a few days, lots of mud and rubbish.
171. Sometime in about 2012, locals working for the council started repairing the old seawall, which included raising the height of it. This wall was in the same place as the old wall all along the front of the village. It didn't go down all the way to the cemetery, it stopped just before the cemetery starts. It was made out of seebee blocks.



172. It was a bit of help, but not really. The water still flowed over and came through every monsoon. It was too small. When the tides were high and the winds strong, water would once again flood the inland.
173. In about 2019, as I have already said, the government started constructing the new concrete seawall. It is quite a bit higher than the old one by about two metres or so. In some parts the new seawall has been built over the top of the old one (which you can see in the photos above, which were taken out the front of Aunty Tamara's house). These works were finished in about April 2022. They also installed the bund walls in this time.
174. I was deputy chair for the PBC at the time. The engineers surveyed all the shoreline area. They'd been out for two or three days. They tried to get the right measurements and the right stuff. They showed us the design of the wall as well and how it should be built, and what's happening to the bund wall and all that stuff. They did a couple of consultations with the community. At the time I thought that they could have listened to the traditional owners of this land. We told them the wall should be higher because we know from our experience living here how far the water will rise. The councillors should have negotiated with traditional owners. It's now complete, and we'll see how we go this monsoon season.
175. As set out above, when the tides come in on the north side of the island, the water flows inland into the river and the swamps. Water also comes into the town this way, as the water comes in from the north near where the old village beach area is, and then it flows overland south, down the roads towards the middle of the island. The water basically follows the roads south, and then turns west and follows the roads into town.
176. Below at 177 is a photo of the dirt road behind my house, looking towards the east. The water comes inland from the left hand side of the photo (which is the road that runs from the old village beach area in a north/south direction), and then flows to the west along this road. The water then flows along this road towards my house and the Council buildings.



177.



178. The next photo at 179 is taken out the back of my house, looking south towards that dirt road. You can see that there is a bit of a dip in the road, where water is pooling. The water pools there (as well as in other places), and eventually flows back into the mangrove area on the south side of the dirt road (which is the bushy area in the back of the photo). This is the same sacred mangrove area that I mentioned earlier.

179.



180. You can also see in the photo above at 179 a star picket, which has a white marking on the top. Below at 181 is a closer view of this star picket (with me standing next to it). The white marking on the star picket shows how high the water levels get during tide inundation events. I put the star picket in the ground, and marked it with the white. I did that in September 2022. The last time the water was that high was in the last monsoon season, around January 2022. It damaged my garden and flooded the laundry below my house too.

A CJ

181.



182. In about 2019, a dirt bund wall started being built to try and stop this water flow. As shown on the map at 33 above, it went from about the old village beach area (in a north south direction) down past the mangrove area, before it turned towards the east (at the back of the mangroves and ran parallel to the airstrip.
183. As I have already said, this new seawall and the dirt bund walls were only completed in about April 2022. At the time of making this affidavit, we do not know how effective these measures will be, because there hasn't yet been a monsoon season to test them out.

Warul Kawa

A *CF*

184. Warul Kawa is about 50 kms to the west of Boigu. It is a small island made up of sand and is surrounded by a shallow coral reef. At low tide, you can walk on the reef. At high tide, the water comes in about 50m inland. The island is about 1m above sea level, and is a bit higher in the middle. It is about 4 hours by boat from Boigu.
185. Many green turtles breed at Warul Kawa. Warul Kawa means 'island of turtles'. It is a particularly important area for some types of turtles. Other animals, like dugong, dolphins, sharks, rays, fish, rock lobster and oysters are also located at Warul Kawa.
186. Warul Kawa was declared an Indigenous Protected Area in about 2001. Being an Indigenous Protected area, means it is an area of land or sea that has been dedicated by its custodians for protection of bio-cultural resources, significant places or other heritage values.
187. As an Indigenous Protected Area, Warul Kawa is managed by its traditional property owners. In this case, that means the people of Boigu, Saibai, Badu, Mabuiag, and Dauan. I go to Warul Kawa once every year, to represent Boigu. Uncle Paul Kabai goes as well, to represent Saibai. We go by dinghy to get there.
188. Warul Kawa is a scared place for both Saibai and Boigu, although we don't do cultural practices there. The sacredness comes from our people's traditional spiritual beliefs. All of the places at Warul Kawa are sacred. Before we go to Warul Kawa we must get acknowledgement from the elders. If we don't do that, something bad will happen to us.
189. Our belief, from Murray Island all the way to Boigu, is that all the spirits are gathered at the red sandbank before Warul Kawa. Boigu is the gatekeeper for Warul Kawa. If anyone else wants to go to Warul Kawa, they need to inform us and get acknowledgement from us. For example, if the rangers need to have trips to Warul Kawa, we need to have all the elders, from Saibai, Dauan, Boigu, Mabuiag and Badu, on board.
190. That's why we don't go there all the time. We only go at certain times, to show respect, because it's a special place. We go to Warul Kawa just to collect food and that's it.
191. If we lost Warul Kawa, we would lose our spiritual connection to the ancestors. We wouldn't be able to do our spiritual business anymore. It would be like losing our version of heaven. It would be like killing all the people in the community and their spiritual ancestors. The people on Boigu are very worried to protect Warul Kawa.



192. Warul Kawa is completely different from Boigu, Saibai, Mabuiag, Badu and Dauan, because that's our spiritual land. If we're going to lose all that, we believe that all the spiritual ancestors will attack us. They will turn back on us.
193. The Spy Tree, which I talked about above, is a fig tree (called *dhani*). Long ago it was brought to Boigu from Warul Kawa and planted in the village. This type of tree does not occur naturally on Boigu.

Connection to the land

194. My identity is connected to Boigu. I always say that I am a Boigu man, *Boiguligal*. It is very important to me.
195. I do not ever want to leave Boigu. I want to fight to stay here, and I do not want to be taken away from it.
196. My ancestors are laid to rest here on Boigu. Talking to my ancestors is a big part of my culture.
197. I have learnt how to hunt and fish here. I have taken part in ceremonies here – ceremonies which my people have been doing for 65,000 years.
198. As a Boigu man, I have responsibilities to protect cultural sites that are sacred to my peoples. However, the rising sea makes it impossible to do that. I am very worried that this will mean those sites disappear forever.
199. If Boigu, or our cultural sites were lost, it would be devastating. It is very difficult for me to explain this in words. It makes me very sad. I tell my children and my grandchildren "No matter what happens, if you have your country and your culture, you can be proud." However, if they are lost, how can I say that? What will they be?
200. If Boigu was gone, or I had to leave it, because it was underwater, I will be nothing. I will have nothing behind my back. I will not be able to say I am a Boigu man anymore. How will I be able to say where I come from? I will become nobody. I will have no identity.


Sworn by the deponent
at Boigu
in Queensland
on 13 December 2022

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Signature of deponent

Before me:



Signature of witness

Cassandra Evans

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law
(Victoria).