



## CORONER'S COURT

<b>Inquest:</b>	Inquest into the death of Christopher DRAKE
<b>Hearing dates:</b>	12-15 May 2014
<b>Date of findings:</b>	22 July 2014
<b>Place of findings:</b>	Coroner's Court, 44-46 Parramatta Road, Glebe NSW 2037
<b>Findings of:</b>	Paul MacMahon Deputy State Coroner
<b>Catchwords:</b>	CORONIAL LAW – Coroners Act 2009, Cause of death, Response to emergency situations by public services, Inherent dangers of public facilities, warnings of dangers, Recommendations.
<b>File number:</b>	2013/86083
<b>Representation:</b>	Mr C McGorey – Counsel Assisting Ms E James – The Drake family Mr S Glascott – The Warringah Shire Council Mr A Halse – SLS NSW and SLS A

**Non-publication order made pursuant to Section 74(1) (b) Coroners Act 2009:**

Nil

**Findings made in accordance with Section 81(1) Coroners Act 2009:**

Christopher Drake (born 3 October 1989) died on 16 March 2013 in the Pacific Ocean off Curl Curl Beach in the state of New South Wales. The cause of his death was drowning, which occurred following him being hit by a large wave and washed out to sea whilst standing on the edge of the North Curl Curl Beach Rock Pool.

**Recommendations made in accordance with Section 82 (1) Coroners Act 2009:**

To: The members of the Warringah Shire Council.

That the Warringah Shire Council obtain an expert safety audit of the North Curl Curl rock pool that examines the inherent dangers associated with the use of the pool by the public in various weather conditions, the effectiveness of the methods used to communicate such dangers to the public, the effectiveness of the methods used to prevent injury to the public in such weather conditions and whether there are any structural improvements that could be made to the pool that might mitigate such inherent dangers.

Paul MacMahon

Deputy State Coroner

22 July 2014

## Reasons for Findings:

1. Christopher Drake (who in these Reasons I will refer to as Christopher) was born on 3 October 1989. He came from a close and supportive family consisting of his parents, Trevor and Nicolle Drake, and his older sister Tiffany. He was, by all accounts, a remarkable young man.
2. Christopher was undertaking studies towards the award of Bachelor of Laws and Bachelor of Counselling and Behavioural Science at the University of Notre Dame Australia. In 2013 he was in his final year of studies.
3. Christopher had been very successful in his studies and as a result had received the first internship ever given by the Manchester City Football Club in the United Kingdom to assist him in pursuing his interests in International Business Law and Sports Psychology. In early March 2013 he returned to Australia after having successfully completed that internship.
4. On 16 March 2013, at about 1:00pm, Christopher and a number of friends went to the North Curl Curl swimming pool to swim. Whilst at the pool Christopher was hit by a large wave and washed out of the pool into the ocean. A search was immediately commenced but was not able to locate him.
5. A little after 8:00am on 20 March 2013 Sydney Water Police were alerted to the existence of a body that had been found floating some 400 metres off Blue Fish Point Manly. The body was recovered and subsequently identified as being that of Christopher.
6. Christopher's death was reported to the Office of the State Coroner on 20 March 2013.

## Role and function of the Coroner

7. It is important at this stage to set out the role and function of the coroner in respect of Christopher's death. That is established by the Coroners Act 2009 (the Act). All legislative references, unless otherwise mentioned, will be to that Act.
8. Section 6 defines a "*reportable death*" as including one where a person died a "*violent or unnatural death*." Section 35 requires that all *reportable deaths* be reported to a Coroner.

9. Section 18 gives a Coroner jurisdiction to hold an inquest where the death, or suspected death, of an individual occurred within New South Wales or where the person who has died, or is suspected to have died, was ordinarily a resident of New South Wales.
10. Because of the circumstances of Christopher's death it was required to be reported to the Coroner.
11. Section 81(1) sets out the primary function of the Coroner when an inquest is held. That section requires, in summary that at the conclusion of the inquest the coroner is to establish, should sufficient evidence be available, the fact that a person has died, the identity of that person, the date and place of their death and the cause and manner thereof.
12. Section 82 provides that a Coroner conducting an inquest may also make such recommendations, as he or she considers necessary or desirable, in relation to any matter connected with the death with which the inquest is concerned. The making of recommendations is discretionary and relates usually, but not necessarily only, to matters of public health, public safety or the conduct of services provided by public instrumentalities. In this way coronial proceedings can be forward looking, aiming to prevent future deaths of a nature similar to that with which the inquest is concerned.
13. Section 74 (1)(b) authorises a Coroner during the course of an inquest, if he or she is of the opinion that it is in the public interest to do so, to prohibit the publication of any evidence given in the proceeding.

