

NOTICE OF FILING

Details of Filing

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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.

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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: **Frank Ned Faid**

Address: [REDACTED]

Occupation: Elder and Minister

Date: 13 February 2023

I, **Frank Ned Faid** of [REDACTED], Elder and Minister, swear:

1. 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.

Personal Background

2. My full name is Frank Ned Faid.
3. I am *Porumalaig* which means I am from Poruma. Poruma is an island in the Torres Strait. It is also known as Coconut Island. I talk about Poruma more below.

Filed on behalf of	Pabai Pabai and Guy Paul Kabai, Applicants	
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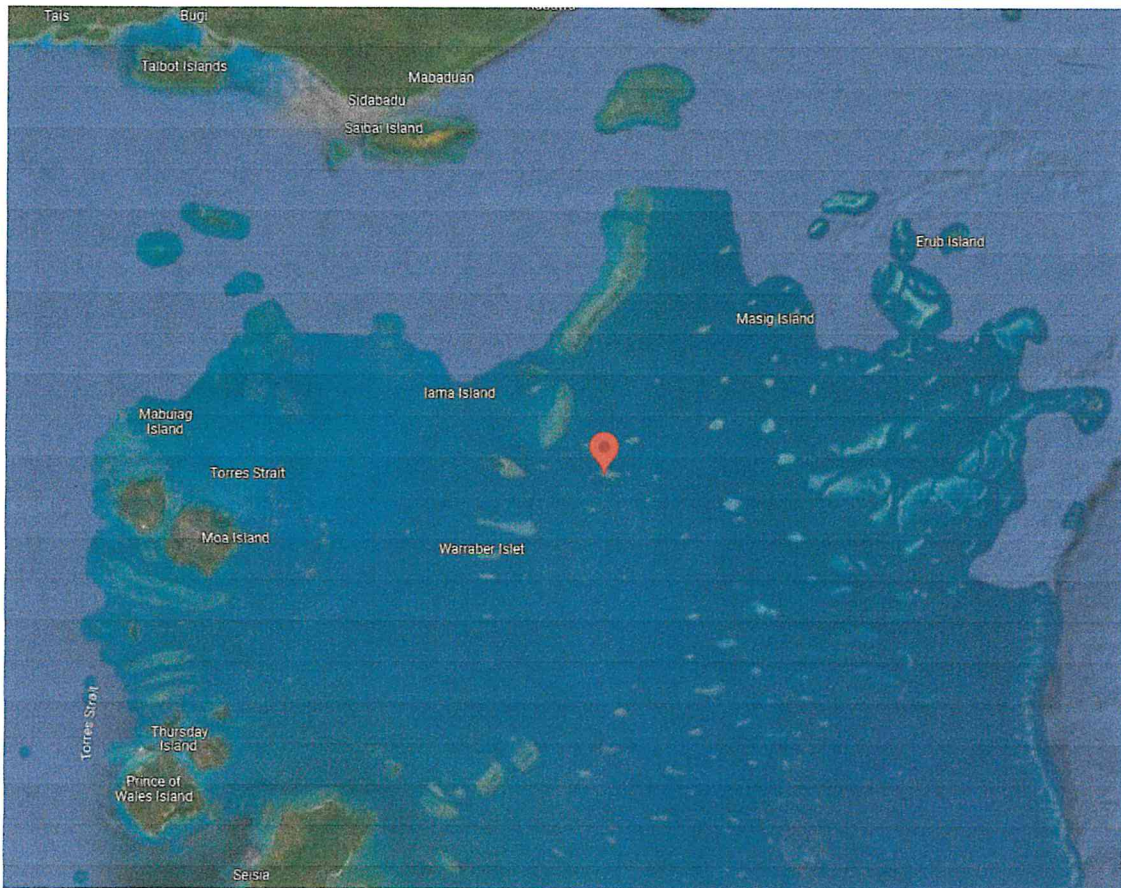

