



STATE CORONER'S COURT OF NEW SOUTH WALES

Inquest:	Into the death of Chayce Kelly
Hearing dates:	24 and 25 September 2015
Date of findings:	30 December 2015
Place of findings:	State Coroners Court, Glebe (hearing in Gosford Local Court)
Findings of:	Deputy State Coroner E.Truscott
Catchwords:	Coronial Law-Cause and manner of death-
File number:	2014/215437
Representation:	Coronial Advocate Assisting: Mr D Welsh Department of Family and Community Services: Ms M English instructed by Mr B Nguyen Gosford City Council: Mr T Vesper instructed by Mr M Huckerby of Moray and Agnew Solicitors Department of Industry, Skills and Regional Development: Mr H Pintos-Lopez instructed by Mr T March of Allen's Solicitors
Findings:	That Chayce Kelly drowned at the northern end of Pearl Beach on 10 July 2014 when he was swept out past the shore break into the ocean whilst playing and running on the sand in the whitewash zone.
Recommendations:	1. That the Gosford City Council give consideration to amending its Beach Management Policy so warning signs can be erected about the strong whitewash and other natural hazards present along Pearl Beach's northern shoreline.

2. That the signage is erected at access points to Pearl Beach including Mt Ettalong headland tracks between Umina Beach and Pearl Beach.

3. That the Department of Primary Industries - Lands give consideration to any application submitted to the Public Reserves Management Fund by Gosford City Council for funding for the erection of warning signage on Crown land managed by Council about the strong whitewash and other natural hazards present along Pearl Beach's northern shoreline.

4. That the Pearl Beach Progress Association's signage remains in place unless it is replaced by Gosford City Council signage as mentioned above.

5. That the Gosford City Council implement a system to record and track adverse water events that occur on beaches contained in Schedule 1 Part 2 of the Beach Management Policy. The system should pay particular regard to the beaches, which are never supervised, and those supervised beaches during periods when they are not subject to lifeguard supervision. The system should also include public education about how to make notifications and why notifications are important for public safety management planning.

**Non-Publication
Orders**

Order made 24 September 2015 continue.

REASONS FOR DECISION

Introduction

1. This inquest concerns the death of five-year-old Chayce Kelly the son of Spring Kofe and Daniel Kelly. Shortly before 2 p.m. on 10 July 2014, Chayce drowned at Pearl Beach after being swept into the sea whilst playing on the sand at the northern end of the beach. Chayce and other children had been playing in the zone of "white wash" from breaking waves.
2. The wave conditions were such that adults on the beach could not get through the waves to reach Chayce. Though Chayce initially remained afloat sight of him was lost within less than 3 minutes. Despite the deployment of numerous water craft from nearby surf rescue facilities and a search by rescue helicopter, Chayce's body was not recovered until some days later when his remains were washed ashore.
3. At the time of his death, Chayce and his two younger siblings were staying with his maternal aunt and her family in Umina, NSW. Chayce's cousin, 28-year-old James, also lived at the house with his de facto partner, 23-year-old Mona. On 10 July 2014, James and Mona took some of the children for an outing to the beach. The children were Chayce, with James' brothers aged 12 and 9 and Mona's 14-year-old brother and 11-year-old sister who were visiting for a few days as it was the school holidays.
4. They had set off on foot from Umina Beach Surf Club and walked in a southerly direction to Pearl Beach. They walked along Umina Beach until ascending onto walking tracks on the Mt Ettalong headland. Having traversed the headland to Pearl Beach they descended onto the rocks at the northern end of the beach and at about 100 m south from the rocks they stopped on top of a sand scarp which was about 10m long and raised to about 2m in height

in the middle. The scarp, and other similar sized scarps, had formed along the beach as a result of very significant wave action. James and Mona and the children sat on top of the scarp watching the waves.

5. About 100-150 m south of the rocks the Wolken and Vernon families were holidaying in a beachfront house, having arrived 3 days earlier. That morning Cherie Vernon and Nerradene Wolken had told their children that they were unable to play on the sand because the beach was too dangerous.
6. About 75m south of the rocks James Roth and Susan Acret were holidaying with their children at another house on the beach front. It was about directly in front of this house that James and Mona sat with the children on top of the scarp. After about a few minutes the children then started playing on the sand below the scarp running away from the incoming whitewash.
7. After Chayce was swept out James tried unsuccessfully to get out to him and Mona sent one of the children up to the houses to get help. The emergency services were called from both households and the adults rushed to help Chayce but like James were unable to get past the surf. Police arrived within about 15 minutes and about 5 minutes later surf patrol rescue craft arrived having launched from Umina. Chayce could not be found.

Focus of the Inquest

8. A Coroners task is to determine the identity, date, and place of death. Those issues in this inquest are non-controversial. A Coroner is also to determine the manner and cause of death.¹ The manner of Chayce's death has been an issue of the inquest, particularly in relation to understanding the mechanism of the wave action, which within a few seconds took a five-year-old from the beach out some 20 m to sea.