### **Identity, Date and Place and Cause of Death**

14. Christopher's identity and the date and place of his death were not matters of contention.
15. Christopher was identified by Dr B G King by comparing his dental records with that of the body found on 20 March 2013. I accept that identification.
16. As I have already mentioned Christopher went to the North Curl Curl rock pool on 16 March 2013. His body was found on 20 March 2013. His death clearly occurred between those dates. The evidence was that Christopher was a strong swimmer. One would reasonably expect that had Christopher been conscious after he was washed out of the pool into the ocean he would have made efforts to return to shore. His friends and others began looking for him immediately when they realised that he had been washed away. He was not seen thereafter.

17. I am satisfied that, on the balance of probabilities, Christopher was knocked unconscious either in the pool or as he was swept out of the pool into the ocean and thereafter remained underwater and as a result drowned.
18. This cause of death is consistent with the findings of Dr J Pokorny who undertook an autopsy of Christopher on 21 March 2013
19. In the circumstances I am satisfied that Christopher would have died within a matter of minutes of him being hit by the wave and swept into the pool and then out into the ocean. I am therefore satisfied that Christopher died on 16 March 2013.
20. As a consequence I am also satisfied that the place of Christopher's death was the Pacific Ocean off Curl Curl Beach in the State of New South Wales.

### **Issues for Inquest**

21. A number of issues associated with the manner of Christopher's death were identified and examined during the course of the inquest. Those issues related generally to the circumstances in which Christopher was washed out to sea, the weather conditions of the day, whether the pool was closed at the time and if so whether this fact was sufficiently indicated, the nature and sufficiency of the search for Christopher, the knowledge of the risks associated with the pool and whether it was necessary or desirable for me to make any recommendations in respect of any matter connected with Christopher's death.

### **Weather Conditions on 16 March 2013**

22. As to the weather conditions of 16 March 2013 there is little controversy.
23. Between about 12:30pm and 1:00 pm Ms Bridget De Jong and Ms Rubeena King walked from the beach to the rock pool.
24. Ms De Jong's evidence was that waves were initially coming over the railings, on the eastern side of the pool, but after a while got smaller. She and Ms King then made their way towards the pool's south eastern corner.
25. Ms King's evidence was that she saw big waves entering the pool on their arrival. She described a big wave entering followed by calm that lasted about 5 minutes.
26. At about 1 pm Christopher, Mr Huon Feitscher, Ms Petra Feitcherova and Mr Karl Robertson arrived at the pool.
27. Mr Feitscher's evidence was that the water in the pool was level. No waves were coming over top of the pool nor was there white water in the pool. That description is consistent with Ms Feitscherova and Mr Robertson's evidence.

28. Ms Feitscherova's evidence was that she was wary of swimming in rough conditions. They had attended the pool for the very reason that its conditions were expected to be calm. She said that she would not have entered the pool if it were rough.
29. I accept this evidence and am satisfied that when Christopher and his friends arrived at the pool, conditions in the surf were rough, but large waves were not entering the pool.

### **Circumstances leading to Christopher's Death**

30. There is also little controversy as to what happened next.
31. Christopher, Mr Feitscher and Mr Robertson were, after a time, standing on the eastern wall of the pool. Ms Feitscherova was in the pool. Ms De Jong and Ms King were standing near the south eastern corner of the wall.
32. After a short time the waves on the eastern side started to become bigger and closer together. At one point Ms De Jong saw Christopher grab the railing and duck down as a wave entered the pool. She asked him about what he was doing. He told her that he was holding the top and bottom railing and crouching down to allow the wave to go over his head.
33. It appears that two large waves then hit in close succession. Ms King described how the first wave knocked her over on top of the wall. Ms De Jong appears to have ended up in the water following that wave hitting her.
34. The force and intensity of the second wave far exceeded that which immediately preceded it. The extreme force and intensity of this wave is evidenced by what followed.
35. Mr Feitscher was in the pool by the time the second large wave hit. He described white water going very high after water hit the eastern rock ledge. He felt the compression of the wave as it entered the pool. He was pushed from the east side to the western side of the pool. Whilst in motion his right shin connected with a hard object he believes was a support pole for the wall railing.
36. He fell back into the pool and struck barnacles on the pool wall. He surfaced near the south western end of the pool. He estimated he had travelled between 15 to 20 feet from his original position.
37. Ms Feitscherova was in the pool near the middle. She described being swept along the top of the water on her stomach. She managed to turn onto her back in a feet first position as she was washed across the pool. She was washed over the wall near the south western corner and struck her chin on the first level of railing as she went over the wall and was washed onto the rocks

