



**CORONERS COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Brendan Vickery
Hearing dates:	11, 12, 13 December 2017, Byron Bay
Date of findings:	11 April 2018
Place of findings:	Glebe Coroner's Court
Findings of:	A/State Coroner Teresa O'Sullivan
Catchwords:	CORONIAL LAW – Cause and manner of death Recreational jumping/swimming in a quarry Drowning Fencing Signage
File number:	2014/00058593
Representation:	Mr D Welsh, Advocate Assisting Mr D Evenden for T and R Medew Mr H Pintos-Lopez for Department of Industry Mr G Radburn for Island Quarry Associates Inc. Mr J Guihot for Byron Shire Council

Findings:	<p>Identity of deceased: The deceased person was Brendan Vickery</p> <p>Date of death: Mr Vickery died on the 23 February 2014</p> <p>Place of death: He died at Island Quarry, Ewingsdale, in NSW</p> <p>Manner of death: Mr Vickery drowned following a recreational jump into a body of water.</p> <p>Cause of death: The medical cause of the death was drowning.</p>
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The Coroners Act 2009 (NSW) in s81 (1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the death.

These are the findings of an inquest into the death of Brendan Vickery.

Introduction:

Brendan Vickery was born on 3 September 1993 and was 20 years of age at the time of his death on 23 February 2014.

On 22 February 2014, Brendan Vickery arrived at Byron Bay after driving from Victoria in the company of his friends Luke Johnston and Rex Osborne. They stayed overnight at another friend's house. On 23 February 2014 Brendan drove to the Island Quarry, an eight acre abandoned quarry site at 380 Ewingsdale Rd, Byron Bay, in his motor vehicle accompanied by Rex Osbourne, Luke Johnston, and another friend, Vincent Brandall. Another group of Brendan's acquaintances also travelled to the location in a separate vehicle. At the centre of the site is a reservoir with a circumference of roughly 300 metres. The reservoir is surrounded on three sides by five to twenty metre rock walls, with the fourth side providing an access point. Luke Johnston stated that they visited the Island Quarry with the intention of cliff jumping and swimming.¹

Several of those attending the site, including Brendan, swam in the water-filled quarry reservoir and jumped from the cliffs into the reservoir. During the afternoon, Brendan went missing. After searching for him, his friends called the police.

Police divers recovered Brendan Vickery's body from the Island Quarry reservoir on 24 February 2014 at 4:50 p.m. He was submerged in 3.3 metres of water.

The Inquest:

S81 Coroner's Act

Pursuant to s.81 of the *Coroner's Act 2009 (NSW)*, the coroner holding an inquest touching upon the death of a person is required to make a finding as to whether the person the subject of the inquest died and, if so, findings as to the following:

- a) The identity of the deceased
- b) The date of death
- c) The place of death
- d) The manner and cause of death

¹ Luke Johnston Transcript 11 December 2017 pg 39

Under s.82 of the *Coroner's Act 2009* (NSW), the coroner holding an inquest also has the power to make recommendations.

The issues list at the outset of the inquest was as follows:

1. S81 Coroner's Act

Manner and Cause of Death, including the following:

- Were there any dangers associated with the quarry site and, if there were, did they contribute to Brendan Vickery's death?

2. Fencing and signage

- Have steps been taken to reduce any potential danger associated with the quarry site?
- How effective is the current fencing in preventing illegal access?
- How effective is the current signage in warning of the dangers at the quarry site?
- How many people currently access the quarry site for the purpose of jumping/swimming?
- How do these people currently gain access?
- Has this number declined or risen since Brendan Vickery's death, and if so, what were the factors influencing the decline or rise?
- Have rates of injuries at the quarry site declined or risen since Brendan Vickery's death?
- Who has responsibility for maintaining the current fencing and signage and/or erecting new fencing and signage that might restrict access and warn of dangers at the quarry site?

3. S82 Coroner's Act Recommendations:

- Are there any recommendations that are desirable/necessary that might reduce death or injury?

The Evidence:

Background:

Brendan Vickery was the youngest son of Tracie Medew and Robert Medew. Although not Brendan's natural father, Robert assumed the parental role when Brendan was nine and Brendan referred to Robert as 'Dad'.

In Year 11 Brendan left school and worked first at KFC and later at JB-Hi Fi. However, he had an abiding passion for the defence force and had been a cadet in high school. His initial application to join the Australian Defence Force was denied but he had reapplied and was approved to start his training just prior to his death.

In 2014 Brendan Vickery quit his employment with JB-Hi Fi as he intended to visit Byron Bay. He had been to Byron Bay previously and was returning for recreation and to "get away" from Melbourne.² Friends Rex Osborne and Luke Johnston accompanied him on the trip, but Brendan was the sole driver.

They stopped at Canberra and then overnight in Sydney, before Brendan drove the final leg to Byron Bay. Luke said in evidence that Brendan appeared tired at the completion of the drive from Sydney to Byron Bay, but didn't recall Brendan saying much about it other than it was a long drive.³ They spent the night at the house of a friend, Drew Cullen.