¹ Section 81 Coroners Act 2009

9. A Coroner may make recommendations relating to public health and safety.²The inquest has focussed on whether the beach, in particular the area where Chayce was swept into the sea, is particularly dangerous and if so whether official signs cautioning beach goers should be erected and if so by whom.
10. The brief of evidence includes a statement provided by James the day following the incident and a statement from Mona, which was made 9 days after the incident. Their evidence of what they observed and what occurred are consistent with other witnesses. To spare Mona and James further trauma, they were not required to attend the inquest.
11. The following witnesses were called and give evidence at the inquest:
- the Officer in Charge, Senior Constable Scarfe, who with officer Cook were the first emergency services to arrive at the beach;
 - Professor Andrew D Short of Coastal Studies, who provided a report of his analysis of the beach and wave conditions and gave evidence by telephone to explain the mechanism by which Chayce was likely swept out to sea; -Cherie Vernon, who has long experience as a surf life saver, has knowledge of the beach and who had, a year earlier, rescued a child who had been swept out to sea whilst he was playing on the sand near the whitewash zone;
 - Craig Healy team leader of the Gosford City Council's Beach Life Guard's programme; - Ross Christie, the current president of the Pearl Beach Progress Association concerned with the safety of beach users. Mr Christie is also familiar with beach conditions having many decades of sailing experience. Following Chayce's death the Association erected warning signs at public access points to the beach cautioning about the wave dump;
 - Mr Robert Micheli, the Acting Senior Manager for the Department of Primary Industries-Lands, Hunter Area, set out the designation of responsibility applicable to Pearl Beach and its reserves; - Mr Michael Tattoli, the Gosford City Council's Risk Manager and Co-Coordinator of Strategies, set out the Council's beach policy and customer service relating to beach management.

² Section 82 ibid

Events of 10 July 2014.

12. James said his group walked *“alongside where the water was coming up onto the shore after crashing on to the hard sand...on a number of occasions we all had to run away from the water to avoid getting wet...”* He said that the children *“began spontaneously playing a game where they would run away from the waves, higher up the beach as they crashed upon the shore. They were all happy, laughing and having fun together...as we walked along the beach”*.
13. James described the sand scarp as a ledge with a vertical face over a metre tall. He said it was variable as to how close the water would run up towards the ledge. He said the children continued to play running away from the water as it crashed upon the sand with the water running up towards the ledge.
14. Mona said *“the waves were unpredictable...they looked massive out to sea but then on the shore it would just be whitewash and at other times the waves were huge and crashing right on the sand creating this ledge”*. Mona said the two older boys were given permission to take their shoes off and they would run down the bottom and across the ledge trying to avoid the whitewash. The next 2 children took their shoes off and joined them. Chayce stayed with James and Mona watching a while and then he was given permission to take his shoes off and join the other children.
15. Mona said, *“There were times when the water would come all the way up the wall and splash James and I. When this would happen the kids would run up the ledge. They had created a ramp type thing in the sand to help them come straight up instead of running around. They were all saturated up to the waist except for Chayce; it was just his feet. The big kids would always push him up the ledge/ramp first”*.

16. After about 10 minutes, Mona and James decided to give the children a break and have something to eat. At this time the children were on the ramp and Mona and James walked about a metre and picked up shoes. As they were walking to collect their bags, which were another couple of metres away, James' brother ran up and said that Chayce was in the ocean. They dropped the shoes and ran down to the water.
17. Mona describes how Chayce *"was just like right there being taken out by the white wash."* She said her brother was trying to rescue Chayce but he was caught in the same rip. James had dived in but he was unable to get past the waves. Mona describes how she saw Chayce, her brother and James tumbling in the water. She said, *"a wave would come from one end and then another from the other side and when the waves hit it would spiral like a tornado in the water (whitewash)."*
18. Mona tumbled twice herself and she told the smaller children to get away from the water and get help. She told her brother to get out of the water. Mona said in her statement that it was only at the point she was in the water herself that she realised how dangerous it was. She said James was constantly diving into the water. Mona saw a couple standing on the ledge were ringing emergency. (This was James Roth and Susan Acret.) At this point Chayce was about 15m out and James was still getting washed back to shore. Mona pulled James out. Mona said Chayce was vertical in the water.
19. James Roth said in his statement that Chayce was directly outside the front of their house 15m out to sea and that Mona and James were yelling at Chayce to try and float on his back. James asked his wife Susan to call emergency services.
20. Cherie Vernon's young son had been watching from the grass edge and he alerted his mother. Cherie immediately asked Nerradene to ring triple 0. At the same time, she grabbed a life saving device she had acquired after the previous year's incident. She and Richard Wolken ran down to the beach.

21. Cherie Vernon's plastic life saving device had a rope attached to it. Mr Roth stripped his clothes off to tie the rope around his waist but Ms Vernon told him that it was for throwing and he couldn't use it that way. The rope was too short to throw out to Chayce. Mr Roth's wife Susan begged him not to enter the water. She was on the phone with emergency services who advised that nobody should enter the water unless absolutely certain of being able to handle the conditions. Mr Roth ran back to the house, collected a surf board and ran back down to the water but by this time Chayce was no longer visible.
22. Mr Wolken said Chayce was about 25m from shore and he could see the very tip of his head but his face and body were under the water. He stripped his clothes off, took a foam noodle and Cherie's rescue device. As soon as he entered the water it was ripped out of his hands. He continued to get through another couple of waves and then realised that he was unable to touch the ground and another set of big waves was approaching. Due to the danger to himself and his responsibilities to his own children he had no option but to return to shore.
23. All the above happened within 5 minutes of Chayce been taken out to sea. About 15 minutes after the call to triple 0, the first police arrived at 2.05 p.m. Officers Scarfe and Cook had been in Killcare when they responded to a police radio broadcast for assistance. They drove under siren and lights, a journey that would normally take about 25 minutes. Officer Cook, an experienced surfer, stripped his uniform off and attempted to use Mr Roth's surfboard but was unable to get past the shore break. Another 2 police units arrived shortly after.
24. About 5 minutes after Officers Cooke and Scarf arrived 2 surf life savers from Umina Beach Surf club arrived on a jet ski – one was driving, the other was on a sled wearing goggles looking under water for Chayce. Another life saving unit deployed another jet ski and 2 inflatable rubber boats one of which got caught in the surf injuring one of the rescuers. A rescue helicopter also arrived. The search for Chayce continued until light fall and was

resumed the following day with divers. However, the search was terminated without locating Chayce on 12 July.

