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Sia Lagos

Registrar

Important Information

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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: **Guy Paul Kabai**
Address: [REDACTED]
Occupation: Unemployed
Date: 15 December 2022

I, **GUY PAUL KABAI** of [REDACTED] unemployed,
say on oath:

1. I am the Second 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 I believe that information to be true.

Personal Background

3. My full name is Guy Paul Kabai, but I am usually known as Paul. I am from the Guda Maluyligal nation in Zenadth Kes (the Torres Strait).

Filed on behalf of	Pabai Pabai and Guy Paul Kabai, Applicants
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4. I was born on [REDACTED] 1967, and I am currently 55 years old. I was born on Thursday Island, but my family is from Saibai Island. I have lived a lot of my life on Saibai.
5. I am the youngest of 8 siblings. I have 5 sisters and 3 brothers. One of my sisters and one of my brothers still live on Saibai. My eldest brother and another sister have passed away. My father, Gamia Kabai, died when I was about 5 or 6 years old. My mother, Agnes Kabai passed away back in the early 90's. Both of my parents lived on Saibai. Both my parents and some of my siblings who have passed are buried on Saibai.
6. At the time I was born, my family was living on Saibai. I attended school on Saibai until grade 7, after that I went to school on Thursday Island for about a year (for grade 8). I then went to school in Cairns for the rest of my schooling (up to year 12). During this time, I lived in a boarding hostel.
7. Once I finished school, I came back to live on Saibai. This was in about 1985, when I was aged about 18 years old. My brother helped me to get a job as an immigration officer, working on Saibai. I was then appointed as a police liaison officer. I did both of these jobs up until around the mid-90s.
8. I am married to Selina Kabai. We got married on Saibai in about 1997. We have 8 children - 5 boys and 3 girls - who range in age from 13 to 30. They were all born on Thursday Island.
9. Around the mid-90s, my family moved down to Cairns for 5 or 6 years so my daughter could complete high school there. Because of this move, I lost both of my jobs (the immigration officer and police liaison officer roles).
10. In about 2000, my family and I moved back to Saibai when my daughter graduated. My mother had called me back to Saibai so that I could represent our ^{after} ~~clan~~ the Saibai native title determination.
11. I became a Councillor of Saibai Island for a 3 year term representing the *Umai* clan, when they changed from three Councillors to seven. Then I became Deputy Chair of the Island for another three year term. Then I took the role of Sewerage Officer until around 2017. That was my last job.
12. Currently, half of my kids live in and around Cairns. The rest live in different places - my eldest son lives in Brisbane, one of my sons lives in Saibai, another of my sons lives in

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Sydney (as he is in the Navy) and my eldest daughter lives in Darwin. I also have 5 grandchildren: 4 in Darwin and 1 in Brisbane.

13. I am a traditional owner of Saibai Island (*Umai* (Dog) clan). The people of Saibai were recognised as native title holders of Saibai in 1999 by native title determination QUD6017/1998 (*Saibai People v State of Queensland* [1999] FCA 158). I hold native title rights including the right to possession, occupation, use and enjoyment of the land.
14. I am a member of the Saibai Mura Buway (Torres Strait Islanders) Corporation RNTBC which is the Prescribed Body Corporate (PBC) that holds native title rights over Saibai. I am a director of the PBC representing the *Umai* clan on Saibai. The PBC is the governing or peak body on Saibai. It represents each of the 7 clans on Saibai, and helps to make decisions that affect Saibai.
15. Each of the clans select a person to be their representative. As I said, I have been chosen for that role by my clan. I only talk for my *Umai* clan, and there are other representatives for the other clans.
16. Before anything can happen on Saibai, people speak to representatives on the PBC first. The clan representatives then talk to each other, and then once a decision has been made, or an issue needs to be discussed, it is ultimately raised with the Torres Strait Regional Authority.

Saibai

17. Saibai is an island in the northern part of Zenadth Kes. It is also known as *Saibe*. It is part of the Northwestern Group of islands, which is the *Guda Maluyilgal* nation of Zenadth Kes, and is located about 4 km south from Papua New Guinea. The Northwestern Group includes Boigu and Dauan Islands as well. Boigu Island is located about 30 km to the west-northwest of Saibai. Saibai is marked on the map below at 19 in yellow text. The large land mass at the top of the map is Papua New Guinea. The smaller land mass in the middle at the bottom of the map is the tip of northern Queensland, i.e., the Cape York Peninsula.
18. Also marked are the locations of Boigu Island and Warul Kawa (which is also known as Deliverance Island) on the map at 19.