4. I am an Elder in my community and I am also on the board of directors of the prescribed body corporate (**PBC**) of Poruma. I am a traditional owner of Poruma and I have Native Title rights.
5. My clan is the *Samu* (cassowary) clan. *Worror*, the south-east wind, is my wind.
6. I am 62 years old. I have a son and a daughter, three grandchildren and one great grandchild. My great granddaughter is the eighth generation of my ancestors who live on Poruma.
7. I'm a Minister of 28 years. I provide social welfare services for the communities throughout the Torres Strait Islands. I have been involved in supporting and helping people understand that climate change is happening.
8. I finished school in 1973. I was a crayfish diver for 8 years right after finishing school.
9. I left my island in 1981, when I trained to be an IBIS store manager in Thursday Island. After that I joined the Army in Brisbane. I moved back to Poruma in 1984 to be married in 1985. I have a qualification in small business management and have worked as an IBIS Store Manager for 23 years in the Torres Strait.
10. For 20 years I have been on the board of directors for the TSIMA (the Torres Strait Island Media Association). For 15 years I was on the board of the Torres Strait Island Regional Education Council (TSIREC).

Poruma

11. Poruma is a coral cay island, located in the centre of the Torres Strait, and is part of the *Kulkaigal* nation island group. The other islands in this group include Warraber, Iama and Masig. My people speak the *Kulkaigal Ya* language.
12. Below at 13 is a map of the Torres Strait showing the location of Poruma in red.




13.



14. Poruma is not a big island. It is only about 1.4km long and about 400m across. It is a low-lying tropical coral island, with coral reefs all around it. At its highest point, it is only about 12m above sea level, but much of the island is around 4.9m above sea level. Below at 22 is a map of Poruma, on which I have marked certain locations.
15. There are two channels on the north and south of Poruma, after the coral reefs. These are international shipping channels where lots of ships pass.
16. The airstrip is located in the middle of the island and takes up a large part of it. There is a large dam to the south of the airstrip, which is now the source of water for the island. It was built in about the 1980s.
17. The high side of the island is the south-west side, to around about the end of the dam area. All of the houses are built on the west side of the island. The original village was located on the western tip of Poruma (which I have shown marked with a green circle on the map at 22). This area is now the PBC accommodation area.

18. The wharf is on the north side of the island (at the end of Mimia Street) (marked in grey on the map at 22). It was built in about 1978 by the Queensland government, and they had to dig up parts of the reef to build it.
19. The IBIS supermarket is located just to the south of this area. I have marked it in purple on the map at 22.
20. The church and the cemetery are located in the middle of the west side of the island, between Murray Street, Gibson Street and Williams Street. I have marked the cemetery in yellow on the map at 22. This area is a little bit more protected than other parts of the island.
21. My house is marked in blue on the map at 22 below, it is on the north side of [REDACTED] which is on the south west side of the island. On the other side of [REDACTED] (the south side), there is an area of coconut trees and then the beach. My house is about 60m from the beach.



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Historic impacts of climate change in the Torres Strait

23. I have been involved in sea claims and native title for a long time. I have a lot of concerns about protecting our islands from climate change. I have been observing it every day since at least the mid-1990s when we really started noticing that we were losing part of our islands.

Poruma

24. When I was younger, back in about the 1960s or 1970s there were big sand dunes on the south side of the island. On the north and west side of the island there were sandy beaches, where we used to fish, camp and sing songs.
25. Around this time, the land of Poruma extended out quite a bit further, especially on the west side of the island, about 100m beyond where the old village used to be, and where the PBC accommodation area is now. It also extended out further on the south and north sides. I have shown the approximate location of the land in the 1980s (in red) on the map below at 29 (this map is a larger version of the map at 22 above, focusing mainly on the west side of the island).
26. There were about 250 enormous coconut trees and a shed with a sitting place. The erosion began in around the 1980s and now this is all underwater. The trees were not growing back, which made the land erode even more. This is a huge loss. The coconuts are everything to us – food, structures and oil; survival.
27. The area to the west of the island also used to be used as garden areas, but now they are lost to the sea.
28. The garden areas were an important community space. People would grow food like pumpkin and sweet potato there, to feed their families. These areas were also used as meeting places.




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30. Because much of Poruma is only about 4.9m above sea level, any big waves are a risk to the island and pose a threat to the community and future generations.
31. Since around the 1980s, the water eventually came in toward the centre of the island, and the land was covered over to where it is now, so the old village was moved further inland, to the east. The gardens also had to be moved near individual houses, because they washed away.