38. Ms King jumped into the pool as the second big wave hit and both she and Ms De Jong were washed across to the western side of the pool. Mr Robertson managed to hold onto the railing. He had locked onto the railing and threaded his legs through the lower rail for extra hold before that wave struck.
39. When SLS Ray Merton arrived at the pool about 10 minutes later, he saw large solid square shaped waves running continuously through the pool. Those waves entered around the north eastern end and washed off the southern side. The waves were higher than the fixed steel railing.
40. Christopher had been standing near the middle of the eastern wall when the second large wave hit. He was washed off that wall and did not surface. Christopher was a strong and experienced swimmer. As I have already indicated, I am satisfied, it is more likely than not that Christopher did not surface owing to him losing consciousness at the time the second wave hit or very soon thereafter. The exact manner in which he lost consciousness cannot be precisely determined but was likely the result of a blow to his head.
41. A laceration observed on the left back of his scalp by Dr Pokorny during the autopsy examination may be connected to this, however, Dr Pokorny in her report was unable to determine if that laceration was peri mortem or post mortem in origin.
42. It is likely that Christopher was washed over the wall, near the south western corner, into the ocean around the southern rocks. The water around those rocks was high and rough at the time and visibility in that water was virtually non-existent owing to the conditions.

### **Media Speculation of Risk taking activity**

43. There was, at the time of Christopher's death, some media speculation that at the time he was washed away Christopher was engaged in a dangerous activity commonly known as 'chain surfing.' This activity involves a person deliberately allowing waves to break over them whilst holding onto the chain or fencing surrounding a rock pool.
44. I am satisfied that the evidence does not support this speculation. The evidence is that Christopher and his friends went to the pool with the intention of swimming. I accept that evidence. In fact they specifically went to the pool because the beach was closed and they expected the conditions there to be safer than at the beach. I am satisfied that when they went to the pool Christopher and his friends did not do so with the intention of putting themselves in harm's way.

45. The conditions in the pool were not overtly dangerous when his group commenced using the pool. The conditions in the pool, however, appear to have changed rapidly following two large waves striking in close succession; the second large wave far exceeded that which immediately preceded it. There is no evidence that Christopher, or anyone else, expected a wave of that magnitude to strike when it did. Unfortunately Christopher appears not to have been able to maintain his grip on the railing and the force of the wave washed him into the pool after which he became unconscious.

### **Christopher's actions preceding his being washed away**

46. Christopher's reputation was that he was someone who cared about others and would try and assist persons who were in need or in difficulties. It may well be that his caring nature contributed to his losing his grip on the railing when the very large wave broke over him.

47. Ms De Jong gave evidence to the effect that Christopher came to help her and Ms King after the first big wave entered the pool. She stated that after the first big wave came, she jumped into the pool, and on the second big wave, Ms King was tossed into the pool. At this stage Christopher showed concern for their welfare and asked Ms King, "Are you okay?" Ms King stated that, after a larger wave came through the pool and knocked her over, Christopher asked her "Are you OK?" She did not recall whether he told her to jump in, or she just did. She gave evidence to the effect that Christopher told her to "hold on another wave is coming". Another wave came and she held onto the railing, before she banged into the wall and into Ms De Jong.

48. Ms Feitscherova stated that she saw one of the girls lose her balance and fall to the ground after a wave passed through the pool. He stated: "Chris went to help her out and I heard him say, 'Are you OK?' He then told her to jump into the pool, as she couldn't handle standing up"

49. I accept the evidence by Ms De Jong, Ms King and Ms Feitscherova about the actions of Christopher in coming to the aid of Ms King. I am satisfied that moments before he disappeared Christopher was concerned with the interests of others. It was submitted by counsel for Christopher's family that in attending to the safety of Ms de Jong and Ms King, Christopher was momentarily distracted from monitoring the waves, and monitoring his own safety as he had been doing immediately before.