25. About 10 days later Chayce's remains were washed ashore, the identity of which has been confirmed by DNA testing.

Dangers of Pearl Beach

26. Senior Constable Scarfe said he grew up at the local beaches of Gosford. He described there were 3 public access points to Pearl Beach – the north end from Coral Crescent³, the Southern end by the corner shop⁴ and the Mt Ettalong headland which is a track from Umina Beach which in the 1920's was part of the road before it was replaced by a road over the top of the headland⁵.
27. Senior Constable Scarfe said that in winter there was low beach use – a few people walking their dogs- but in summer there would be people, more in the northern end. He said that “you just don't swim there” because Pearl Beach is known to be a dangerous beach. There is an ocean bath in the southern end but “you know not to go down there or swim there, the waves, it's dangerous.
28. Senior Constable Scarfe said Pearl Beach was an “out-of-the-way” beach, about 15-20 minutes from Gosford. He and Senior Constable Cook were in a police vehicle returning to Gosford from Killcare when they received the alarm. They activated their lights and siren and arrived at the beach in about 15 minutes. He said under usual day conditions the journey would take about 25 minutes. He said his first reaction on the day was that the

³ The road leading to the beachfront houses.

⁴ Where there is a public reserve with Gosford City Council signage setting out prohibitions relating to the public reserve under the Local Government Act 1993.

⁵ Where there are Gosford Council signs cautioning users of the track (walkers and cyclists) about falling rocks from unstable cliffs and slippery and uneven surfaces and drop offs with consequence of death or serious injury.

beach had heavy surf with loud breaking waves and spray. Some waves on the sand were 1 ½ to 2 m tall. His evidence confirmed the difficulties the conditions posed for rescuers entering the water from the beach.

29. Photographs and video footage taken that day have been tendered and whilst the view from the grass edge of the beach shows a reasonably blue and calm sea, down on the water's edge the surf is pounding, turbulent and white.

30. Ms Vernon said that during the summer the majority of swimmers used the southern end of the beach but a lot of people walk down the beach. She has seen families walking along the beach when the surf conditions are particularly dangerous, but more often than not, the waves are an average height but are dumping, such that she would use the southern end of the beach rather than the northern end where the houses are. She said that Umina was a very different beach and coming around on the tracks of Mt Ettalong Point you would see green waves crash on the beach. She said that it was the water that comes up the beach that is dangerous. She has seen her husband knocked over by whitewash while he was walking on the beach.

31. Ross Christie, the current president⁶ of the Pearl Beach Association, said that of a permanent population of about 540 residents⁷, 330 were members of the association. It is an active association involved in dune care; beach care and volunteers fund and maintain the area. The association owns its hall and has on average 60-70 people attending its monthly meetings. The meeting following Chayce's death, some 100 people attended, as there was a significant amount of distress. Mr Christie said there was a consensus and concern about the dangers associated with the beach.

⁶ Since October 2014, at the time of Chayce's death and for some years prior Mr Roger Murray was the Association's president.

⁷ In 2011 there were 640 houses.

32. Mr Christie said that in summer the population swelled to about 2,500 and there would be about 100-150 cars arriving for day trips to the beach, involving activities predominantly towards the southern end of the beach. Mr Christie was aware of anecdotes of “people getting a serious fright at the northern end”. The outcome of the Association’s meeting of 2 August 2014 was that there should be signage erected at the 3 entrances to the beaches, that Angel Rings positioned at the northern end might be useful and that an alert to people that the beach is not patrolled could be managed through putting pamphlets in rental properties.

Mr Christie, a retired engineer, has lived at Pearl Beach since December 2010. He has a long background in surfing and ocean sailing and says that since the age of 5 he has been aware of the power of the surf and the ocean. He said, “I don’t think I have seen a more dangerous beach, it is steep with a shore dump, the sand is coarse and very loose, it shifts very quickly causing a loss of footing. It is not possible to dive under a wave.” He said that if he swims, it is at the southern end and even there 3 m out water is high as and there is no obvious drop off. He said that you can’t see the steepness of the beach; it is not obvious until you are actually on it (the beach). He said that during summer months, the life-saving inflatable rubber boats (IRBs) from Umina patrol past the beach, which does raise awareness to users that there is a risk.

33. Professor Short’s report summarised the conditions at Pearl Beach 10 July 2014:

“During the day a 1.5 to 2 m southeast swell, peaking at between 3-4.5m was running up the coast. At the moderately sheltered Pearl Beach these waves would have been arriving between 0.75 and 1 m high, peaking at 1.4 to 2 m during sets of higher waves. The long 14 second period of the waves would indicate they were arriving in sets of lower and higher waves. The waves, and in particular the sets of higher waves, were breaking heavily at the base of the beach producing a strong wave uprush and back wash, leading to erosion of the beach and the formation of vertical beach erosion scarps on the protruding cusps horns. The usually low to moderate beach hazard rating of 3 to 4, increased to as much as 6 to 7 (moderate to highly hazardous) during the sets of higher waves.