G.K. CF

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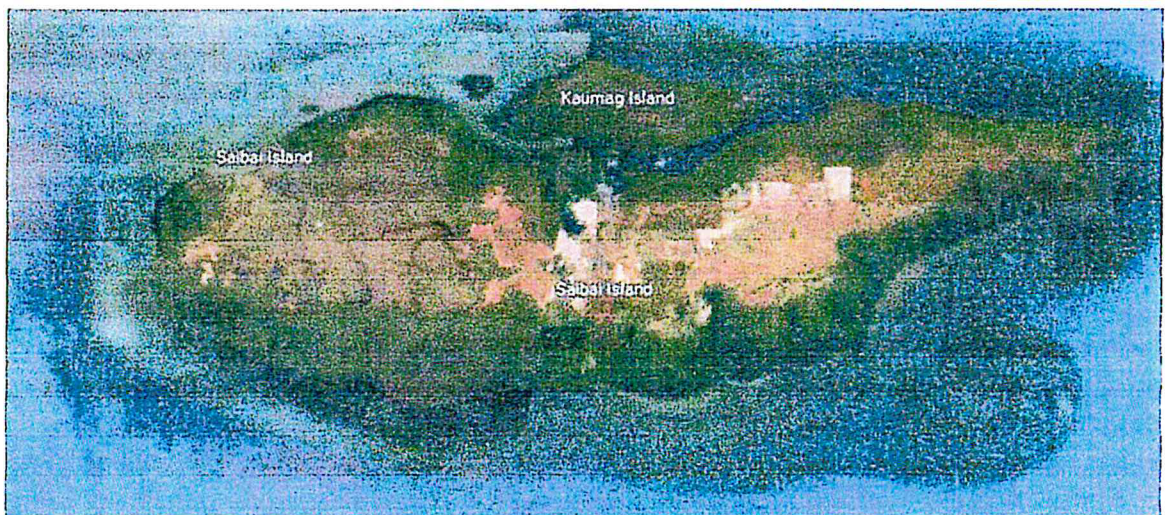


20. Saibai is about 20km long and 6km wide. It is very flat, and most of the land is only a little bit above sea level (maybe about a metre or so). It is made up of mangroves and swamps,

C.K. CF

with the inland mostly being made up of the swamps. The south side of Saibai is mainly mangroves.

21. There is a small island directly to the north of Saibai called Kaumag Island, and another small island to the west of Saibai, called Dauan Island. Nobody lives on Kaumag, but some people live Dauan, but it is a separate community to Saibai.
22. The Saibai village is on a narrow strip of land on the northwestern side of Saibai. The map below at 23 shows Saibai Island. The village is on the map where the text says Saibai Island, on the top left.
- 23.