50. It was the evidence of Mr Robertson that he saw Christopher grab the rail just before the larger wave hit, but it is apparent that Christopher was unable to obtain a sufficiently firm hold of the rail to resist being washed out of the pool.



51. The family argue that given Christopher's level of fitness, his physique, and his training in the water, had he been holding on in the manner he had described moments ago to Ms de Jong, that is, holding the top and bottom railing and crouching down to allow the wave to go over his head, it was likely that he would have been capable of resisting the impact of the wave. It was submitted that I could find that Christopher's actions in relation to his concern for the two girls played a critical part in the circumstances of his death.
52. I accept that shortly before Christopher was washed away he was indeed having regard to the wellbeing of others and that this may well have distracted him in a way that meant that he was not able to maintain his grip on the railing. I do not, however, think that I can make a positive finding to this effect as, on all the evidence available, the wave that washed him away was one of unusual force and intensity. It would seem likely that it was only because Mr Robertson had his leg around the rail that he was able to hold on at the time.
53. In the circumstances it may well be that because of the force and intensity of the wave the stance suggested by Christopher would not have prevented him being washed into the pool. The fact that I cannot make such a finding does not, however, take away from the fact that Christopher was indeed caring for the interests of others at the time he was washed away.

### **Was the rock pool closed on 16 March 2013?**

54. A question of contention during the Inquest was whether or not the pool was closed on 16 March 2013.
55. The evidence was that Warringah Council lifeguards based at North Curl Curl would close the rock pool if the conditions in the pool were considered dangerous.
56. The lifeguards' practice when closing the pool was to tie a rescue tube across the stairwell from the headland to impede people using the stairs to access the pool below. In addition, a "pool closed" sign which was ordinarily kept at the North Curl Curl Surf Club was also mounted in a metal sleeve on the side of the pool.
57. This sign was a rectangular yellow sign with red writing that read "pool closed dangerous conditions." This was mounted on a tall steel pole which was inserted into the metal sleeve on the side of the pool. An identically shaped white sign with red and black writing reading "pool closed for cleaning" was located on the reverse side of the sign.

58. When it was proposed to close the pool, a lifeguard would carry the sign to the pool and place it in the specially built metal sleeve which was positioned on the west wall next to the stairs. The yellow "pool closed dangerous conditions" was to face westwards towards the Surf Club. The reverse sign would then face eastward into the pool. The evidence was that the sign could not easily turn in the sleeve. For it to be turned it would be necessary to lift it out of the sleeve and then turn it before reinserting the metal pole in the sleeve.
59. Counsel for Christopher's family submitted that from the perspective of potential users of the pool it was not closed. It was put that, unlike on the beach, no sign was posted to warn persons accessing the pool from the beach that it was closed due to the danger of swimming and there was no physical barrier to deter people from entering the pool.
60. Senior Beach Inspector (SBI) Heath Brown's evidence was however that he decided on the morning of 16 March 2013 that the pool should be closed due to the conditions. He said that at about 9:00am he told Beach Inspector (BI) Graham Parker to close the pool and rope off the stairs.
61. BI Graham recalled a conversation with SBI Brown on 16 March 2013 where it was agreed between them that the pool would be closed. BI Parker however did not have a specific recollection of doing so on 16 March 2013; however he had done so on a number of occasions.
62. Numerous witnesses recalled seeing the rescue tube tied across the stair well, either that morning or that afternoon after responding to the alert about Christopher. These witnesses included Surf Life Saver volunteers (SLS) Mark Scoberg, Matthew O'Connor and Ray Merton. I accept that the tubing would only have been so affixed had the pool been closed. Although he does not recall doing so I am satisfied that it is more likely that this was done by BI Graham on the instruction of SBI Brown on the morning of 16 March 2013. I am satisfied that it was the intention of SBI Brown to close the pool on 16 March 2013.

### **Was the Pool Closed sign erected on 16 March 2013?**

63. The question in contention was whether or not the 'Pool Closed' sign was installed when the tube was tied across the stairwell and if so what was the content of the sign that faced those approaching the pool? The evidence on this point is contradictory.
64. There is no doubt that at 2:20pm on 16 March 2013 the yellow 'pool closed – dangerous conditions' sign was in place and facing westwards towards the Surf Club. This is conclusively established by the photograph taken at that time by Mackenzie Price.