*When viewed from the back of the beach and during sets of lower waves, the lack of wave breaking seaward of the beach would give the beach an appearance of relatively calm conditions. However down on the steep beach face sets of higher waves were producing highly hazardous conditions. Chayce Kelly entered this environment, perhaps during a period of lower waves. He was likely walking-playing on the steeply sloping beach face when a set of higher waves broke heavily on the base of the beach and surged up the beach, either knocking him over with the uprush and/or dragging him down the beach in the backwash into the turbulent zone of wave breaking where he floated briefly. Even if he was dragged just seaward of the wave breaking, the water would have been more than 2m deep. A normal adult would have difficulty in such conditions, and adults have drowned in similar circumstances. For a small child it would have been extremely dangerous and almost impossible to escape”.*⁸

34. Professor Short describes Pearl Beach as only 1.1 km long and is categorised as a reflective beach with features of sand with high quartz content, a steepness increasing from south to north, with a “step” at the wave break where the sand level drops down suddenly to 1-2 metres deep of water.
35. Professor Short says that owing to Pearl Beach’s location, the ocean waves are reduced to about 50% of its height by the time they arrive at the beach. The northern end of the beach is quite different to the southern end. The size of the sand grain (an iron stained quartz) at the northern end is 0.35 mm reducing down to 0.25 mm in the southern end. The waves at the northern end average 0.7 m reducing at the southern end to about 0.3m. The slope of the beach at the northern end is about 8 degrees reducing to about 5 degrees in the southern end⁹.

⁸ Page 1 Report (No: CS 15/01)

⁹ Paragraph 3.1 ibid

36. Professor Short says Pearl Beach is a steep reflective beach – it has a relatively steep beach face, backed by a more horizontal berm (the dry beach). It always has well-developed rhythmic beach cusps spaced 20 to 30 m apart. That is, looking landward, 20 to 30 metre long arcs or crescent shapes form in the sand ending in a raised “horn. The depression or embayment between each horn is called a swale.
37. A steeper beach has deep water without a sand bar allowing low waves to reach the beach before breaking. They break heavily as a plunging or surging wave on the base of the beach that rushes up the beach (uprush) and the returns strongly back down the beach (backwash). This water is called the “swash”.
38. At the base of a beach face at low water mark is the “step”. It is the area of the beach that has an accumulation of the coarsest sand and pebbles sloping even steeper (up to 20 degrees) forming the “step”. Seaward of the step the high tide water depth can be 2 to 2.5 m. The waves break on the landward side of the step.¹⁰ The area where a wave breaks right at the shore or base of the beach is called the “shorebreak”. The higher the wave, the more hazardous the shore break particularly for reflective beaches such as Pearl Beach. Waves of 1.5-2 m high are deemed moderately hazardous increasing to highly hazardous if 2.5-3 m and any higher extremely hazardous.¹¹
39. Professor Short explains *“The presence of the rhythmic beach cusps cause the swash to diverge over the protruding cusp horns and converge in the swales to flow strongly down the beach as a narrow band of turbulent backwash, that jets a short distance (10 m) seaward of the beach into deeper water”*.¹²
40. Chayce was swept out to sea at about 1.50 p.m. Professor Short says low tide was at 3.20 p.m. so at the time the tide elevation was about -0.1 m at 2 p.m. The low waves averaged 0.75-1.1m and the higher waves averaged 1.5-2.2m, with a wave period of 13-14 seconds. The waves were arriving in well-defined sets of higher and lower waves, which were

¹⁰ ibid

¹¹ Figure 2 of the report page 5.

¹² Para 3.3

breaking heavily on the beach and flowing strongly up the beach face. The wave conditions were eroding the beach evidenced by the 2m high erosion scarped beach cusps, one of which Chayce and the other children were playing near.

41. Professor Short says that the waves were not breaking until they reached the base of the beach indicates that the water depth was 2-3 m at the step. In his evidence he described the effect of the swash particularly in the zone of the erosion scarp. He said that the steep slope of the beach would have made walking or maintaining a footing difficult. A strong uprush is capable of knocking a child over, and where the uprush hit against the erosion scarp the returning backwash would have been intensified. He says that the backwash was particularly strong owing to the high waves, presence of the erosion scarp, and convergence of the backwash into the cusp swales, producing an intense deeper turbulent backwash that runs down the beach and jets seaward several metres past the breaking waves. These pulses of converging swash are capable of transporting someone, particularly a child, rapidly down into the breaking waves and/or deeper water immediately seaward of the breaker zone.¹³

42. Professor Short explained the impact of these “jets of water” in his verbal evidence. He said that they were like a rip carrying water and possibly people outward into deeper water. He said that water pushed into the embayment, particularly where the scarp was, could be more than a metre high until it retreats and that the water depth would fluctuate with each wave. The higher the wave, the more volume of water and the more energy the jet or rip would have to drag someone out to sea. A heavily breaking wave would have collided violently with the scarp and reflected off it, creating a massive volume of water in a narrow space (about 10 m) and projecting a jet of water 20m seaward of the step. Chayce, caught in this way, was literally jetted out past the breaking waves.

43. This is consistent with the eye witnesses and is consistent with an experience Ms Vernon had the previous year. Professor Short suggested that those who were trying to get past the waves were not diving deep enough. Professor Short said that once a person did get

¹³ Para 5.

out beyond the waves, the water flow was such that it would not bring them back into the beach.