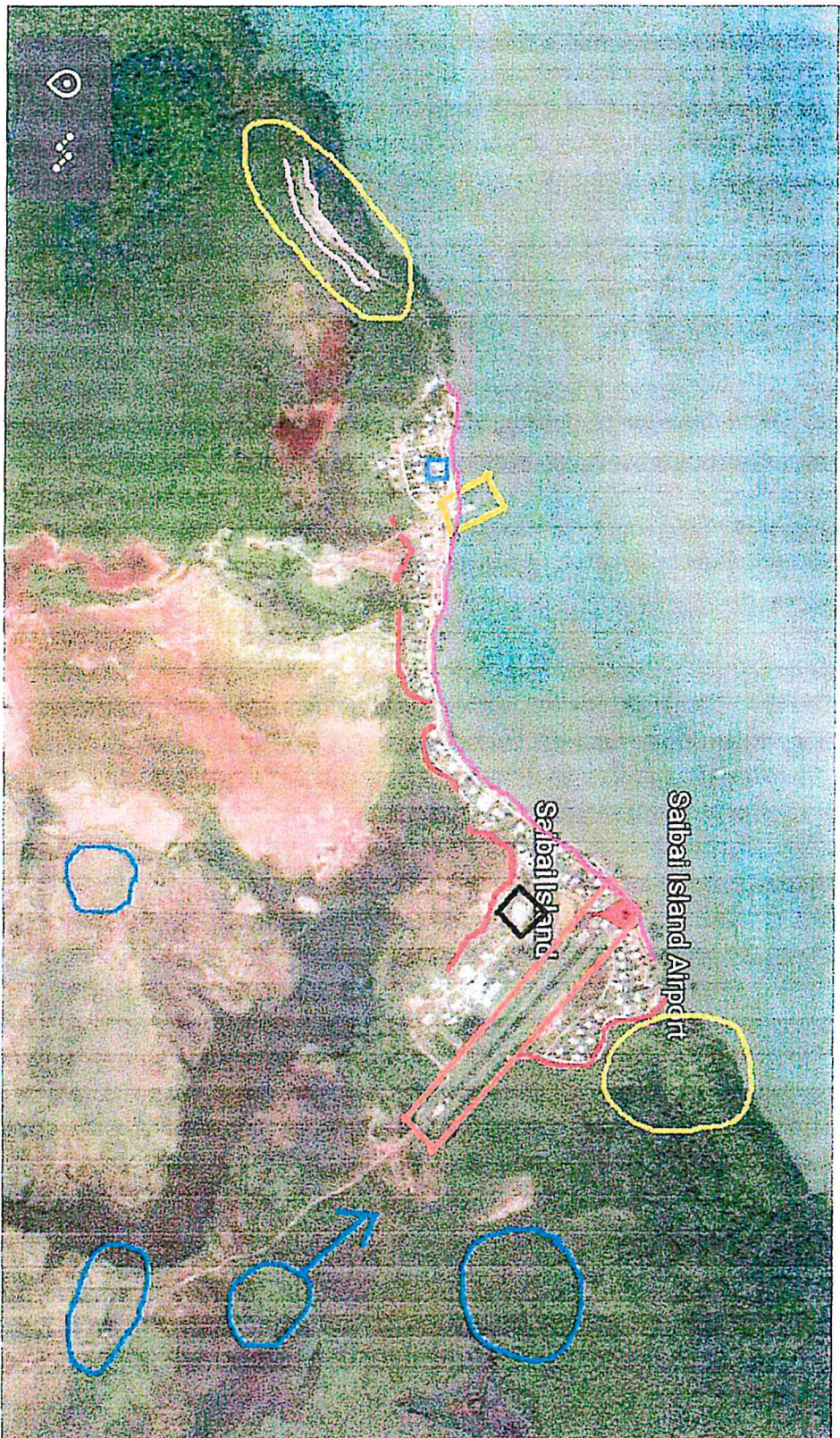


24. The map below at 34 shows the Saibai village. I have marked the important locations in the village in different colours. Most of the village is located on Main Road, which is a long road that runs along the coastline. You can see the ocean from the verandah of most houses.
25. My house is located on [REDACTED] and it is marked on the map at 34 below in dark blue.
26. There is an airstrip located on the northeastern side of town. It is marked in orange on the map at 34 below.
27. The supermarket (which is the only shop on Saibai) is located just to the west of the airstrip. It is marked on the map at 34 in black.

G.K. C.F.

28. There are two cemeteries on Saibai. One is at the end of Main Road, located to the west of the town area, and the other is on the eastern end of the village. I have marked both cemeteries on the map at 34 below in green.
29. There is a wharf on the western side of the village. I have marked it on the map below at 34 in yellow.
30. There used to be gardens which are located to the southeast of the village down School Road. The areas where they were are marked on the map at 34 in light blue.
31. In about 2017, the Commonwealth Government in collaboration with the Queensland Government and the Torres Strait Island Regional Council built a concrete seawall along the entire length of the beach area of the village on Main Road. It runs from the area just to the northeast of the airstrip, all the way to the western side of the town. I have marked its location on the map at 34 below in purple.
32. There is also a small seawall along the north and south side of the western cemetery. I have marked its location on the map at 34 below in pink.
33. There is a dirt bund wall in places around the back of the village. The bund wall is located at the western edge of the village, around the back of the village in the centre, up the inside of the village near the western edge of the airport, and around the eastern edge of the village. I have marked it on the map at 34 below in red.

C.K. C.F.

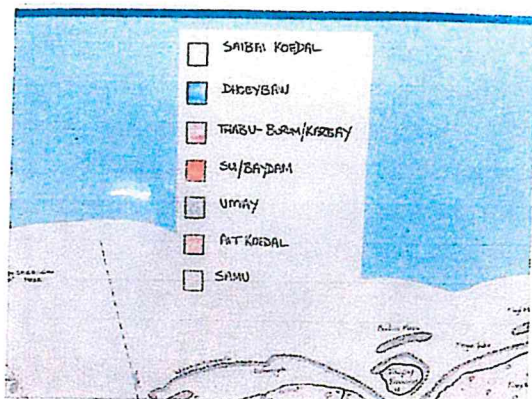


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35. Immediately behind the town of Saibai are swamps. The village of Saibai is on a very thin strip of land between the ocean and the swamps. The inland of the island is mostly swamps. Many years ago, before the missionaries came to Saibai in 1875, people used to live inland on Saibai, all across the island. However, no one has lived inland since the first London missionaries arrived on Saibai. They gathered everyone into one main area, where the village is now.
36. One of the areas where people used to live include an island located within the swamps on the eastern end of Saibai, known as *Ait*. This is where the *Ait Koedal* (Crocodile) clan are from, but now it is impossible to live there because it is completely covered during the high tide and wet season.