Saibai

32. In 1987 I was working on Saibai island when the water came into the island, and the IBIS store was flooded. I lost about 100 cartons that were placed on the floors, all of them were damaged.
33. The water was so high during this flood in Saibai, that I sat up on the table in my house until the water went down. We also used a dinghy to get around the road. The people were afraid that there would be sharks and crocodiles in the streets.
34. After this time, I remember the government made a change to raise the buildings on low lying islands in the Torres Strait, but the houses in the central islands were not raised high enough.
35. These events, the flooding of Saibai, and the loss of the land and coconut trees on Poruma made me really start thinking about what was happening, and paying attention to the changes.
36. Even though there have been some changes happening since around the 1980s, they have gotten worse in the last 10 years or so. During this time, I have really noticed these changes and the impacts that they are having on Poruma.

More recent impacts of climate change

37. The change on Poruma has been faster than on some of the other islands.

Flooding

38. My house has only a very small 1m raise. If the water continues to climb, I will be gone.
39. I have often thought about what options I would have to escape if storms and flooding brought the water into my home. It frightens me to think about being stranded and surfing or taking my dinghy to mainland Australia.




40. This really needs to be understood: if that happens, this is what I would be faced with – travelling to Australia by water in a hurry from my home. Some of my friends don't feel safe or comfortable coming to stay with me on Poruma now.
41. When it floods and water comes in on Poruma, it doesn't reach my house yet. But that doesn't mean we don't have to stop it. I would have to leave to Cairns if it hit my house. The Government could never make us move from our island.
42. We love our island and we love Australia, but we want to be the way we are. We want to be with our loved ones on the island. Our loved ones are buried here, and between the oceans and islands. Our divers out there, in the ocean, it's their grave. They are buried out here. It's important to us to stay, so we can stay with our ancestors and buried loved ones. We need to be there with them, on Poruma. *Poruma Ngaulag* (Poruma is my home).

Trees and gardening

43. As I said above, Poruma has lost a lot of coconut trees. When the high tide comes in, the waves take the sand from the bottom of the sandbank, which causes the top of the sandbank to fall. This sand goes out to sea and doesn't come back. When the water comes back in, the coconut trees fall. We lose a lot of coconut trees frequently because the water comes deeper and deeper inland.
44. As I also said above, the garden areas have also been lost to the sea. Nothing much grows in the land any more, at least not like it used to. You can grow some things, but they are different types of crops than what we used to grow, and you need to buy fertiliser, which you didn't need to in the past.
45. We can grow limited produce now because something is wrong. I can grow sweet potato and pineapple, but most other plants we have to use fertiliser to grow, which we buy from IBIS. Watermelon, pumpkin, corn – a variety of produce – never used to need fertiliser to grow on Poruma.
46. Everybody has forgotten about gardening now. Very few houses have interesting gardens, including with banana, and with greater variety. Gardening has dropped off on Poruma.
47. This means that people now buy food from the IBIS, which is not as healthy, and I see people having more problems with high blood pressure and other health problems.




48. It also means that we have lost that culture and connection that we used to have with gardening and traditional ways. When we lose the sand and the coconut trees, they are not coming back.