44. Ms Vernon said that there was no way to get under the wave as it was just sand, they couldn't even reach the step where the deeper water started. She said that the only way to reach Chayce would have been to lie down on the sand and be jettied out by the white wash jets (as described by Professor Short).
45. Ms Vernon said that the child she had rescued the previous year had been playing within about 5m of the shorebreak. She said as she was walking towards him to tell him to not play there, she saw him being knocked sideways by the white water and within 3 seconds he was jettied 10 m out to sea.
46. On that day Ms Vernon entered the water and reached the child. She said that she had intended to take him out further but they were swamped by huge waves as if in a washing machine, dump after dump. She had realised that they would drown. Unable to return to shore, she lost consciousness. She said that the next thing she knew was on the beach with the child in her arms, her own children wakening her. She doesn't know how she and her child survived, nor does she know how they were delivered back to the beach.
47. Ms Vernon's decision to not enter the water to attempt to rescue Chayce was obviously highly traumatising for her. Her children and friends pleaded with her not to try. She said that though she is a strong swimmer with surf lifesaving experience, she thought that even if she went out she wouldn't get back. Given her experience and the conditions of 10 July 2014, Ms Vernon made the right decision.
48. Professor Short said a layperson could be well oblivious to the dangers of the power of the surf and the ability of it to drag people into the sea. He said that Chayce might have started playing when the waves were at a low and this could have been over 5 minutes before the set of bigger waves came. He said that this kind of lull could give a false sense of security. He said that an uninformed beach goer entering the beach, particularly from the road,

would not see the dangerous edge and could think the sea was calmer than it was and think that the beach was safe to play or walk on. However, he thought that walking from the headland would provide a different view of the beach.

49. Ms Vernon and her family have been holidaying in Pearl Beach for over 6 years and would stay 4-5 weekends and sometimes for a week twice a year. They stay in a house, which is about 7 houses from the end of the northern point of the beach. She says that on 10 July 2014 she told the children they could not play on the beach or go near the water as she considered the beach “extremely hazardous”. The house would shake when a big wave broke on the sand.
50. Ms Vernon said that the water at that location is very deep with very loose sand. During the inquest I received a letter by a man Jason Harwood. He wrote that years previously he was walking with his young son at the water’s edge on the northern end of Pearl Beach and the sand collapsed causing his child to disappear only to reappear some seconds later out the back of the surf. Mr Harwood reached his son and described that to get back to the beach he had to go under the water and claw his way along the sand, which he said took over 60 seconds. He wrote that he couldn’t express any true understanding of how they survived.¹⁴ Those sentiments are hauntingly similar to Ms Vernon’s.
51. Ms Vernon thought a helpful device to affect a rescue would be a surf rescue tube, which floats behind the rescuer so as not to interfere with the rescuer’s body while moving to reach the person. However, that would not solve the problem of how to get out past the shore break in conditions such as those of 10 July 2014. Nor does it solve the problem about how to safely return – though there would be an opportunity to wait for rescue craft entering the water from another location.
52. Ms Vernon said that the police arrived within about 15 minutes of emergency services being called and life savers on surf rescue jet skis and IRBs from Umina Beach arrived about 5 minutes.

¹⁴ Ex 5.

53. The evidence about the dangers of Pearl Beach was not challenged nor questioned. In summary Pearl Beach is “out of the way” being some 20 minutes from Gosford. It can look calm from the edge of the grass giving a false sense of security. The northern end is steep with coarse sand, which can shift and cause loss of footing. The beach’s steepness is not appreciated until near the water’s edge and the step into deep water is not realised until in it. The waves dump onto the sand forming regular and prominent cusps. When the waves are above average or hazardous, the power of the water can knock someone over, particularly a child, and the force of the collection of out -going water can be such as to cause a child to be jetted out to sea past the shore break. A rescue by entering the water from the shore can be difficult, if not impossible, and if that is achieved, re-entering the beach safely can be difficult. It takes about 15-25 minutes for emergency services by road and rescue craft from nearby beach facilities to arrive from the seaward side - such a lapse of time is sufficient to result in an unsuccessful rescue.

Gosford City Council’s Beach Management Policy

54. Craig Healy, Team Leader of the Gosford City Council’s Beach Lifeguard Services said that during the swimming season (from September to April school holidays) the Council provides services for lifesaving services to beaches Monday to Friday and the NSW Surf Life Saving (SLS) provides volunteer life guards during the weekends.

55. During the off-season there are no patrols, but SLS introduced an off-season system whereby volunteers can be on a roster for rescue incidents. Mr Healy explained that an emergency call to the police involving beach or water rescues is linked to the SLS State headquarters in Belrose, which in turn notifies the Gosford City Council’s Team Leader and the SLS Central Coast.

56. Mr Healy said there are jet skis and zodiac boats known as ‘assets’ at Council supervised beaches: Terrigal, Avoca and Umina beaches. It was due to the SLS off-season volunteer rescue roster system that the assets were deployed to Pearl Beach on 10 July 2014.

57. The response time and service provision by the volunteers to assist in Chayce's rescue is commendable. Mr Healy said that during the swimming season when the flags are up in Umina, an asset can be deployed and in the water within 2 minutes and would be at Pearl Beach within 5 minutes. The Council would keep a log of the water rescue incidents it is involved with during the swimming season but not out of season incidents such as the one on 10 July.
58. There is no evidence to suggest that Pearl Beach should be a patrolled beach. Indeed the evidence points to it having a reputation as not being a swimming beach and not being a surf beach. Indeed, the evidence points to a danger associated with the water's edge rather than with swimming, which leads to the issue of signage about that danger.