On 23 February 2014, Brendan drove to several sightseeing locations with Luke Johnston, Rex Osborne, and Vincent Brandall, who had met Brendan a month before during Brendan's previous trip to Byron Bay. They then returned to Drew's house around midday.

At the house a discussion took place about what to do in the afternoon. Rex, Luke, Brendan, Drew and Vincent were present for the discussion. Either Drew or Vincent suggested they go to the Island Quarry to swim and cliff jump. The others present agreed with the proposal.

² Luke Johnston Transcript 11 December 2017 pg 37

³ Luke Johnston Transcript 11 December 2017 pg 38

The Fatal Incident

Brendan drove to the Island Quarry with Rex, Luke, and Vincent. Other acquaintances, including Drew, travelled to the location in a second vehicle. They parked at the front of the Island Quarry on Ewingsdale Rd and entered via that side of the property. Luke Johnston recalled seeing a barb-wire fence with holes in it, a gate with a sign and then another sign as you entered reading “Enter at your own Risk”. He also recalled a sign saying, “Swim at your own risk.”

Vincent Brandall also recalled seeing a few signs, but said he did not really pay any attention to them. When asked in evidence why he did not pay them attention, he stated, “We didn’t expect anything bad to happen so we were just going there to have some fun and we didn’t really – didn’t really think it mattered that much, you know.” He stated that no one in the group paid attention to the warning signs.⁴

He described the access as “all pretty open”.⁵

The quarry site contains a reservoir with a rough circumference of 300 metres. On three sides it is bounded by rock walls between five to twenty metres tall. The fourth side (on the south) is accessible via ground level and an installed jetty.

Luke, Drew, Brendan and some of the others in attendance walked around to the northern side of the reservoir. From varying points on the north cliff they jumped into the reservoir. Luke indicated two points on the cliff edge, marked in Exhibit 3 as points A and B, where he jumped from. He marked a third point slightly further to the west where Brendan jumped from.

The location where the witnesses agree that Brendan jumped from is a foothold about a metre below the cliff edge. The distance from this jump point to the water was not accurately measured. Luke Johnston gave varying estimates of this distance. He provided estimates of seven to eight metres⁶ and alternatively five to six metres⁷ at different points in his evidence. The distance, though, can fairly be described as a significant distance for a person to fall.

There is some discrepancy between the witnesses about how many times Brendan jumped. Vincent Brandall recalled him probably jumping two or three times, although this was in oral evidence.⁸ His interview on 23 February 2014 only specifically refers

⁴ Vincent Brandall Transcript 11 December 2017 pg 19

⁵ Vincent Brandall Transcript 11 December 2017 pg 19

⁶ Luke Johnston Transcript 11 December 2017 pg 48

⁷ Luke Johnston Transcript 11 December 2017 pg 56

⁸ Vincent Brandall Transcript 11 December 2017 pg 18

to one jump. Luke Johnston stated in oral evidence “from memory a couple of times but I think he only jumped once.” Rex Osborne recalled him jumping once.⁹

Johnston estimated that Brendan took half an hour to an hour before jumping into the reservoir. Brendan was hesitant about jumping and Johnston stated that Brendan “chickened out” and walked away before returning to jump into the reservoir. After his first jump, Brendan had a “huge grin” and in Johnston’s words was “loving it”. Vincent Brandall says that Brendan resurfaced after his first jump and was smiling a lot and said, “That was awesome.”¹⁰

Some encouragement to jump on the part of his peers was evident. Johnston said to him, “You can do it, mate. You can do it.”¹¹

Johnston recalled Luke’s landing being a little forwards or backwards, in that his legs dug in to the water, but he qualified this by saying that it wasn’t a bad entry and that Luke was fine afterwards. Luke recalled Brendan swimming around afterwards and appearing fine. He seemed unsure when asked by the advocate assisting, Mr Welsh, whether he might not have noticed Brendan jumping off the wall on another occasion. He responded, “Maybe. I’m not – I’m not – I’m not sure like I didn’t – I didn’t see him scale the wall. I didn’t see him climb out of the water and scale the water like.”¹²

In his initial police interview, Luke recalled swimming with Brendan in the reservoir after Brendan’s jump for approximately half an hour or forty-five minutes. He stated that Brendan was right next to him and that he talked to Brendan and Brendan was fine.

Rex Osborne was interviewed by police on 23 February 2014. Unfortunately, his attendance either in person or electronically was unable to be secured for the inquest. However, in his initial interview, he states that he was speaking to Elliott (one of the persons present at the quarry) and Elliott mentioned that Brendan had been complaining about being tired and not having the energy to swim back. According to Rex, Elliott had told him that it looked like there was something physically up with Brendan. Rex hypothesised at that point in the interview that Brendan may have landed wrong during a jump into the water.¹³

Rex only recalled Brendan jumping once. He saw Brendan surface and swim after the jump and didn’t recall anything notable about the jump or Brendan’s behaviour