Wind and waves

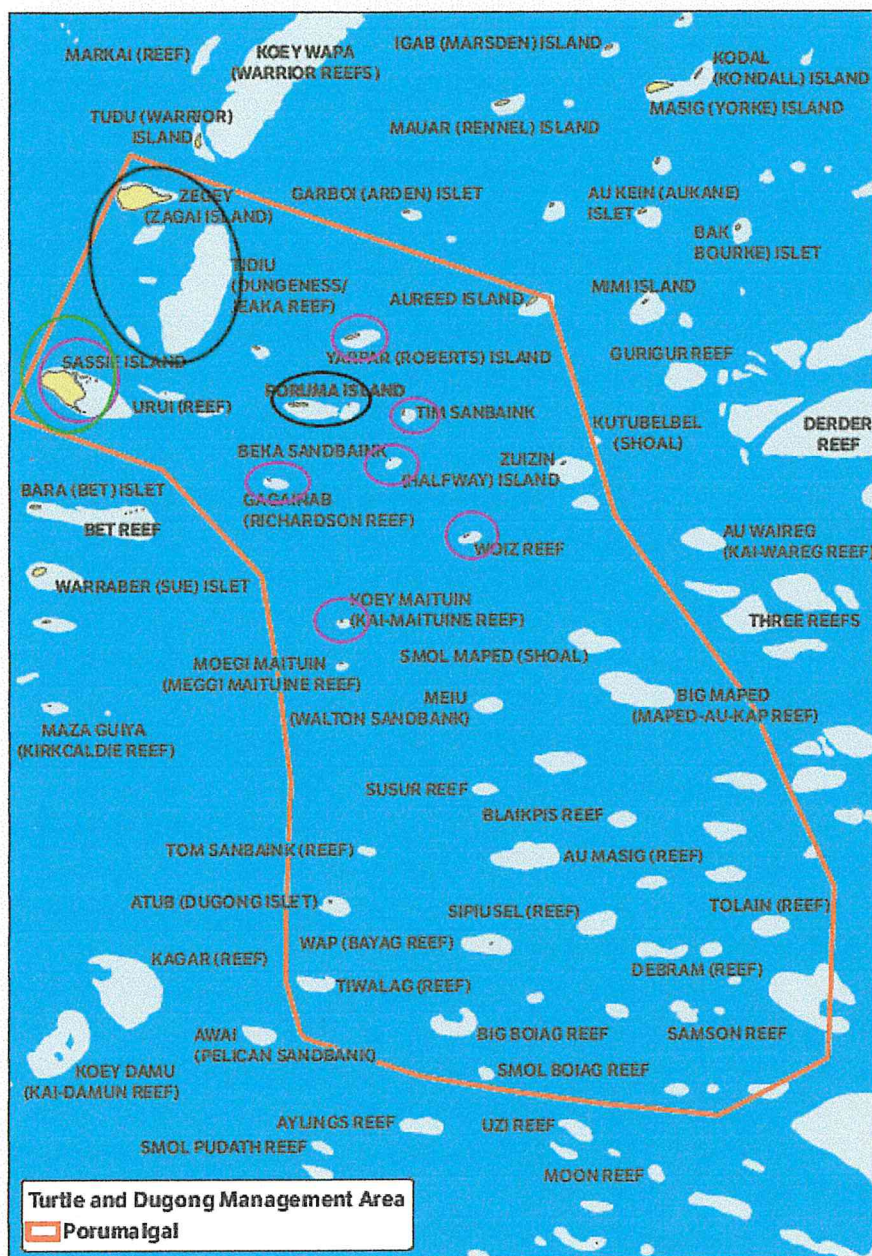
49. High tides are connected to the wind, the wind pressure, the current and the waves.
50. Poruma is located in the middle of the Torres Strait, and the ocean currents meet at Poruma. This makes it very different to other parts of the Torres Strait. The waves come from both sides – the north and the south.
51. The winds are also stronger now than they used to be, they are now about 30-35 knots most of the time. This is much more than what we used to get.
52. I've noticed it for a while, on the island. It's powerful. It is so scary. If a coconut tree breaks on you, you're dead. Even the branches are very dangerous. I've seen how injured people can be if a coconut tree branch falls on them in strong winds. We risk being trapped alone for a long time leaving you to yell for help. It can kill you.
53. I am lucky to have a very secure home that protects us. We are aware of the damage wind does. The coconut tree trunks are very thick and heavy, the wind can cause them to snap and fall. They are a very dense and heavy trunk.
54. If you touch nature, the nature will change.

Hunting

55. The erosion of the land means that there is more sand going to other places and creating sandbanks in the ocean. The little islets near Poruma used to have grasses on them. Now they are just sand. We used to get traditional foods like bird eggs and turtle and turtle eggs from these little islets, but now that the grass is gone, the islets are really just moving sandbanks. The turtles and birds are gone.
56. The sand is also impacting the reef. The sand covers the sea grasses, which is what the dugongs and turtles feed on. So they end up going to different places.
57. Below at 58 is a map showing the islets and reefs I am talking about.
- 58.



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59. The map at 58 is from the TSRA Poruma Land and Sea Profile. It shows the Turtle and Dugong Management Area for Poruma (the entire area marked in orange). The small islets that I was talking about above are marked in purple on the map. These are the islets where we used to get turtles and birds from.
60. The dugongs used to be located around Poruma, Zegey, and Tidiu (these areas are marked in black on the map at 58). They could be found between Dungeness Reef and



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Warrior Reef. There are much less than they used to be. There used to be a lot, but now we often don't find them out there. We understand that they are moving, because they don't have food here anymore.