People

37. About 450 people live on Saibai Island. They are mostly islanders, the *Koeybuwai* and *Moegibuwai* people. The language my people speak is called KKY (*Kala Kawaw Ya*), and most people also speak creole. Many people also understand the language of the Papua New Guinea people, as we trade with them all the time.
38. There are 7 clans on Saibai – *Thabu* (Snake), *Dhoeybaw* (Wild Yam), *Ait Koedal* (Ait Crocodile), *Umai* (Dog), *Samu* (Cassowary), *Sui Baidham* (Shark/Swamp Bird), and *Saibai Koedal* (Saibai Crocodile). There are two Crocodile clans: *Ait Koedal*, from the old swamp island of *Ait*, and *Saibai Koedal*, from the Saibai village area. The map and key at 39 below shows the traditional lands of the clans on Saibai.
- 39.





40. Which clan you belong to depends upon your family. Clans usually run along the father's side, although sometimes when a woman marries a man, she can chose which clan the children belong to.
41. My mother's clan is *Ait Koedal*, but my dad's clan is *Umai*. I am part of the *Umai* clan, as are all of my siblings. *Umai* clan's territory is located along the western coast of Saibai.

Growing up on Saibai

42. When I was a kid, in the 1970s and 1980s, Saibai was a land of plenty. I would catch barramundi and crabs in the inland swamps, and I could go to the special garden places, by boat and canoe across the swamps.
43. People used to canoe over the whole island, as the rivers and swamps were connected through trenches. You can't do this anymore, because there's dust that covers the rivers and you just can't canoe there now.
44. I also used to play on the beaches out the front of my house when I was younger – they were many many meters further out than they are now. I used to play football on the sand with other Saibai kids. This is all gone now.
45. Below I talk about some of these places, and other special places, in more detail.

Special Places

My house and garden

46. My house is on [REDACTED] and is located on the beachfront. I have lived here since I returned from Cairns in around 2000. It is the blue house on the left hand side of the photo at 47 below.

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47.



48. The next photo at 49 below shows the road and seawall out the front of my house.

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49.



50. The road used to be closer to where the ocean is now, where the seawall is currently located (as shown in the photo at 49 above). The whole area from the western side of the front of my house to the seawall, including where the road is now, used to be my family's garden (to the right of the photo at 47 above, and to the left of the photo at 52 below). We used to grow things like cassava, sweet potato and banana in that garden. Now nothing grows there because the erosion of the beachfront meant the road had to be built further back over the gardens.
51. The photo below at 52 is taken out the front of my house, where my garden used to be. All that is there now is a dying almond tree. The tree used to be an inland beach almond.

G.K. CF

52.



Gardens and food sources

53. My family also used to have a garden behind the village near the swamps. I have marked this by the bottom left light blue circle on the map at 34 above. My mother and sisters and brothers told me that you could travel there through the swamps in a canoe to get to the garden area. The location of the gardens is a little bit higher than the village.
54. The photo at 55 below shows my Aunty's plot, called *dhuri*, which has upright white coloured sticks, which used to be part of the fences to keep out deer. This was located near the light blue arrow at 34 above.

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56. As a child, my family and I would go out to the gardens most days, and we lived off the garden. My parents and grandparents taught me how to grow taro, cassava, yam, sweet potato, pumpkin, sugar cane, bananas and other fruit and vegetables at these gardens. The crops we would grow were large in size. We would use these fruit and vegetables for our whole family.
57. Now it is all gone.
58. The gardens have been destroyed by storms and because there is too much salt in the soil now. We haven't been able to use them for about 20 years now.
59. When I was younger, the swamps used to be filled with freshwater. You could do your washing there. Sometimes, water came inland from the sea into the swamps, but it used to be that the rains would wash away any salt that came with the sea water.

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60. Now, because the sea level is higher, the water comes inland from the sea all the time. And because the rains are less too, the salt stays on the ground, and in the swamps. This has been happening slowly since I was young, but much more rapidly in recent years. The swamps are now full of salt. This means that nothing really grows in the gardens anymore, and I can't see the garden beds anymore. The gardens are all overgrown with reeds now. You can see this in the photo at 55 above.
61. There is one community garden left which is managed by the PBC and rangers. It is on a slightly higher plot of land, which is located near the bottom right light blue marked area at 34 above. They tried to grow sweet potato and cassava. But the soil was too salty and the crops were small and didn't grow very well. The garden is now overgrown and no one has gardened there for about 5 years. The photo at 62 below shows the garden, and you can see the mesh and poles where the garden beds used to be. It is all overgrown now.
- 62.