⁹ Rex Osborne ERISP Transcript 23 February 2014 pg 13

¹⁰ Vincent Brandall Transcript 11 December 2017 pg 22

¹¹ Luke Johnston Transcript 11 December 2017 pg 43

¹² Luke Johnston Transcript 11 December 2017 pg 44

¹³ Rex Osborne ERISP Transcript 23 February 2014 pg 10, 11

immediately afterwards. Immediately following the jump, he saw Brendan swim five to ten metres from the landing point. His estimate of the time Brendan hesitated before jumping is considerably lower than Luke Johnston's, however. Rex estimates Brendan sat for about five minutes before proceeding with the jump.¹⁴

On the available witness statements, the last person to see Brendan alive appears to be Vincent Brandall. In his initial interview on 23 February 2014, Vincent says that he saw Brendan jump into the reservoir. He says that Brendan "hit the water pretty badly" but then resurfaced and clung to the cliff to catch his breath. He then swam over to Vincent, who was swimming in the reservoir. He said to Vincent, "I don't think I've got the strength to swim back." When Vincent was asked whether this conversation occurs straight after or a little time later, he replied, "He caught his breath. It would've been like five minutes later or something."¹⁵

Vincent suggested to Brendan that he crawl along the rock wall because then he'd have something to hang on to. Vincent noticed that Brendan had started crawling around the rock wall. Vincent checked two to five minutes later and Brendan was treading water and grabbing the rock and dragging himself along. Vincent did not see him after this.

In oral evidence during the inquest, Vincent stated that when Brendan approached him in the reservoir after the jump that he was breathing "pretty heavily". Vincent believed that Brendan was all right and simply needed a breather.¹⁶ Vincent marked a photograph tendered as Exhibit 2 with his own location and the location he last saw Brendan. He marked Brendan's location with A and his own location with an X. The two locations in the photograph are, relatively speaking, a short distance apart. Brendan's body was located by police divers within the area depicted in Exhibit 2. Again, this location was a relatively short distance from where Vincent last saw Brendan alive.

About an hour after Vincent last saw him, members of the group became concerned when they could not locate Brendan.¹⁷ They searched the immediate vicinity without success and then contacted police.

On 24 February 2014, police attached to the Diving Unit located Brendan's body in 3.3 metres of water.

Luke Johnston's recollection of Brendan appearing fine after his jump appears to conflict with Vincent Brandall's recollection of Brendan appearing to be in difficulty.

¹⁴ Rex Osborne ERISP Transcript 23 February 2014 pg 13

¹⁵ Vincent Brandell ERISP Transcript 23 February 2014 pgs 7, 8

¹⁶ Vincent Brandell Transcript 23 February 2014 pg 25

¹⁷ Vincent Brandell ERISP 23 February 2014 pg 10

Both witnesses, to me, appeared genuine in their efforts to recollect the incident. However, none of the witnesses are certain about how many times Brendan jumped. It is possible Brendan jumped more than once, and this would reconcile the versions. Indeed, there was a delay before those present realised Brendan was missing, so by no means was he under constant observation.

Vincent Brandall's version is independently supported by evidence of where Brendan's body was retrieved, a location in the quarry close to the rock face where Vincent said he last saw Brendan. Vincent also recalled specific aspects of the conversation he held with Brendan while Brendan was swimming, while Luke's recollection of Brendan swimming in the quarry is more general.

I am satisfied that Vincent Brandall was the last witness to see Brendan alive and that his account was accurate. Where any discrepancy exists between his account in the police interview and his evidence in the witness box, I favour the police interview due to its proximity to the time of the incident.

Brendan's comments about the difficulty in swimming back to shore, his laboured breathing, his decision to hold onto the rock face and the proximity of his body to where Vincent last saw him all lead me to conclude that shortly thereafter Brendan slipped under the water and died within the reservoir. The exact time is unknown. However, it would have been between midday on 23 February 2014, when the group left for the quarry, and 3:10 p.m. when Senior Constable McCaffrey received the radio message that a person was missing at the quarry.

Intoxication and Fatigue

Cannabinoids were detected in the toxicology. Pathologist Dr Beer stated in the post-mortem report that estimations of the amount and timing of the deceased's cannabis use prior to death could not be commented on. He did not consider the toxicology results, including the presence of cannabis, to be contributory to the death.

Rex Osborne stated in his interview with police that the night before Brendan visited the quarry, he had smoked cannabis.¹⁸ However, none of the witnesses state or suggest that Brendan smoked cannabis on 23 February 2014. The witnesses did not suggest or indicate that Brendan was intoxicated on 23 February 2014. Police who attended shortly after Brendan's disappearance do not observe any of the other members of Brendan's party to be intoxicated.

I am satisfied that intoxication did not play a role in Brendan's death.

¹⁸ Rex Osborne ERISP Transcript 23 February 2014 pg 5

While there was anecdotal evidence about Brendan being tired due to the amount of driving in preceding days, the witnesses did not observe him suffering any appreciable fatigue on 23 February 2014, and certainly not enough to account for his exhaustion as observed by Vincent Brandall. I am satisfied that fatigue due to driving did not contribute to his death.