61. Sassie Island is also where you could get turtles and other species like clam shell and eggs from, and you can still do that, although there are less than before. Sassie island is marked in green on the map at 58.
62. My mother told me that when she was young in the 40s and 50s turtles would mate in the water right near the beach. When I was young, in the 60s and 70s, I would see plenty of turtles mating close to the edge of the reef.
63. In the 1980s-90s I would see them floating yet further out from the reef. Today, we don't see them at all. They've moved much further out. This has slowly changed over time.

Seawalls and infrastructure

64. In around 2014, I spoke out about climate change in a video my daughter, Adria Faid, made about impacts of climate change to our island. The video was sent to the TSRA. It can be viewed here:

https://www.google.com/search?q=youtube+poruma+erosion&rlz=1C1GCEA_enAU1023AU1023&oq=youtube+poruma+erosion&aqs=chrome..69i57j0i546i2.3806j0j7&sourceid=chrome&ie=UTF-8.
65. In 2016 when Nigel Scullion was the Minister for Indigenous Affairs and visited the Torres Strait, I said each community speaks for their community and I need to speak for my community. We need to talk from our experience. I've seen it, I have the knowledge of climate change on Poruma. We might be describing the same thing, but the impacts of climate change are all different experiences.
66. Between 2020 and 2022, a seawall was built on Poruma. Below at 67 I have marked in light green where the seawall runs around the island. It is made of geobags, which are a bit like really big sandbags.
- 67.






68. The seawall doesn't stop the waves and the wind that comes from the southeast. For about 6 to 9 months of the year, the winds, and the waves, come from the southeast side. The worst affected side of the island is the south-west side.
69. Below at 70 is a map showing the wind direction that happens for most of the year (shown as green lines), as well as the way that the waves come in from the sea (shown as yellow lines).

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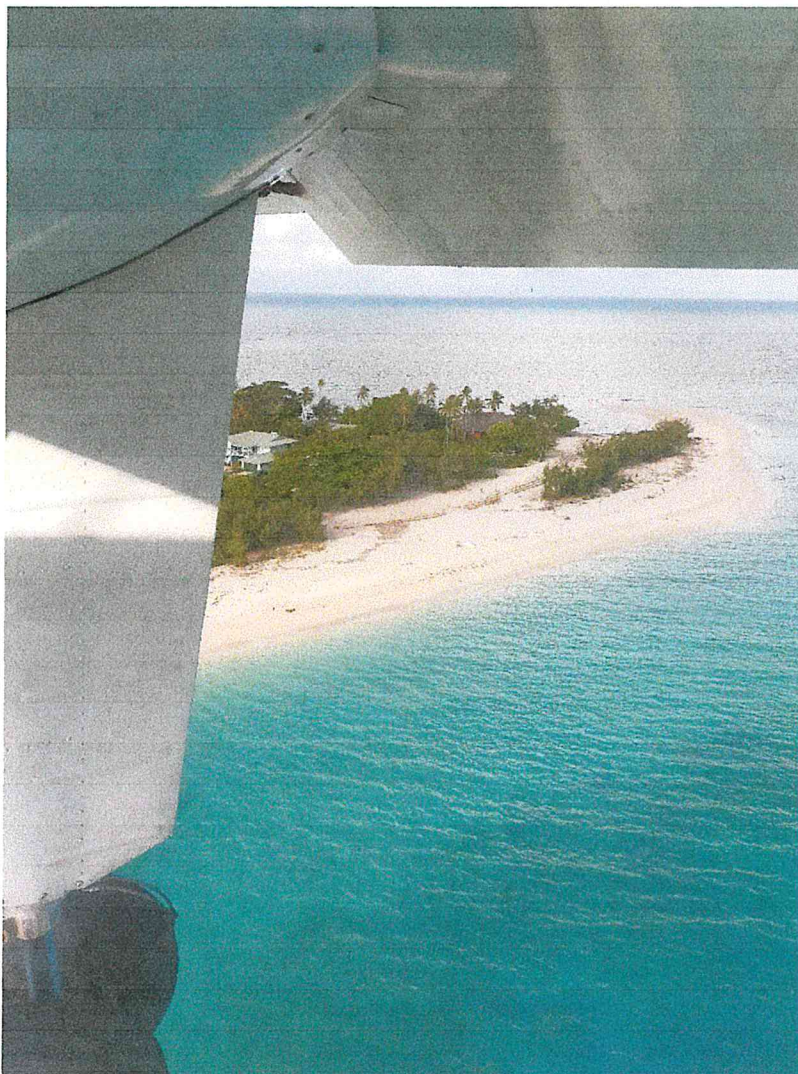