63. Hundreds of magpie geese used to migrate into the garden and swamp area every year, and we would hunt them. The magpie geese don't land on these areas anymore, maybe because there is too much salt in the swamp.
64. I sometimes take my family out to a little picnic area to eat on the western side of the island, which is near where these gardens used to be. I told my kids that our family's garden used to be out there, but it is now all gone. I am very sad about this. My children have missed out on some of the best things from my childhood.
65. When I told my kids about this, my eldest daughter and eldest son were in tears, and so was I. They asked me "when you were small you used to come here with your parents for gardening?" And I said "Yes". They then said, "Where is it now?" I don't know how to explain that to them, and I ask myself, where will my children make their gardens?
66. When I was a child, we only bought sugar, salt, flour and rice at the shop, but we would otherwise eat the food from our gardens, and we would also be able to get dugong, turtle, barramundi and crabs to eat as well.
67. I can't catch barramundi or crabs in the swamps anymore. There are no barramundis, because there is no freshwater.
68. My grandparents used to go crabbing in the mangroves, using ^{coconut}~~banana~~ weave baskets. They would just collect crabs from the mud in these baskets. I was taught how to do this too.
69. There are no crabs in the swamps now. You used to be able to get crabs from the western cemetery area, but now, the sand is moving, so it is hard for the crabs to dig in because it's hard ground underneath. You can still go crabbing on the river on the eastern side of the island, but you can't do it the way my grandparents did, or even I did.
70. So we miss out.
71. Because the gardens are gone too, there is nothing to feed my family. We have to buy most of our food from the shop now, and it is very expensive. A lot of the food is not healthy for us either, and people get diabetes and other illnesses that we never used to get.
72. During monsoon season, we can have no supply boats for weeks. This means that Saibai runs out of fresh food. The shop also runs out of rice and flour.

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73. In the past, we used to be able to tell when monsoon season was coming, and we could stock up on those things. Now, the seasons have changed so much, we don't know when to do that.

Cemetery

74. The cemetery is a very important place for my people. When I speak about the cemetery here, I am talking about the cemetery on the western end of the village, because that is where my ancestors and all of the clan members have been buried.
75. A seawall was built around the cemetery and the village front in ²⁰¹⁷~~2019~~. A bund wall to the west of the cemetery was built inland then too. These are shown on the map at 34 above.
76. When someone dies, they are buried in the cemetery. We put a frame around the grave and a cross on top, to identify their grave. Later, we might put other things to mark the grave, like concrete tombstones, with tiles and other things. The photo at 77 below shows the type of grave markers and memorials that we build around people's graves.

77.



78. For burial sites, elders have to go to the cemetery and decide where to dig the graves. You have to get permission the ancestors to dig in a certain spot.

G.K. G.F.

79. First you have the burial service, and then maybe two or three years later you put the headstone on it which is a different ceremony. The funeral service is just mourning, but the tombstone unveiling involves feasting and dancing. The tombstone unveiling is a celebration of the person who has passed having a better place to live now, it signifies the end of the mourning period. These ceremonies involve people from all over Zenadth Kes and down south.
80. There are other ceremonies involving men's and women's business that take place at the cemetery, but I cannot speak about these because of cultural reasons.
81. My people go to the cemetery a lot. You go to the graves of your ancestors to pay respect to the dead. It is very common to go to the cemetery, and there is almost always someone from the community most days.
82. Because the cemetery is a little out of town, when it is high tide time during the monsoon season, the road floods and the cemetery can become inaccessible. Sometimes we have to wait a few hours for the water to drop, before we have a funeral because we can't access the cemetery.
83. The cemetery is also important because we do ceremonies there before big events. For example, before the seawall was built, in 2017, the community came to the cemetery and did a ceremony. These kinds of ceremonies involve us talking to our ancestors and telling them what is happening. Sometimes we are also asking for their permission to do certain things, like make decisions about what happens in the community.
84. To do these kinds of ceremonies, the people come to their ancestors' graves, so it is very important to know where your ancestors are. They sit and talk to the ancestors, telling them what is happening, and asking them for the permissions that are needed. If you did not know where your ancestors were, it would be harder to talk to them, and you would just stand at the entrance of the cemetery and talk to your ancestors.
85. Since I was in my 20s, I noticed the sea water started to come into the cemetery. Some of the gravesites were already exposed to erosion. Since then, it's been eroding very rapidly, especially in the 5-10 years before the seawall was completed in ²⁰¹⁷~~2019~~.
86. A lot of the graves and tombstones have started to wash away. The grave frames moved, and came away from their locations. The photo at 87 below shows some of the headstones that washed away. We do not know which graves these belonged to, so we haven't been able to put them back.

G.K. G.F.

87.



88. The next photos at 89 and 90 also show some of the headstones and grave markers that were washed away. They are just jumbled on the ground, and no one knows where they used to be.

G.K. G.F.

89.



90.



91. This was terrible. It made many people very sad, including me.

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92. The seawall is made of concrete Besser blocks, but it is not very high above the ground level, maybe less than a metre high. It is located only a couple of metres from the graves. The photo at 93 below shows the location of the seawall compared to the graves, and the mangroves.