Adverse Water Incidents and the Gosford City Council Risk Management Programme

59. Mr Michael Tattoli, the Risk Management Co-Coordinator gave some short evidence in relation to the Council having a policy to follow up adverse water events. He said that the Council relies on notifications from the public before any investigation or follow up would occur. He said that no body rang the council in relation to the incident involving Chayce. He said that there was no information or education programme advertising the need for the public to contact the Council to advise of such incidents to be subject to risk management strategies.
60. Mr Healy said that incidents during the summer season would be logged but not out of season incidents.
61. At the end of the inquest it was proposed that there be a recommendation in relation to the Gosford City Council implementing a system of recording and tracking adverse water events that occur at beaches within Schedule 1 Part 2 of the Council's Beach Management Policy which includes Pearl Beach. Mr Vesper submits that such a recommendation should

be referred to Surf Life Saving NSW as they have the most effective data-gathering environment and already have a system in place that can be expanded to incorporate such information with co-operation from Council and Crown lands.

62. The SLS did not attend the inquest and the recommendation arises out of the Council's management of the beaches named in the policy's Schedule 1 Part 1. The Council has a designated risk management co-ordinator who responds to notifications but if the community does not know of such a notification system, there seems to be a lost opportunity to ensure effective communication of adverse water events occurring at beaches under Council management.
63. Mr Healy said that the Council keeps a record of adverse water events when their lifeguards are on duty. The SLS keeps a log of incidents when their volunteers are on duty. The NSW SLS receives notifications of emergency services calls about adverse water events for beaches, which may be those not subject to supervision during the swimming season or at all. Not all adverse water events at beaches require emergency services – such as the rescue Ms Vernon affected in 2013. However, it would be useful for the Council, who has the management of those beaches, to be informed of such incidents to properly discharge the risk management strategies.
64. A system is required whereby the SLS notifies the Council of all adverse water events and responses at beaches contained in the Council's Beach Policy Schedule 1 Part 1. Not all adverse water events result in emergency services being notified – such as that involving Ms Vernon and a child in 2013 – so the SLS would not know about those events. Accordingly, a system whereby notifications from the community to the Council in addition to the SLS to the Council should be implemented so that the Council's risk management strategies can be effectively co-ordinated and appropriately managed. It is obvious that it is essential that the community are made aware of such a programme and encouraged to use it. It would be a Council programme, of which the collection of information from SLS is just one part of it; accordingly the recommendation should be directed at the Council.

Signs alerting the Public to Risks of Pearl Beach

65. The Pearl Beach Association contacted the Gosford City Council about erecting signage at access points of the beach reserve. When told that the Council had had a “no sign policy” the Association set out creating warning signs, which were designed and manufactured professionally. They were erected at 3 access points to Pearl Beach. Mr Christie gave evidence about his liaison with Gosford City Council and the signs. Initially he was asked to remove them and after further negotiation involving the Association’s insistence that the signs should remain to help protect the public from the perils of the northern end of Pearl Beach, a compromise was reached. The Association complied and reprinted the signs to indicate that they were their signs (so that a member of the public did not think the signs had been erected by the council).
66. The signs contain information that is clear and necessary. The top indicates the name of the beach, the address of the access point and an instruction to phone 000 and give that address as the location. There are 2 large yellow diamonds. The first is a person with a raised hand in water with direction arrows going left to right; next to the diamond in large letters are the words “Strong Currents”. The second is a large wave dumping a person upside down impacting their head; next to it are the words “Shore Dump”. Along the bottom of the sign are the words “This beach is NOT patrolled”.
67. The need for such signs was not a matter of dispute at the Inquest. The Association nailed signs at locations where the public accesses the beach, but the Association is not charged with the management of the beach.
68. The Gosford City Council has a “Beach Management Policy: Public Beach Reserves”¹⁵. The document is conveniently known as the Council’s “Beach Policy”. Schedule 1-Part 1 of the Beach Policy says that the Asset group to which this policy applies as the “Public Beaches under the control and management of Council”. Part 2 identifies 15 beaches as “Designated Beach Reserves”. Pearl Beach is one of those beaches. Part 3 identifies 10

¹⁵ Exhibit 2.

beaches, which are declared, “designated supervised beach reserves” which receive the supervision¹⁶. Part 4 identifies 6 beaches, which are “designated unsupervised beach reserves”, one of which is Pearl Beach. “Unsupervised” means that no lifesaving, rescue, emergency or general supervision shall be provided at any of these beaches”¹⁷.

69. Whilst the rescue commitment provided by SLS on 10 July 2014 was not one provided by the Council (due to the incident occurring outside the swimming season), Mr Healy’s evidence is that if an incident occurring during swimming season and during a time that the Council was providing supervision, then assets would still be deployed subject to “what other jobs were on”.¹⁸
70. Schedule 1 Part 2 identifies that Pearl Beach is a public beach under the control and management of Council. Mr Healy gave evidence that Pearl Beach is not supervised because it is Crown Land but this cannot be correct. It is not supervised because the Council who has management and control of it designates it not to be- just as it has in relation to other beaches (some of which are Crown Land in any event) in Part 4.
71. The supervision of the beaches and erection of signage on beaches is found in Part 13. Without reciting the entirety of the policy, suffice to say that it states there are to be no signs at any beach or coastline area warning of any hazard, artificial or natural, relating to water, sand, rocks or any natural formation or animal. It matters not whether the beach is in a Schedule or not.
72. There is an exception to the Council’s “beach risk warning sign policy”¹⁹. A particular sign can be used on the Council’s supervised beaches where there is a *designated bathing area* and a lifeguard in attendance. A *designated bathing area* – are areas, which may be determined from time to time and on a case-by-case basis, by the relevant senior lifeguard

¹⁶ Schedule 3 sets out the supervision or patrol hours at beach locations.