65. SBI Brown gave evidence that he had frequently checked the pool from the Surf Club during the morning both with the naked eye and with binoculars and he saw the fluorescent yellow 'pool closed – dangerous surf' sign facing towards the surf club. He also said that on his return to the Surf club between 1:20pm and 1:30pm following his lunch he saw that the sign was still in the same position with the 'pool closed – dangerous surf' facing the Surf Club.
66. SLS Scoberg testified that to the best of his recollection, the pool closed sign he saw at 9:30 am was white with black lettering. He testified that this sign wasn't there permanently and he believed it was put up when the pool was cleaned. He said that he only glanced at it at the time and wasn't really focused on it. Assuming that he is correct it would indicate that it was the "pool closed for cleaning" sign that was facing westwards towards the Surf Club.
67. Ms King recalled seeing a "pool closed for cleaning" sign. She said it was not positioned at the pool but on the rock shelf near the stairs. It was faded and not prominent. It was grey or white with small print, possibly with black letters. She noticed the sign when she was out of the pool waiting for a guard to arrive or after speaking to a lifeguard following Christopher being washed away.
68. Ms Feitscherova recalled seeing a faded white sign with black and red or green and red writing that read "pool closed for cleaning" when her group arrived at the pool. She did not recall seeing anything on the back of the sign. She said that later that afternoon, whilst standing at the stop of the stairs, she noticed that the sign had changed to the yellow "pool closed dangerous conditions" sign. She believes she would not have entered the pool had she seen the later sign when she arrived at the pool.
69. SBI Adam Murray recalled seeing a tall sign positioned in the rock slab, located in the middle of the rock pool, when he attended in response to the alert about Christopher. The sign read "pool closed". He could not recall the sign's colour.
70. SLS Merton recalled seeing a sign when he first went down the stairs. It was positioned on the western wall adjacent to the stairs. It was a white sign that read "pool closed". It matched the pool closed for cleaning sign depicted in the tendered photograph except he did not recall seeing "for cleaning" written on the sign. He said that he has since seen the yellow "pool closed dangerous conditions" sign but believes that wasn't the sign he saw on this occasion. SLS Merton's evidence was that he remained within metres of the base of the stairs and was never in a position to observe the back of this sign. He was 80% certain about this recollection but conceded that the sign was not his focus at the time.

71. Ms King, Ms De Jong, Mr Feitscher and Ms Feitscherova did not immediately leave the rock pool after the first lifeguard arrived. According to SBI Brown, he escorted two girls and a husband and wife back to the Surf Club after he attended the rock pool at about 1:30pm.
72. No witness recalled seeing anyone move or change a sign at the pool whilst they were there.
73. Council Beach Services Coordinator Tim Donkin attended the North Curl Curl after Surfcom was notified about Christopher's disappearance. He arrived at or about 1:30 pm. After a time at the Surf Club he took up a position on the headland. His evidence was that that from his position on the headland, he could see the rock pool's western wall and recalled seeing the yellow pool closed sign facing towards the Surf Club.
74. SLS Graham Cook believed he arrived at North Curl Curl Beach sometime between 1:30pm and 1:50 pm. He made his way from the beach to the rock pool and then back to the Surf Club. He recalled seeing a "pool closed" sign at the pool. As best he recollected, the sign was black on white or white on black.
75. As I previously said the evidence concerning the sign that was installed was contradictory. The preponderance of evidence was that there was a sign installed that said that the pool was closed and I accept that this was the case.
76. The real issue of contention was whether the reason given for the pool being closed was because of the dangerous conditions or because the pool was being cleaned. On balance I am satisfied that it is more likely that the sign facing the Surf Club read 'Pool Closed – Dangerous Conditions.' I accept the evidence of SBI Brown that this was the sign he saw when he looked at the pool from the Surf Club from time to time during the morning, was still there when he returned from lunch and was photographed by Mackenzie Price at 2:20pm that day. This evidence is also corroborated by the evidence of Tim Donkin. I am satisfied that where others saw either no sign or a different sign they are incorrect.
77. I am satisfied that given the number of people at the scene following Christopher's disappearance were the sign to have been withdrawn and turned following his disappearance such action would have been noticed. No one did so. I am satisfied that the sign was not touched, repositioned or in any other manner adjusted at any relevant time.