93.



94. The next photo at 95 also shows the location of the seawall compared to the graves, but in this photo you can see how close the wall is to the ground. It really isn't very high. On the left hand side of the photo you can also see the seawall that protects the other side of the cemetery from the water that flows in from the swamps.

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96. When a person dies, our culture thinks of them as resting. We do not want to wake them up again from their rest.
97. The thought of losing or moving the graves is terrible. If we were to move our ancestors from their current graves, this would be like waking them up again, to say "we've got another bed for you to sleep on".
98. Losing the graves is even worse. Where would our ancestors be? How could we talk to them?
99. All my clan members are buried in the Saibai cemetery. I go to the cemetery maybe around once a month and talk to them. I clean up around the gravestones too, we have to go and check on the gravesites for damage after high tide.

G.K. G.F.

100. Our ancestors live in the cemetery there. Sometimes we talk to our ancestors about certain things. The elders talk to the ancestors there like you would if a person was standing in front of you.

Other locations

101. There are also culturally significant trees all over Saibai. The most important trees on the island are almond trees (planted on sacred places), figs and wongai. Some of the special trees are dying in their sacred places. This is mainly trees like the wongai trees, almond trees and coconut trees.
102. Boys on Saibai undergo an initiation ceremony when they are teenagers. This ceremony happens when boys become men. It is a ceremony that is undertaken by the boy's uncles, not his father. The father hands the son over to the uncles, and the uncle takes the boy somewhere secret – in their clan's territory.
103. The uncle then does a secret ceremony with the boy on the clan's land. I am unable to say exactly what happens because this is men's business.
104. For my clan, the *Umai* clan, this type of ceremony happens on the west side of the island. You must do this ceremony in your territory. It must happen at a special place, which must be on the clan land.
105. Women also have similar secret places, again within their clan areas.
106. Because of the sea level rise and flooding of the swamps, we can't go to some of these places anymore. These ceremonies now sometimes take place at people's houses. This is how we have lost our culture, because we can't access sacred places due to flooding.
107. I am very worried about the fact that we might lose our clan's sacred places on Saibai. We still have connection to our cultural areas now. If the special places are lost, it would be very sad for us. Once these areas disappear, that means we've lost our culture, our tradition is gone.

Stars and constellations

108. My grandfather could read the constellations to tell when the seasons were going to change. This was something that he was taught by his elders, and he then passed it down to me.
109. When I was a child, I knew that when the stars of the *Taigai* constellation (located on the south side of the island) faced upwards, it was dry season. *Taigai* is a person with a spear.

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When his spear goes down to the west, that's when you know it's going to rain – the monsoon season is coming.

110. That's all changed now. When the spear tips over now it is not monsoon season anymore. The seasons have all changed. It rains when it should be dry, and it's dry when it should rain. The monsoon season is sometimes early, and sometimes late – it's unpredictable. I started noticing this around 30 years ago, because I remember when I was in my 20s the elders told me the season patterns were changing. This has become more obvious in the last 5-10 years.
111. My elders also taught me to garden by following the stars and constellations. I was taught to use the stars as a guide for planting and harvesting. For example, before the *Taigai* spear turns downward, the stars of the *Baidham* constellation (located on the north side of the island) point upwards, which used to mean it was a good time to plant. *Baidham* is a Shark. When his nose points down towards the horizon, that means rain.
112. My elders also taught me how to hunt using the stars. When the *Tagai* spear (or the Southern Cross) is pointing down, that means it is a good time to hunt.
113. Because the seasons no longer match up to what the stars are telling me, I cannot tell what is happening. I also cannot pass on this part of our culture to my children, or grandchildren, so they do not know what to do. This means that our culture is dying because we can't pass it down to our children and grandchildren.

Dugong ceremonies

114. When your son becomes a man, we have the initiation ceremony (which I talk about above) first, then his uncles take him out on a boat to hunt dugong.
115. Dugongs and turtles are not seasonal, you can hunt them at anytime. From when I was very young until around my mid-20s, it used to be that you would always find turtles and dugongs on the eastern side of the island. We always went to the same places and would reliably catch dugong and turtle there.
116. When I was young, I would go dugong and turtle hunting with my uncles in September.
117. To decide whether or not to go hunting, my uncles would wait until the sun set, and then they would face to the east. If the moon was straight above their shoulder, it was a bad time to hunt. But if the moon was further forward, and shining on their front, it was a good

time to hunt. This has stayed the same, but the hunting spots are different because the turtles and dugongs are always moving.