¹⁷ Schedule 1. pp39and 40

¹⁸ This should be the case but would seem contrary to the stated Council policy.

¹⁹ My term.

at each beach mentioned in Schedule 1- Part 3. These areas may have a movable sandwich board sign.²⁰ The design and content of the sign is contained in Appendix A.

73. The sign provides a Risk Warning of injury or death caused by Dangerous Currents- Surf- Pipes-Rips-Sandbars- Marine Creatures-Sharks- Shallow and variable depth water- Submerged Objects. It says "You use this beach entirely at your own risk". The sign has 5 yellow diamonds, each containing a pictorial symbol: an exclamation mark, a large wave above an off-balanced person, a shark, a stinger jelly fish and lastly a shallow diving person impacting their head.
74. The use of the sandwich signs is limited. They are only used in conjunction with the life-saving flags erected on patrolled beaches during patrol times. There must be three signs, one at either end and one in the middle of the designated bathing area. They are to be removed when a life guard is no longer on duty. At all other times there are to be no signs on any of the beaches named in Section 1 Part 2 of the Beach Policy, that is both supervised and unsupervised beaches.

Gosford City Council Management of Beach Reserves and Department of Primary Industry's Management of Crown land

75. The Council raised the issue that the danger on the part of the beach under discussion was the shore-break, which occurs on Crown Land as opposed to Crown Reserve Land under the management of council. Mr Healy said that the Council does not provide supervision to Crown Land beaches. However, this proves not to be correct and indeed, if that argument was pursued, given the ownership of Crown land is from the mean high or low water mark to 3 nautical miles the Council would not supervise any parts of those beaches.
76. Mr Robert Micheli's²¹ statement sets out that devolved management refers to section 48 of the Local Government Act 1993 which gives the responsibility for certain public reserves to

²⁰ Clause 13.6.4.b

²¹ Acting Senior Manager of the Department of Primary Industry – Lands Hunter Area (DPI-Lands)

Council. Public reserves are defined in the Act to include a Crown reserve that is dedicated or reserved for public recreation.

77. Mr Micheli provided a map and diagrams indicating the different land status details for the relevant area. There are 2 separate areas of foreshore Crown Reserves and an area of Crown land that comprises the sandy beach. Generally, the beach below the high water mark and the ocean bed to three nautical miles is Crown land.²²
78. However, Reserve 66087 situated at the east of Coral Crescent extends to the low water mark. The management for this reserve is devolved to the Gosford City Council and the council does manage it. Another reserve LOT 7044 DP 93705 is a parcel of land, which comprises reserve 63146, which extends to the high water mark. LOT 7044 also has a reserve 40412 (for public access purposes), which also extends to the high water mark. The management of both these reserves is also devolved to Gosford City Council.²³
79. Mr Micheli identified that the extension of Coral Crescent extending northwards around Umina Point (Mt Ettalong) is a public road controlled by Gosford City Council and is a triangular section of public road at the eastern end of Agate Avenue and a pathway to the north. Both these sites provide access to the beach.²⁴ Mr Micheli identified 8 access points to Pearl Beach, all of which are controlled and managed by Gosford City Council.²⁵ Six of those access points are located on or across R63146, and one goes through R 66087. All of those sites had various council signage.²⁶
80. One sign warns of the dangers on the walk around the headland, one sign prohibited dogs being on the beach, another sign encouraged people to remove rubbish from the beach and ocean (“take 3 for the sea”), and other signs prohibited the lighting of fires, camping, drinking alcohol, playing golf, riding motorbikes or vehicles on the reserve, though one of

²² Para 16 Robert Micheli statement.

²³ Para 21-22

²⁴ Para 24 and 23

²⁵ Para 26. The sites are identified in paragraph 28.

²⁶ Para 28-29, photographs of which show they relate to matters other than beach risk warnings.

those signs was right on the grass edge near the sand alongside a sign prohibiting dogs on the beach. The gist of the signs is that the acts prohibited related to both the grassy areas and the sandy beach. The signs (apart from the Pearl Beach Association signs) were all erected by the Gosford City Council.

81. Mr Micheli says it is essential to place signs outside the range of tidal influence and wave or storm activity. The most logical place to put signs is at the 8 public access points, all sites under the control of the Gosford City Council.
82. The Gosford City Council does not dispute that warning signage such as that devised by the Pearl Beach Association should be erected at Pearl Beach. However, they do raise the issues that there are some 30 beachfront houses with direct access to the beach that would not have access to the signs upon directly entering the beach. That is a disingenuous problem easily resolved by placing the signs at the entry point to the road, which leads to those houses.
83. There is council signage erected near the path around Mt Ettalong to be read by people walking north to Umina Beach; a sign warning about the dangers of the northern end of Pearl Beach to be read by people walking south to enter Pearl Beach could be erected at the same location.