History of Fencing and Signage at Island Quarry prior to the 23 February 2014

Shane Rennie, the chairperson of Island Quarry Incorporated, described the original fencing situation as follows:

At all times there has been a 6 foot high silver fence which runs for 50 metres from the north western corner of the property along both the western and northern boundaries. In that fencing along the northern boundary there is a vehicle access gate which has always been kept locked with a chain and padlock when not in use... Adjacent and to the east of the fencing on the northern boundary was the pedestrian access which was an open access spot until February 2014. The western and southern boundaries are adjacent to inaccessible wetlands. There had always been a 6-foot-high fence along the eastern boundary.¹⁹

Shane Rennie stated that when he was appointed trustee in 1997 there were picket posts in place on the Ewingsdale Rd boundary to the east of the pedestrian access with barbed wire occasionally between the posts. This fencing was damaged and in disrepair. In approximately 2001-2002 star picket fencing with dog wire was installed around the length of the reservoir. Over a period of time bamboo handrails were added to the top of the fencing. The height of that fencing was approximately 1100 mm. Around 2001-2002 approximately 8 signs stating "Danger Cliff Keep Out" were made and secured to the fencing of the reservoir approximately 15 to 20 metres apart.

A sign reading, "Restricted Area – Do Not Enter – Authorised Personnel Only", was installed at the cliff edge in approximately 2011. In 2012 or 2013 a sign was installed on the quarry grounds stating, "No Entry Trespassers will be prosecuted \$150 fines apply".

As at the 23 February 2014, there were numerous warning signs in place at Island Quarry.

These included the following:

¹⁹ Statement of Shane Rennie 12/12/2016 paragraph 6

- Members Only (located near the pedestrian access)
- No entry trespassers will be prosecuted \$150 fines apply (located near the pedestrian access)
- Restricted Area – Do Not Enter – Authorised Personnel Only (located near the cliff edge)

Up until February 2014 the site was open to the public to assist in regeneration works. On 23 February 2014 and 25 February 2014, following Brendan Vickery's death, closed signs were placed at the front of the site.

Rex Osborne was not questioned about signage during his interview on 23 February 2014, but both Luke Johnston and Vincent Brandall recalled seeing warning signs. Luke Johnston recalled the sign near the entrance as being "very clear as you walk in." Neither Luke nor Vincent paid heed to the signs. Vincent stated that no one in the group paid attention to the signs. In evidence, Luke was referred to annexure D of Shane Rennie's statement, which was a photograph of the "Restricted Area" sign near the cliff edge, and he confirmed that he had seen that sign before jumping.

Brendan himself seemed aware of a level of danger at the site as evidenced by his hesitation to jump from the cliff. Given the height of the cliff, jumping into the reservoir from the cliff would be inherently dangerous. Vincent himself described the activity of jumping into the reservoir from the cliff as "moderately dangerous". He went on to say, "It was just like, you know, obviously dangerous but not like angry dangerous..."²⁰

It is, however, another question to ask whether those present appreciated the specific level and type of danger they were exposing themselves to. However, Vincent Brandall's responses to questions put to him by Mr Evenden in the inquest suggest that he at least was not surprised at the level of physical danger. Mr Evenden informed Vincent that at least nine people had been hospitalised in the three-year period before Brendan died and that six of those hospitalisations involved spinal fractures. Mr Evenden asked Vincent whether this information came as a surprise. Vincent responded: "It's not like not surprising given the height of the jump."²¹

Luke Johnston was more equivocal in his evidence on the point. When asked by Mr Evenden whether it would deter him if there were a sign indicating that people had sustained fractured backs and that someone had died as a result of jumping, Luke answered: "Yeah. It depends on the person, though, to be honest with you. Me

²⁰ Vincent Brandall Transcript 11 December 2017 pg 20

²¹ Vincent Brandall Transcript 11 December 2017 pg 30

personally, I don't know if it would deter me. I like – I really enjoy doing stuff like that.”

He initially expressed little surprise that people were known to have fractured their spines jumping into the reservoir. He referred to cliff diving as “an adrenaline thing”.

²²

Later, though, he contradicted this view, stating that if he saw a sign indicating that there was a history of people fracturing their backs and one person having died that it would deter him.²³ It is difficult, therefore, for me to judge the effectiveness of further signage based on Luke Johnston's opinion alone. As both Luke Johnston and Vincent Brandell noted, the group containing Brendan Vickery paid little regard to the warning signs then present.

Warning signage currently displayed around the Island Quarry site is substantial. At the Ewingsdale Rd fence a sign is prominently displayed which reads, “*Crown Reserve Caution*”, and on it are symbols for various dangers, including the following: Cliff edge approaching, drop off, danger of drowning.

“*Danger Keep Out signage*” is also displayed. Furthermore, a sign reading “*Danger Use of this Dam is a High Risk Activity. No Swimming. No diving*” is displayed on the fence surrounding the reservoir.

Anyone attending for the purpose of cliff jumping would have to pay no regard to these signs and scale two 1.8 metre fences.

Who has responsibility for maintaining the current fencing and signage and/or erecting new fencing and signage that might restrict access and warn of dangers at the quarry site?