118. Our ancestors and our grandfathers used to build tall platforms from mangrove wood (called a *nath*) to hunt dugongs. A man would stand on it all night, and wait for the dugong to come underneath, as they always came to the same place. When I was younger, my grandfathers showed me where they used to build these platforms all around the northeast and southeast sides of the island. But I've never seen the platforms around the island, this is knowledge that was passed down. There was seagrass all around the south side of the island, which is where the dugongs would go.
119. Now it is different.
120. Sand has covered the foraging areas where the turtle and dugongs used to be. You can't find many on the southern side of the island anymore. There is nothing there in September anymore.
121. Because of the erosion, you can't find where you used to find the dugong and turtle anymore. Sometimes it's covered with sand, other times you come 3 years later and they're there again. Then you come back 3 months later and there's sand again.
122. There are also no seagrasses on the south side of the island. The dugongs and turtle are only on the southeast side of the island, in the bay area near the bight.

Seawalls and inundations

123. In about the mid-1970s, the local people of Saibai built a seawall, just in front of the village area. It did not go down as far as the western cemetery. It was made of things like rock, brick and cement. In some places it was about three or four metres high, in some places it was one or two metres high. It was designed to stop the erosion. It was not designed to stop the inundation. This old seawall was on the shoreline, and was a little bit closer to the village than the current seawall.
124. Over the years, that seawall started to collapse. The foundations of it would get undermined by water coming in, and the wall would then fall over. Water got behind the wall too, and washed out the land behind it, which also made it very unstable. The community would try to repair these issues from time to time, by placing more sand behind the wall, or bags of cement to fill up holes.

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125. However, by about the early 2000s, it was obvious that the seawall was not helping to stop the sea water from coming into Saibai.
126. Outside of the town, the sea comes in through the rivers from the south and east of the island, through the swamps. This happens every king tide. It is worse during monsoon season. It fills up each of the swamps, which then flows onto the next swamp and so on. Eventually, because there are swamps behind the town, the water from the swamps also comes flowing into the town. So, water inundation from the sea occurs from both sides of the town – the beachfront and the swamps.
127. I have marked on the map at 128 below where the water flows in from the rivers surrounding the town, into the swamps which eventually overflow into the community. I have also marked how the water that flows in from all the many rivers around the rest of the island, comes in to fill up the swamps behind the village as well.
- 128.



129. The beach at the front of the village used to be about ^{20-25m}~~50-100m~~ further out than where it is now. The elders in the community have told me that there used to be houses where the

G.K. CE

beach almond trees are now that line the seawall, I've seen some photos of this. The loss of the beach happened between about the 1970s to about 2010.

130. From around the early 2000s onwards, the community kept asking the government to build a new seawall on Saibai. By about 2010, the old one had collapsed in many areas and was doing very little to stop sea waters coming in.
131. There was a very bad flood that happened about 10 years ago, in around 2012. The roads were all underwater, and people's homes were flooded. My laundry is at the bottom of my house, and my washing machine and some of my tools were damaged from the flooding. I remember the pressure from the floodwater impacted the drainage pipes beneath my neighbourhood, and the sewerage manholes for the drains blew open.
132. Around this time, the western cemetery had also been very badly damaged by inundation from the sea water. Many graves were washed away. You can still see this in some of the photos that I referred to above.
133. There was another bad flood in around 2018, and in about July ²⁰¹⁷~~2019~~, a new seawall was built on Saibai. It replaced the old one that had been built by the town people in the 1970s.
134. You can see the seawall in the photos at 135 and 136 below. The first photo looks east, and the second photo looks west from in front of my house. It goes from the western edge of the village to the eastern side of the village. There is a gap between the seawall and the western cemetery, and then there is another seawall at the cemetery. The new seawall is made out of concrete. It is about 2 metres high in some places, and about 1 metre high in other places.

135.



G.K. (A)

136.



137. When it's high tide (January and February during the monsoon), the water covers the rocks at the base of the seawall, leaving about a metre of the concrete wall left.
138. Dirt bund walls were also constructed in ²⁰¹⁷~~2019~~ to stop the water from the swamps from flowing back into the town as well. These are marked on the map at paragraph 34 above in red. The bund wall goes all the way around the back of the village until the edge of the airport. It is about one metre high. It is dirt and is covered on top.

C.K. (F)

139. When the seawall was completed, engineers working for the government told us that the seawall would protect Saibai from inundation for 50 years.
140. However, in February 2020, about ^{3 years}~~6 months~~ after the seawall was completed, there was a king tide in Saibai. The tide crashed over the new seawall and into the streets. It also came in around the back in some areas through the bund walls. The water still came into people's houses, and in some areas it was knee deep. My washing machine and tools were affected too. It also came in through the drainage system. It came onto Main Road. It came into gardens trying to grow cassava and sweet potato. It destroyed the crops underneath.
141. The water stayed there until the tides went down. It goes out through the drainage system. There's a drainage system in the bund walls too, so the water came in through there too. This was near the IBIS on the eastern side, and also near my place on the western end of the village. It takes a few days after the flooding for us to clean up all the damage caused. We have to do lots of raking and cleaning of debris and rubbish. It smells very bad until the sun can come out and dry everything up properly.
142. If the water keeps on rising, in the way it has in the last 10 years or so, the seawall will not be able to protect Saibai at all.