Proposed Coroner's Recommendations

84. The following proposed recommendations were forwarded to the Council and DPI-Lands:

1. *That the*

- Gosford City Council give consideration to amending its Beach Management Policy so warning signs can be erected about the strong whitewash and other natural hazards present along Pearl Beach's northern shoreline.*

2. That the signage is erected at access points to Pearl Beach including Mt Ettalong headland tracks between Umina Beach and Pearl Beach

3. That the Pearl Beach Progress Association's signage remains in place unless it is replaced by Gosford City Council signage as mentioned above.

4. That the Gosford City Council implement a system to record and track adverse water events that occur on beaches contained in Schedule 1 Part 2 of the Beach Management Policy. The system should pay particular regard to the beaches which are never supervised and those supervised beaches during periods when they are not subject to lifeguard supervision. The system should also include public education about how to make notifications and why notifications are important for public safety management planning.²⁷

85. The Council proposes that the proposed recommendation be amended as set out in bold thus: *That the Gosford City Council **and the Department of Primary Industries - Lands** give consideration to amending its **respective** beach land management policy **(ies)** so warning signs can be erected about the strong whitewash and other natural hazards present along Pearl Beach's northern shoreline.*

86. The Department of Primary Industries for a number of reasons opposes that amendment. However, there is no evidence before me of the DPI beach land management policy²⁸. There is no evidence suggesting that the Gosford City Council Beach Management Policy bears any relationship or relative reference to any DPI policy. The only evidence about the genesis of the Council's beach policy is that it commissioned an independent report and put in place a standard of management of beaches consistent with the council being under no obligation to warn beach users about naturally occurring hazards consistent with *Vairy v Wyong Shire Council* [2005] 223 CLR 422.

²⁷ In relation to the proposed recommendation 4, Mr. Vesper on behalf of the council submitted that recommendation should be amended to include the SLS however for the reasons expressed in paragraphs 62-64 I decline that amendment.

²⁸ In his submissions Mr. Pintos-Lopez says that there is no comparable DPI beach management policy.

87. Given the signage prohibition contained in its Beach Management Policy, I do not know how the Council resolves its risk management strategy where a risk is assessed as one for which a warning sign should be erected.
88. Mr Vesper submits that the devolvement of the reserve at the end of Coral Crescent bears no relationship to access to the beach. He says that the Crown owns the sandy beach and the Council does not assume management of it. As owner, the DPI – Lands should bear the responsibility of its management. The difficulty with that submission, the Gosford City Council has included Pearl Beach in its Beach Management Policy not for the purpose of regulating the grassy reserve but in relation to the provision or otherwise of supervision of water and sand usage and rescue in the event of an adverse event.
89. In support of the DPI-Lands' opposition to the amendment of the recommendation, Mr Pintos-Lopez relies on the devolvement of responsibility under the appropriate legislation, the inclusion of Pearl Beach in Schedule 1 Part 2 of the Council's Beach Management Policy and the signage already erected by council and the unsuitability of erecting signs on the sandy part of the beach. However, he does suggest an amendment to the recommendation so that the Department of Primary Industries – Lands would give consideration to any Council application to the Public Reserves Management Fund for the funding of warning signs.
90. Mr Pintos-Lopes suggests an additional recommendation as follows:
That the Department of Primary Industries - Lands give consideration to any application submitted to the Public Reserves Management Fund by Gosford City Council for funding for the erection of warning signage on Crown land managed by Council about the strong whitewash and other natural hazards present along Pearl Beach's northern shoreline.
91. I have not received any evidence in relation to the Public Reserves Management Fund, but it seems to me that if the issue were one of cost such a recommendation would assist.
92. The real issue is whether or not the Council will consider the "no signage" policy in light of this finding that the beach hazards are such that signage is appropriate. The council has

not submitted that such a finding is unwarranted. As far as I can understand the relationship (or lack of it) between the Council and the DPI – Lands the latter were not involved in the creation of the Council’s Beach Management Policy in any event, so there is no role for it to be involved in any amendment to it now. Whereas the funding of any signage, if the Council does proceed with that course will be an issue that can be assisted by the recommendation proposed in a sensible and conciliatory manner by DPI – Lands. An attitude I trust will prevail should the Council make an application to the Fund.

93. Accordingly my findings and recommendations are as follows:

Finding

That Chayce Kelly drowned at the northern end of Pearl Beach on 10 July 2014 when he was swept out past the shore break into the ocean whilst playing and running on the sand in the whitewash zone.

Recommendations

1. That the Gosford City Council give consideration to amending its Beach Management Policy so warning signs can be erected about the strong whitewash and other natural hazards present along Pearl Beach’s northern shoreline.
2. That the signage is erected at access points to Pearl Beach including Mt Ettalong headland tracks between Umina Beach and Pearl Beach.
3. That the Department of Primary Industries - Lands give consideration to any application submitted to the Public Reserves Management Fund by Gosford City Council for funding for the erection of warning signage on Crown land managed by Council about the strong whitewash and other natural hazards present along Pearl Beach's northern shoreline.
4. That the Pearl Beach Progress Association’s signage remains in place unless it is replaced by Gosford City Council signage as mentioned above.

5. That the Gosford City Council implement a system to record and track adverse water events that occur on beaches contained in Schedule 1 Part 2 of the Beach Management Policy. The system should pay particular regard to the beaches, which are never supervised, and those supervised beaches during periods when they are not subject to lifeguard supervision. The system should also include public education about how to make notifications and why notifications are important for public safety management planning.



Deputy State Coroner Truscott

30 December 2015