On 18 April 1997 Byron Island Quarry Reserve Trust was established and IQ Inc was appointed to manage the affairs of the trust. A reserve trust is a corporation established by the Minister under Part 5, Division 4 of the *Crown Lands Act 1989* (NSW) as trustee of a Crown reserve or reserves. In general, each reserve trust is responsible for the care, control and management of a specific Crown reserve or reserves.

²² Luke Johnston Transcript 11 December 2017 pg 51

²³ Luke Johnston Transcript 11 December 2017 pg 51

The IQ Trust, like other reserve trusts, is autonomous in relation to the care, control and management of the IQ Reserve.²⁴ While the Department of Industry provides each reserve trust with operational support, financial assistance and guidance, the Department is not responsible for the management of reserve trusts.²⁵

Byron Council's role is as an approving authority and certifier of works done in accordance with any approval granted.

In addition to tendered statements, the following witnesses gave evidence concerning fencing, signage and the roles of the IQ Trust, Department of Industry and Byron Shire Council:

- Chris Larkin, a Byron Bay Shire Council town planner
- Nathaniel Andrews, a building certifier employed by Byron Shire Council
- Kevin Cameron, a Byron Bay Shire Council building certifier
- Shane Rennie, the chairperson of Island Quarry Incorporated

All witnesses gave evidence that touched on the process leading to the fencing currently in place. Without getting into the fine detail of the development approvals, construction certificate applications and similar, the consensus reached was for a 1.8 metre chain wire fence along Ewingsdale Road, a 1.8 metre chain wire fence around the less accessible cliff areas and a 1.2 metre post and rail fence at the "general activity area" near the grassed lower area of the reservoir.

While the IQ Trust bears the primary responsibility for management of the everyday management of the site (in conjunction with the Department of Industry), each of the three bodies previously named contributed to the erection of the fencing and signage. Funding was provided by the Department of Industry, as evidenced in documents that include an email exchange dated the 10 February 2014 between Shane Rennie and Daniel Cupitt, employed by the NSW Department of Industry. Nathaniel Andrews, employed by Byron Shire Council, visited the site in July 2014 and made further requirements before an occupation certificate would be granted. These requirements included resuscitation signs.²⁶

Nathan gave evidence that cliff jumping was specifically in his mind when he conducted his site inspections.²⁷ On 23 January 2017, the works on the site were completed to the council's satisfaction.²⁸

²⁴ Statement of Marwan El-Chamy dated 4 December 2017 [14]

²⁵ Statement of Marwan El-Chamy dated 4 December 2017 [15], [17]

²⁶ Nathaniel Andrews Transcript 12/12/2017 pg 38, 39

²⁷ Nathaniel Andrews Transcript 12/12/2017 pg 36

²⁸ Nathaniel Andrews Transcript 12/12/2017 pg 36

The planning for the fencing pre-dated Brendan Vickery's death and correspondence tendered during the inquest shows that Crown Lands representative, Dan Cupitt, emailed Shane Rennie on 10 February 2014 to indicate that extra funds for fencing had been approved, accompanied by the statement: "Please start construction as soon as possible."

Mr Rennie responded in an email dated 10 February 2014: "Thank you so much, we will get all this up asap."

Evidence was tendered of the timeline of the fencing installation, but it is sufficient to say that arrangements for fencing the quarry were being finalised at the time of Brendan Vickery's death. Delving into the historical timeline of the fencing is not the purpose of this inquest. The details that are relevant are those pertaining to the issues list, and these issues look toward the present and the future.

While fencing and signage were core issues in the inquest, the inquest also examined other steps taken to reduce potential danger at the quarry. To assess the effectiveness of any measures introduced, the issues list explored the following: how many people were attending to jump/swim; how were they were gaining access; was there any change in these numbers and the reasons why; and were there any changes in the injury rates seen at the quarry.

The officer in charge, Senior Constable McCaffrey, gave evidence that since the incident the caretaker, Bazz Laow, would ring the police to report people trespassing. Senior Constable McCaffrey stated that prior to Brendan's death there would always be a dozen cars parked in the car park out the front, but now you would be "lucky to see one". He believed that it was promoted as a popular place to cliff jump by backpacker's websites. However, he believed word had circulated that people were no longer being allowed in and that trespassers could receive infringements and this contributed to a downturn in attendance.

Bazz Laow gave evidence about his observations of access to the site in recent years. Bazz Laow had worked in various capacities at the Island Quarry site for three to four years prior to the inquest. He initially worked as a volunteer supervisor two days a week, overseeing volunteers who were conducting tasks such as mowing, property maintenance and rubbish removal. When he first started he was under instructions to tell people not to jump into the quarry from the cliffs. However, the site itself was open with no real restrictions.

Bazz recalled that in 2012 he was staying out at the site for three to four days a week. During summer, up to 150 people would attend daily. As would be expected for a swimming spot, the numbers of people attending were highly influenced by the weather. Bazz believed that jumping from the cliffs was popular on internet searches and popularised at local backpacker hostels. Bazz would ask people where they got

the idea to jump and would be told that they got the idea from local backpacker websites.