### **Was the sign effective?**

78. Notwithstanding that I am satisfied that the sign indicated the pool was closed due to dangerous conditions I accept the evidence that neither Ms De Jong, Ms King, Mr Feitscher, Ms Feitscherova nor Mr Robertson recalled seeing that sign or realised that the pool had been closed owing to dangerous conditions. In the circumstances it is also probable that Christopher was unaware of that fact.
79. I accept Ms Feitscherova's evidence that had she seen the sign indicating that the pool was closed due to dangerous conditions she would have been unlikely to enter the pool. In addition, on the evidence available to me, I am satisfied that Christopher was not a 'risk taker' and as already mentioned was a person who had concern for the welfare of others. In the circumstances I am satisfied that had he known the pool was closed due to dangerous conditions he would have been unlikely to enter the pool himself or to encourage others to do so.
80. As to why they missed the sign or its import is a matter of speculation. It might have been the direction from which they approached the pool, the nature of the light behind the sign itself or that their attention was directed elsewhere. Either way, the sign was insufficient to successfully bring the fact that the pool was closed and the reasons for its closure to their attention. The sign was therefore ineffective in achieving its intended purpose.
81. As already mentioned another method of advising people that the pool was closed was the tying of the rescue tube across the steps. I have found that this did occur. This method would have been no more than an indication that persons coming down the stairs not proceed any further. It would not stop anyone from doing so. It would not, without more, explain why the person should not proceed further. It certainly would not, by itself, have indicated that the pool was closed and why it was closed. Taking such action was also ineffective in achieving its purpose.

### **Response to call for assistance and effectiveness of search**

82. Following Christopher being washed into the pool and then out to sea, a search for him was instigated. It was estimated that Christopher was last seen at about 1:00pm. The initial search was undertaken by Christopher's friends. They were unable to locate him. After a short time Mr Robinson ran to the Surf Club to seek assistance.
83. Once the alarm was raised SBI Murray, BI Graham and SLS Merton, with emergency equipment, went to the pool area to investigate what had happened and if necessary assist in the recovery or rescue of the person in difficulty.

84. Once at the pool SLS Merton considered that the IRB (Inflatable Rescue Boat) should be launched to assist in the search for Christopher. He attempted to communicate that decision by radio but his radio had no signal. He then proceeded over the headland towards the Surf Club. SLS Merton's evidence was that he recovered the signal when he was about half way along the track, however, decided that as he was nearing the Surf Club he was the most appropriate person to operate it having regard to the prevailing weather conditions and the experience of the other persons who were available and qualified to do so.
85. At the same time that SLS Merton returned to the Surf Club to launch the IRB BI Graham ran back to deploy a rescue life board. SLS Merton gave evidence that this was also appropriate as BI Graham was the only person on the beach to hold a gold medallion qualification and given the conditions in the ocean it was necessary for a person of that experience to operate the life board.
86. The search for Christopher on 16 March 2013 was extensive and involved the use of various forms of equipment and many persons. The evidence is that those involved were active in their attempts to locate Christopher and some placed themselves at risk in doing so.
87. There was some criticism of the decision of SBI Murray's decision to go to the pool in the first instance rather than arranging for the IRB and the life board to be launched immediately.
88. Such criticism is, in my opinion, unfounded. There is no doubt that SBI Murray was following the established protocol in undertaking the action he did. Complying with such protocol was also appropriate as until a person was able to examine the circumstances they would not be able to effectively determine what action would be appropriate. I am satisfied that the action of the beach inspectors and the surf life saving personnel involved was both timely and appropriate. They are to be commended for their efforts.
89. It is likely that Christopher was pushed by the wave into the pool and then washed out to sea a little after 1:00pm on 16 March 2013. His friends immediately looked for him. They were unsuccessful in their efforts. His friends then called for assistance and an extensive search occurred with the number of personnel and the resources involved expanding over time. These efforts were also unsuccessful. It was not until a little over 3 days later on 20 March 2013 that Christopher's body was located.
90. I have already found that it is more probable than not that after Christopher was washed into the pool he became unconscious and as a result drowned. The fact that he was not seen, notwithstanding an almost immediate search for him by his friends, suggests that

his death would have occurred fairly soon after he was hit by the wave that pushed him into the pool. In the circumstances the subsequent search for him was in reality a search in order to recover his body and not to rescue him. On the evidence available to me I could not find that any additional action by Christopher's friends, the professional beach inspectors or the volunteer surf life saving personnel would have been likely to have prevented Christopher's death on 16 March 2013.