Warul Kawa

143. Warul Kawa is about 60-70 km to the west of Saibai. It is made up of sand and is surrounded by a shallow coral reef. It is a sandy cay with wongai and beach almond trees. There is one type of tree that only exists on that island. 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.
144. Many green turtles breed at Warul Kawa. It is an important habitat for some types of turtles.
145. 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.
146. As an Indigenous Protected Area, Warul Kawa is managed by its traditional property owners, the people of Saibai, Boigu, Dauan (*Guda Maluyligal* nation), and Mabuiag and

G.K. 

Badu (*Maluigal* nation). I go to Warul Kawa once every year, to represent Saibai. Uncle Pabai Pabai goes as well, to represent Boigu. We go by dinghy or boat to get there.

147. Warul Kawa is a scared place, although we don't do cultural practices there. We are the traditional owners of Warul Kawa. The sacredness comes from our people's traditional spiritual beliefs. All of the places at Warul Kawa are sacred.
148. There is a red sandbar off the western tip of Boigu, before Warul Kawa, that is like a doorway to Warul Kawa. This is where we believe all spirits go, from everyone from Zenadth Kes who passes away. They then travel to Warul Kawa from the red sandbank.
149. This is why it is important for us. The spirit stays there. We go to Warul Kawa once or twice a year. It's a very sensitive place for us. When you go, you have to first talk to the ancestors and get permission to go to the island. If you don't talk to the ancestors, then it is bad. A few years ago, rangers from *Guda Maluyligal* and *Maluigal* nations went to Warul Kawa with surveyors on a survey vessel from Cairns to do a survey, without first asking permission from the ancestors. Their boat was brand new. But their boat sunk, because they didn't ask permission.
150. Warul Kawa is a sacred place for me as a *Guda Maluyligal* nation man. It would be very sad for me if it was lost. If people died on Zendath Kes, where would they go? That's where our ancestors are living there now. We will have lost connection with the island of Warul Kawa and our ancestors.

Culture and connection to land

151. My ancestors have lived on Saibai for more than 65,000 years, maybe more. My great great grandfather was from Saibai, and my great great grandmother was from Papua New Guinea. Stories of ancestors are passed down from elders to the younger generation, and those stories are generally connected to particular areas of the island.
152. The clans have occupied their areas of Saibai from the beginning. Each clan has a spiritual connection to their area of land. If a person from another clan wants to visit a rival clan's lands, they need permission, and someone from the clan must be with them (i.e., if a crocodile person wanted to visit dog clan places, a person from dog clan would have to be with them at all times).
153. Our culture is very connected to country. This is what I mean by *Ailan Kastom*. It means everything about our way of life.

C.K. (F)

154. When I was a small child, around about the age of 10, I recall that my parents and grandparents told me that in the 1940s lots of Saibai people moved to the tip of Cape York, in mainland Australia, to a place called Bamaga.
155. My grandfathers told me that people had moved to mainland Australia because there had been drought and inundation of the island. The community gardens had been destroyed.
156. *Later in the 1940s*
~~Then, when I was very young, in the 1970s,~~ there was a second movement of people from Saibai. They moved for much the same reason, problems with inundation, but this time the tide wasn't very big, it was more that because of the river system the village was flooding from the swamps behind it. This time, the people moved to a place called Seisia, which is also located in Cape York, Queensland.
157. Even though people moved to Bamaga and Seisia, they are still connected to Saibai. At the moment, they are still able to travel back to Saibai and connect to it, and our culture.
158. The young people who live in Bamaga have a saying "I hope one day to see my motherland". It makes me very sad to think that Saibai might not continue to exist, and that these young people might never get a chance to come to their motherland.
159. The loss of these people is still remembered on Saibai. It was very painful when this happened, and it caused a lot of sadness in the community. If you move away from Saibai, you can still keep the stories, and tell them, but they aren't connected to country anymore. This changes the culture a lot.
160. I am very scared that more people will have to move from Saibai. The thought of this makes me want to cry.
161. It is very hard for me to talk about what it would mean if Saibai was lost, or if I had to leave it because it was underwater or uninhabitable.
162. My country would disappear. I would lose everything: my home, my community, my culture, my stories and my identity. Without Saibai, I do not know who I would be.

Sworn by the deponent
at Saibai
in Queensland
on 15 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).