



**CORONERS COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Indy Henderson
Hearing dates:	15-18 October 2018
Date of findings:	17 December 2018
Place of findings:	NSW Coroners Court - Glebe
Findings of:	Magistrate Elizabeth Ryan, Deputy State Coroner
Catchwords:	CORONIAL LAW – death of a child - crush injuries from collapse of sandstone memorial – was the memorial structurally adequate – should development consent be required for such structures – should development of a specific Australian Standard be considered.
File number:	2016/355820
Representation:	Counsel Assisting the inquest: A Mitchelmore of Senior Counsel i/b Crown Solicitors Office. The Henderson family: M Gerace of Counsel i/b Marsdens. Mid Coast Council: S Glascott of Counsel i/b M Down Blackhead Bowling Club: T Berberian of Counsel i/b N Martin J Edstein: M Preece of Counsel i/b M Spicer Standards Australia: M Walz, solicitor.

<p>Findings:</p>	<p>Identity The person who died is Indy Henderson born 3 February 2013.</p> <p>Date of death: Indy Henderson died on 26 November 2016.</p> <p>Place of death: Indy Henderson died at Manning Base Hospital, Taree NSW 2430.</p> <p>Cause of death: Indy Henderson died of multiple crush injuries to the chest and abdomen.</p> <p>Manner of death: Indy Henderson died as a result of the collapse of a sandstone headstone which had not been properly affixed to its base.</p>
<p>Recommendation:</p>	<p><i>To the Minister for Planning and Environment (NSW):</i></p> <p>That the Department of Planning and Environment consider amending the development standards in clause 2.78 of the <i>State Environmental Planning Policy (Exempt and Complying Development) 2008</i>, known as the 'Codes SEPP', to provide that a development not comprise masonry construction higher than one metre from existing ground level.</p>

Table of Contents

Introduction	4
Background	4
Events of the evening, 26 November 2016	5
The post mortem report.....	5
Issues at the inquest	6
Why did the headstone collapse?	6
The construction of the Anzac memorial: evidence of Mr Edstein.....	6
The construction of the memorial: evidence of Mr Hari Gohil.....	7
Findings as to the collapse.....	8
What regulatory framework applied to the construction of the memorial in 1997? Are any changes to this process warranted?	9
The consent pathway in 1997	9
Consent pathway in 2018.....	11
Should there be an amendment to the Codes SEPP?	12
Was the memorial subject to any standards for construction in 1997 and if so were they complied with?.....	13
Are existing standards of construction for such structures adequate to meet the needs of public safety?.....	14
Was anyone responsible for maintenance of the memorial? If not, should there be changes in this area?	15
Conclusion	15
Findings required by s81(1).....	16
Recommendation pursuant to s82	16

Section 81(1) of the *Coroners Act 2009 (NSW)* [the Act] requires that when an inquest is held, the Coroner must record in writing his or her findings as to various aspects of the death.

Pursuant to section 81 of the Act a Coroner must make findings as to the date and place of a person's death, and the cause and manner of death.

In addition the Coroner may make recommendations in relation to matters which have the capacity to improve public health and safety in the future, arising out of the death in question.

These are the findings of an inquest into the death of Indy Henderson.

Introduction

1. Indy Henderson was only three years old when she died on 26 November 2016.
2. Together with family and friends, Indy was celebrating her grandmother's birthday at Blackhead Bowling Club on NSW's mid north coast. She and other children were playing outdoors near a sandstone Anzac memorial, when its headstone suddenly collapsed and fell. Tragically, Indy was crushed beneath it and she received fatal injuries. She died soon afterwards at Manning Base Hospital, Taree.
3. At the close of the evidence Indy's mother Tamica Harrower spoke of the grief she and her family have suffered at the sudden and terrible loss of their little girl. Indy was much loved by her family and they miss her very deeply. Despite their distress Ms Harrower and her mother Shiralee Walker attended each day of the inquest. It was very important for them to understand how this tragedy happened, and to identify how it might be prevented in the future.

Background

4. Indy was born on 3 February 2013 in Sydney. She lived in Airs in Sydney's south west with her mother, her two older siblings, and her mother's partner Robert Bishop. Also part of the family is Mr Bishop's son.
5. Indy's mother described her as a happy little girl who had learned to talk at an early age. She loved laughing and having jokes and conversations with people.
6. Ms Harrower's mother Shiralee Walker lives at Mitchell's Island in the mouth of the Manning River on NSW's mid north coast. On Tuesday 22 November 2016 Indy's mother travelled there with Indy and her sister, to help Ms Walker cater for an Aboriginal Women's Camp. They were joined on Friday by the rest of the family, who had arrived to celebrate Shiralee Walker's birthday the following evening.