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71. While the seawall offers some protection from water coming in from the north side of the island, there is no protection for the south to southeast side. What this means is the south side of the island is now seeing most of the damage. The sand washes away from this side and then ends up around the wharf area. This then means we have to dig out the sand from the wharf area approximately 2-3 times a year, to make sure it is still useable. This damage is happening fast, and is a major attack on the island.
72. Below at 73 is a photo I took of the PBC accommodation area, from the plane, when I was flying out of Poruma in about December 2022. This view is of the north side of the island, and the plane is flying from west to east. You can see in the photo how close the water comes in on the south side of the island now. You can also see the lines of the geobag seawall (they are the parts that look like steeped lines in the sand).

73.

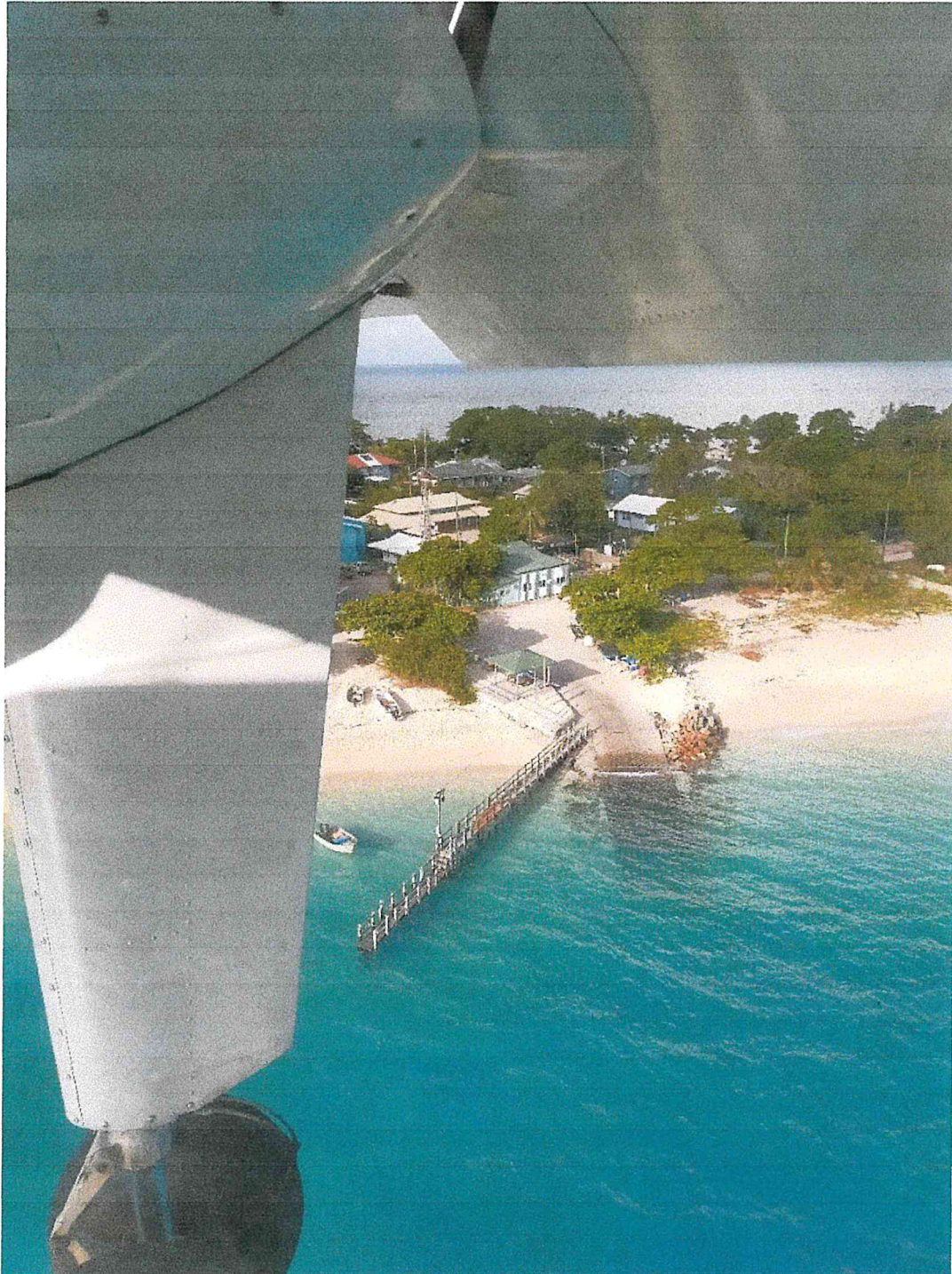


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74. The photo below at 75 is also one I took from the plane on the same flight. It shows the wharf and jetty area.

75.



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76. When the tide gets to about 4.9m above sea level, the jetty is basically underwater. Below at 77 is a photo of the Poruma jetty under water, which is from the TSRA.

77.



78. On Poruma, eight families can hear the sound of the water against the seawall when they put their heads on their pillow at night. That is how close we are. These houses are on the south-west side of the island, and it includes my house.
79. I think if there was a seawall on the south side of the island, or at least mangroves or other vegetation growing, that would help stop, or at least slow, the erosion on this part of the

island. Mangroves would help slow the current, and then the water from coming into the island.

Impacts on culture

80. Ever since I was young, *Allan Kastom* for me is culture, tradition and lifestyle.
81. Culture is the platform that I build upon. Culture is respect. Respect for authority, Uncles, Aunties, Elders, cousins, family, grandchildren and great grandchildren. You respect their opinion, and what they say. Uncles and Aunties hold a lot of authority in our culture.
82. There are two types of Uncle, the mother's side and the father's side. When you come to be married, it's your mother's side Uncle who has a role in the marriage ceremony. The groom must seek permission from the Uncle on the mother's side, never the Uncle on the father's side. It is forbidden to discuss love with the father's side Uncle.
83. The father's side Uncle has a teaching role, about how to hunt, fish, garden, and knowledge about island medicine for eyes, ears and sores or any cuts. I learned this from my father's side Uncles, this is passed through storytelling.