Shortly after the incident, Island Quarry management asked Bazz to erect a temporary fence at the front of the property, along Ewingsdale Road. Bazz estimates this cut the number of visitors in half. For about a year and a half they would have 30 to 60 people a day attending the Island Quarry trying to get in. He believed that having it removed from websites was instrumental in reducing the numbers of attendees. He indicated that if he spotted a trespasser within the quarry, he would instruct them to leave and call the police if necessary.

At the time of giving his evidence on 12 December 2017, Bazz estimated that about twenty people had come to the quarry during that entire summer season. He compared this to 150 per day that he had witnessed in prior years and considered the fall in attendance to be huge. He believed that those currently gaining access were jumping the fence, and in one instance had cut a hole in an adjoining fence and come in through a neighbouring property.

He had only seen four or five trespassers on the property during that 2017 summer season. He did not observe them cliff jumping or swimming. Bazz indicated that it was difficult to get up to where people used to jump from. The new fencing was one factor, but due to the lack of pedestrian access, the vegetation had also increased markedly, further restricting access to the cliff top areas.

Bazz stated that the fence line was checked and maintained. During evidence, Bazz displayed knowledge of recent damage to the fence, giving a clear indication that he is monitoring the integrity of the fencing.

In Bazz's opinion, jumping the fence on Ewingsdale Road is easier than attempting access via either of the neighbouring properties. On that point, there was discussion during the inquest about the prospect of the western neighbour's fence coming down, potentially leaving the western boundary exposed as an easy access point. Shane Rennie gave evidence that funding had been approved for a 1.8 metre chain wire fence along that western boundary, allaying any concerns that the western boundary might become an access point in the future. Shane Rennie stated that the intention was to entirely enclose the Island Quarry in 1.8 metre chain wire fencing apart from the southern boundary, which is deep wetland.²⁹

Shane Rennie was also able to give evidence that he believed word of mouth was the biggest reason for the downturn in attendance. He stated that he was visiting the backpackers [hostels] quite a bit and putting out in the community the message that people were not welcome at the quarry to swim and jump. Another factor was that

²⁹ Shane Rennie Transcript 12 December 2017 pg 67

after Brendan's death the backpacker websites removed the Island Quarry from their websites as a jumping/swimming spot. Shane stated that it took slightly over a year for the backpackers to stop attending and that a lot of the newer backpackers don't know about the quarry. He believed this was more important than the fencing.³⁰

Dr Davies, the Network Director for Emergency Medicine Tweed Byron Health Service Group, gave evidence in relation to injuries sustained by people jumping into the Island Quarry reservoir from the cliffs. He first became aware of this issue in late 2011, when a group of the Emergency Medicine Consultants at Tweed Emergency Department identified recurrent cases stemming from the site.³¹ Dr Davies was proactive in contacting representatives of Island Quarry, the Director of Public Health and various media outlets. Dr Davies catalogued a list of serious injuries occasioned at the Island Quarry between 2011 and Brendan Vickery's death on 23 February 2014.

There were nine admissions listed, Brendan Vickery not being included in this number. Injuries included a potentially fatal pneumothorax, a loss of consciousness requiring on-scene resuscitation, a knee injury and multiple cases of spinal injury.³²

Dr Davies was called as a witness on day one of the inquest. He elaborated on his statement, explaining that in 2011 he had noted "significant patterns of injury", most notably spinal fractures and the near drowning of a 17-year-old male caused by loss of consciousness after impact with the water. Dr Davies listed 10 cases of individuals known to have been seriously injured between 2011 and 2014 due to jumping into the quarry.

Dr Davies was asked his opinion about whether rates of injuries at the quarry site had changed since Brendan Vickery's death. This was one of the issues to be examined in the inquest.

Dr Davies said that for the previous two years [2016, 2017] patients with those sorts of serious injuries fell under a revised protocol that had them bypass Tweed Hospital. However, 2015 would have been before the protocol came into place but after new measures to restrict access and reduce attendance at the Island Quarry began to come into effect. Dr Davies was not aware of any further injuries during that 2015 period.

Senior Constable McCaffrey and Shane Rennie were likewise unaware of any further recreational cliff jumping injuries following Brendan's death. While one injury to a stunt person filming a movie was believed to have occurred during a cliff jump at the site, the circumstances are dissimilar to Brendan Vickery's case.

³⁰ Shane Rennie Transcript 12 December 2017 pg 53, 60

³¹ Statement of Dr Davies 22 February 2017 pg 1

³² Statement of Dr Davies 22 February 2017 pg 1

As outlined in the issues list, the effectiveness of the fencing and signage in place at the site must also be assessed. Fencing and signage needs to be gauged according to the specific situation. Clearly a fence installed to prevent a toddler accessing a pool has different requirements to a fence installed to prevent a teenager accessing a cliff side.

Much insight can be gained from the testimony of Luke Johnston, who was present when Brendan Vickery gained access and who attended the site during a viewing on the first day of the inquest.