### **Inherent Risks of North Curl Curl rock pool.**

91. A question of the inherent risks of the North Curl Curl rock pool was raised during the course of the inquest.
92. The rock pool is positioned on a rock ledge with concrete walls on its east, south and western side. A fixed steel railing, about 1.2 metres in height, runs along the top of these walls.
93. There is a large rock shelf past the south wall. Those rocks ensure that southerly and south easterly waves break some distance before reaching the pool.
94. The pool's east wall is within 10 metres of the edge of a deep-water rock face. There isn't a rock shelf off that side.
95. Depending on conditions, waves can strike the north eastern rock ledge and enter over the eastern wall. Large solid square shaped waves may run through the pool over the southern wall. Alternatively, those waves may displace the water out over the southern wall.
96. The water will wash under or through the steel fixed railing as it washes over the wall. The distance from the rock shelf to the top of the wall at the south western corner is about 1 to 2 metres.
97. Irregular wave conditions, where a surge occurs unexpectedly, can cause potentially dangerous conditions to swimmers within the pool.
98. This danger is not one that has only recently been identified by the circumstances of Christopher's death. It has, in fact, been well known for many years.
99. The report titled "A Preliminary Study on the Upgrade Options for North Curl Curl Rock Pool" Manly Hydraulics Laboratory 1996 (the Report) also identifies as a feature of the pool its "high exposure to wave activity" and, due to its location, exposure to "all major storm systems which occur in the Sydney region".
100. The Report notes that: [t]he full impact of the easterly and north-easterly storms is felt due to relatively deep water conditions along the eastern face of the rock platform. Since the pool is sited within 10m of the edge of the deepwater rock face, waves

breaking along the edge plunge directly on to the pool. Hence, even during a minor storm this pool could be extremely dangerous.

101. The family of Christopher also submits that the Report, by implication at least, suggests that the metal railing that was erected since the Report was prepared may also add to the dangers of the pool by giving users a false sense of security when at the location.
102. In addition the brief of evidence contained a significant number of reports of incidents involving members of the public who have been either swept from the pool or witnessed such events. David Mayo Webb describes three such incidents, adding, "I have seen approximately a dozen or so people washed across the rocks at the back of the pool".
103. The Critical Incident Report produced by Andy Kent, the Lifesaving Manager of Surf Life Saving New South Wales, on 29 January 2014 also refers to the risks in the Coastal Public Safety Risk Assessment, Warringah Local Government Area prepared by Surf Life Saving New South Wales and conducted in October 2013. In that Report it is suggested that due to the exposure, the North Curl Curl rock pool is anecdotally one of the most hazardous rock pool locations along the NSW coastline during dangerous swell. The location is exposed to swell from any direction that impacts the coastline. The location has (also) recorded a high number of emergency incidents.
104. The Report mentioned above discusses a range of measures that might be considered in order to address the inherent risks identified as being associated with the North Curl Curl rock pool. Those proposals include as an option the decommissioning of the pool. I do not propose to recite those measures here, nor do I propose to recommend that any particular measure be adopted. I could not do so in a meaningful way on the evidence available to me in these proceedings.
105. What is however clear from the evidence available to me is that the methods of warning the public as to the dangers of using the pool in certain weather conditions and the nature of those dangers that was used on 16 March 2013 was ineffective, and that consideration should be given to the development of more effective methods before there is another tragedy such as that which resulted in Christopher's death.



## **Section 82 Recommendation**

106. In the circumstances I propose to make a recommendation to the Warringah Shire Council in accordance with Section 82 of the Act that a safety review be undertaken of the North Curl Curl Rock Pool with particular consideration being given to the inherent risks associated with the use of the pool by the public, the effectiveness of the methods used to inform the public of the risks associated with the use of the pool during certain weather conditions, the methods adopted in order to protect the public from such risks and whether there are any structural modifications to the pool that might mitigate the risks posed to the public by adverse weather conditions.

Paul MacMahon  
Deputy State Coroner  
22 July 2014