84. Tradition is the way we live and make things. How you prepare to have the wedding, for tombstone opening, and for death in the family. Poruma has its own tradition.
85. Our lifestyle is how we live, how we eat, what we eat, how we dress. This includes eating damper and wearing Lava Lava (traditional clothing with a tie in the middle). The way we dress reflects the way we live and shows the beauty of our island. We don't feel comfortable wearing our traditional clothes much outside of the Torres Strait, but everywhere I go I am an Island man.
86. Further loss of turtles and dugongs would be bad. We eat turtles and dugong, but they are not everyday foods, they are special or ceremonial foods. We eat them at certain celebrations like weddings, and tombstone openings. We expect to see those types of foods at those types of celebrations. If there was no turtle or dugong to eat at a wedding, it would feel very strange. I would not feel very happy.
87. I do not know what I will do if I cannot pass on these cultural connections – with the land, the animals and everything – to my grandchildren or great-grandchildren. If Poruma was lost, then I cannot tell them the story of the past anymore. The past would die. The stories of the past have to be connected to the reality. They have to be connected to the land




and the sea and I have to be able to show the next generation this, to tell them the story. I want it to still be alive.

88. I do not want to move from Poruma. I want to die here. It is my home. I cannot talk about what not being able to live on Poruma means to me. It makes me very sad. I would never move from here. If the waves are going to come over the island, then I will die here.
89. It's my responsibility to be here so that my generations to come will be part of this land and sea.
90. I would like to finish by saying part of a short prayer:

"Father, we come before you, we believe that you are Almighty God. We thank you for your presence with us because your word it says you will never leave us, you will never forsake us.

Father, this morning we trust you, we believe Father that you will be in the midst of us directing us, ministering us, comforting us through this journey.

This journey, Lord, these families, these friends, that are sitting around with us, they are talking about Zendith Kes. Zendith Kes is in your hands. Torres Strait is in your hands.

Let the cry of the people be heard.

The voice is already heard in your throne my God, but today, Father, Lord, we are to demonstrate something to the government.

Lord it is about people's lives, it's about the nationality, it's about culture, it's about tradition, it's about our lifestyle.

Lord please bless us, Amen."




Sworn by the deponent
at Cairns
in Queensland
on 13 February 2023

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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).