Q: [Mr Evenden] – if you saw a sign that indicated that there was a history of people fracturing their back –

A: [Johnston] Yeah.

Q: -- and of one person dying, would that be something that might factor into whether or not you would jump?

A: Yeah. It would deter me. That 2 metre fence would deter me as well. I'm too lazy to climb over a 2 metre fence just to jump out, to be honest with you.

Further to this, Johnston says, "...a 2 metre fence would definitely deter me. Who wants to climb over a 2 metre fence to get into the water?"³³

Certainly, it is possible for a determined individual to scale the 1800 centimetre fencing currently in place on Ewingsdale Rd and then also scale the 1800 centimetre fencing around the reservoir. However, Brendan Vickery and his companions attended for what can be described as a day of recreation and relaxation. They were not passionate thrill seekers. They did not specifically seek out places to cliff jump. Vincent Brandall, who had previously attended the site, described it as "a nice place to go and stay and like hang out."³⁴ Several members of the group did not in fact jump at the quarry. The trip to the quarry was not pre-planned and came about at short notice on the advice of one of those present, most likely Drew, although Vincent stated in evidence that it might have been him.³⁵

Bazz Laow and Dr Davies gave evidence that the location was circulated around backpacker hostels as a place to go cliff jumping and swimming. They did not give evidence that the locale attracted a fraternity of dedicated individuals in the vein of base jumping or certain extreme sports. For those looking for a day of recreation on short notice, the effort of scaling a 1.8 metre fence is a deterrent in itself.

³³ Luke Johnston Transcript 11 December 2017 pg 52

³⁴ Vincent Brandall Transcript 11 December 2017 pg 16

³⁵ Vincent Brandall Transcript 11 December 2017 pg 16

The effectiveness of further signage is doubtful. I am satisfied that the signage currently in place is adequate. Dr Davies evidence was that the potential injuries from cliff jumping at the location are wide and varied. They include spinal fractures, potential paraplegia, pneumothorax injuries, internal bleeding, concussion and drowning. The evidence suggests that those present were aware, on some level, of a risk of injury.

In summation, the downturn in attendance and associated injury, the improved fencing and signage, and the commitment of the caretaker to prevent trespassing gives me confidence that the Island Quarry site has been made significantly safer.

Mr Evenden submitted that a rock depicted in exhibit 5 be moved, as its present position near the cliff fence makes it easier for a person to scale the fence. Mr Rennie gave evidence that the rock had already been noted in an inspection looking for objects coming within a specified distance of the top of the fence and it had not been deemed problematic.

A sufficiently determined and fit individual can scale the fence regardless of the presence of the rock. The fence functions to deter entry and makes it more difficult to enter. I am not convinced that the rock's presence makes scaling the fence a more enticing prospect, especially as anyone scaling the cliff fence will likely have gained entry via scaling an identical fence on Ewingsdale Rd.

I do not consider it necessary or desirable to make any recommendations under s.82 of the Coroner's Act 2009 (NSW).

Autopsy Report and Cause of Death

On 26 February 2014, pathologist Dr Brian Beer conducted an external examination on Brendan Vickery. Dr Beer's post-mortem report listed the direct cause of death as drowning. The post-mortem stated: "Overall the history and the external findings are consistent with the deceased, a poor swimmer, having drowned in the quarry water hole." Dr Beer's source documents were limited at the time of the examination to the P79A form and the Coroner's Form 18.

While the toxicology showed cannabis had been consumed prior to his death, Dr Beer stated that overall the toxicology was non-contributory to the death.

The P79A states: "His mother was spoken to and she informed police that the deceased was not a good swimmer." Tracie Medew does not recall making this statement to the police. In a statement dated 1 December 2017 she stated: "Brendan was actually a good swimmer. He spent almost 12 months in Brisbane when he was 16 to 17 years old and used to swim there in the open water."

Rex Osborne was asked in his interview on 23 February 2014 about Brendan's swimming ability. Rex did not exhibit confidence in his knowledge of Brendan's swimming ability, saying, "I wouldn't judge him as a bad swimmer, I don't think."

Luke Johnston concurred with Tracie Medew, stating in his interview on 23 February 2014, "He's a good swimmer. I've swum with him at the beach in Melbourne. He can swim."

The totality of the first-hand evidence would indicate that at the very least Brendan was not a bad swimmer, contrary to what Dr Beer was informed via the P79A.

Dr Beer was called as a witness during the inquest and appeared via Audio Visual Link (AVL) on day two. In oral evidence, Dr Beer stated that his conclusion that the cause of death was drowning was a balance of probabilities diagnosis involving the history, the lack of any injuries on the external findings and the toxicology.

Mr Welsh asked Dr Beer if it would influence his conclusion about the cause of death if he received information that Brendan was a good swimmer. Dr Beer responded that generally in a situation where someone is winded by the process of falling or hitting the water a little bit awkwardly you would not expect a good swimmer to drown.

During examination by both the Advocate Assisting, Mr Welsh, and Mr Evenden, appearing for the family, Dr Beer was asked about other potential causes of death. He could not exclude cardiac conditions such as Long QT syndrome, but noted that with regard Long QT syndrome a 20-year-old male would usually have already exhibited some of the symptoms previously, including fainting and seizures. He could not exclude other cardiac complications such as an arrhythmia. Nor could he exclude the possibility that the jump into the water caused internal injuries such as a pneumothorax.

Although Dr Beer conceded that in the general population a clear diagnosis of drowning was difficult to make,³⁶ he maintained that on the balance of probabilities drowning was still the most likely cause of death.³⁷

Dr Davies also gave evidence during the inquest in his capacity as a medical professional. He was asked what dangers he perceived as present at the quarry. Along with algal pollution, he identified that jumping from the quarry walls put participants at risk of serious injuries. He stated that if a person were not practised in how to hit the water correctly, the forces involved were considerable. Rates of injury he was seeing at the Island Quarry were very high. He based this on the observation

³⁶ Dr Beer Transcript 12 December 2017 pg 5

³⁷ Dr Beer Transcript 12 December 2017 pg 14

that the fractures observed were to multiple vertebra in the spines of healthy young people (15 to 24 years of age). Fracturing multiple vertebra in those spines requires the application of what Dr Davies described as “considerable force”. More specifically he stated: “To crack multiple [vertebra] is an enormous amount of force.”

Some of the injuries required spinal surgery and the insertion of rods to stabilise the spine. Dr Davies expressed the view that under the sorts of loads the spines were being subjected to during jumps into the reservoir, it was only a matter of time before someone’s spine fragmented and severed the spinal cord, rendering the person paraplegic.³⁸

Dr Davies stated that internal bleeding was consistent with Vincent’s observations of Brendan being short of breath and feeling exhausted shortly after his cliff jump. Alternatively, a tension pneumothorax, where blood flow back to the heart is reduced because of pressure inside the chest, would also have accounted for his weakness. Dr Davies said that a person suffering such an injury would feel weak and then lose consciousness over minutes.

However, Dr Davies could not conclude with certainty that Brendan suffered an injury in the jump or what that injury might have been if it occurred. I did, however, find compelling the explanations offered by Dr Davies regarding potential causes of Brendan Vickery’s death. Dr Davies had extensive knowledge of injuries specific to cliff jumping at the quarry. While Dr Beer stated that a good swimmer would be expected to recover after being winded in a fall, Dr Davies experience was that the injuries occasioned at the location could be far more significant than winding.

However, Dr Davies was not able to isolate any one mechanism that he could with confidence put forward as the cause of Brendan’s shortness of breath and apparent exhaustion following his jump. Therefore, I am reluctant to find that Brendan suffered any such injury, although there is certainly a possibility that he did so.

While I find that the evidence falls short of allowing me to find that Brendan suffered a debilitating injury following the jump, Vincent Brandall’s evidence, along with Dr Beer’s evidence, gives me confidence that the cause of death was ultimately drowning. Why, though, did no one hear him call out for assistance prior to his drowning? Sergeant Busby, a police diver with 25 years’ experience, provides an answer in paragraph 21 of his tendered statement:

In my experience speaking with witnesses at the scene of a drowning, it is typically a very quiet event. Witnesses have stated that they did not here any noise before the person disappeared under the water. This may be attributed

³⁸ Dr Davies Transcript 11 December 2017 pg67

to the victim concentrating their efforts on breathing and maintaining buoyancy, or injury suffered.

I commend the proactive stance Dr Davies took in attempting to protect the lives of those who were putting themselves at risk through cliff jumping. Dr Davies showed great foresight and perseverance in working to protect young people engaging in a dangerous activity at the site. His dedication is admirable and due credit should be accorded to him for his efforts to protect those young people from coming to harm.

Conclusion:

Brendan Vickery was a young man enjoying himself and spending time in the company of good friends when this tragedy occurred. He was very much loved by his family and friends and their loss must be immense.

I am satisfied that a lot has changed since Brendan's death. The downturn in attendance and associated injury, the improved fencing and signage, and the commitment of the caretaker to prevent trespassing gives me confidence that the Island Quarry site has been made significantly safer.

I would like to thank the officer in charge, Constable Chris McCaffrey, for his thorough investigation. I thank my Sergeant Assisting, Durand Welsh for the excellent work he has done in assisting me. I thank the interested parties and their legal representatives for their co-operation throughout these proceedings.

Finally, I wish to pass on my heartfelt condolences to Brendan Vickery's family. Their composure and resilience in the face of such a tragic loss has been commendable. They obviously loved Brendan deeply and their presence at the inquest was important and valued.

Findings required by s81(1)

As a result of considering all of the documentary evidence and the oral evidence heard at the inquest, I am able to confirm that the death occurred and make the following findings in relation to it.

The identity of the deceased

The deceased person was Brendan Vickery

Date of death

He died on 23 February 2014

Place of death

He died at The Island Quarry, 380 Ewingsdale Road, Byron Bay

Cause of death

His death was caused by drowning

Manner of death

He drowned following a recreational jump into a body of water

I close this inquest.

Teresa O'Sullivan

A/State Coroner

Date: 11 April 2018