Events of the evening, 26 November 2016

7. Ms Walker's fiftieth birthday party was held at the Blackhead Bowling Club, near Blackhead Beach. The Club sits on Crown land which is leased to the Club. It has two turfed bowling greens and a building with bar, bistro and gaming facilities. An area of the Clubhouse had been set up for Ms Walker's party, and a large number of people including many children had been invited.
8. Indy and her family arrived at the Bowling Club at about 6.30pm. Many guests were already there, some playing barefoot bowls on one of the greens.
9. Guests reported seeing children running around and playing on the grassed area of the Club, near an Anzac memorial which had been constructed in 1997. Made of sandstone, the memorial's principal feature was an upright headstone which weighed approximately 425 kilograms and stood just over one metre above ground level. The memorial was freely accessible on an area alongside one of the Club's two bowling greens. It did not have any fencing around it.
10. At around 7.10pm one witness, Ms Lisa Robbins, saw a young child sitting astride the headstone, rocking his body forwards and back as though riding a horse. Another witness Ms Livinia Cronin also reported seeing young children playing on top of the headstone. Still another witness, Ms Sandy Woods, stated she did not see children climbing on the headstone that evening, but had seen them doing so on many previous occasions.
11. At about 7.15pm two witnesses saw the headstone of the memorial dislodge from its base and fall backwards. Indy's body was pinned underneath the block, with her head and neck visible.
12. People rushed to lift the headstone so Indy could be taken out. Indy's mother and grandmother ran over in great distress, and Ms Walker commenced CPR assisted by others. They continued their efforts until the ambulance arrived shortly afterwards. Witnesses reported that Indy was unconscious throughout.
13. Despite the efforts of ambulance officers Indy could not be revived. She was pronounced deceased at Manning Base Hospital at 8.13pm.

The post mortem report

14. Forensic pathologist Dr Hannah Elstub found that Indy had died from multiple injuries to her chest and abdomen. She had collapsed lungs and a haemoperitoneum (blood within her abdominal cavity). There were also fractures to her right clavicle, ribs and sternal region. These signified significant crush injuries. Indy had also suffered multiple superficial injuries to her head, chest, and upper and lower limbs.

Issues at the inquest

15. The inquest sought answers to the following questions:

- Why did the memorial collapse?
- What regulatory framework applied to the construction of the memorial in 1997? Are any changes in this area warranted, in the interests of public safety?
- Was the memorial subject to any construction standards in 1997 and if so were they complied with? Are existing standards for such structures adequate to meet the needs of public safety?
- Does there exist a system for ongoing inspection of existing memorials? If not should there be?

Why did the headstone collapse?

16. For Indy's family it was very important to understand how this tragedy occurred. What could explain how a publicly accessible memorial came to collapse that evening, taking the life of this little girl?

17. The court received evidence about how the memorial was constructed by its builder Mr John Edstein; followed by expert evidence regarding the memorial's structural stability.

The construction of the Anzac memorial: evidence of Mr Edstein

18. For many years there has been a committee in the Black Head area, known as the Halliday's Point Anzac Day Committee, whose role is to organize an annual Anzac Day ceremony. In 1997 the Committee decided to erect an Anzac memorial at the Bowling Club, which could serve as a focal point for the community to commemorate this day. The Committee received from the Department of Veterans' Affairs a one-off grant of \$1,000 towards its cost.

19. Committee members prepared a design which was then submitted to the Council for development approval. This was granted in March 1997. At that time the relevant Council was the Greater Taree City Council [the Council]. It has since amalgamated with two other Councils to form the Mid Coast Council. I address later in these findings what is known about the process by which the memorial was granted development approval.

20. The Anzac memorial was constructed by John Edstein, a third generation stone mason who for most of his career operated the family business JJ Edstein and Sons. Established in the Raymond Terrace and Taree regions, the business specialised in stone structures such as dwellings, church altars, sanctuaries and memorials. In 1987 the business was sold to investors but Mr Edstein continued to manage it. Its trading name was changed to 'Edstein Creative Stone' in 1995.

21. Mr Edstein had qualified as a stone mason in 1959 after a five year apprenticeship under his father. In 1997 he was asked by the Halliday's Point Anzac Day Committee to advise about the erection of an Anzac Day memorial. Mr Edstein recalls discussing the proposed design with Committee members Garth Partridge, Jim Howie and Jack Crisp; however none of these men was available to give evidence at the inquest, due to death or infirmity.
22. The memorial comprised three sandstone components as follows:
- Two sandstone bases, the lower of which was set onto a footing made of cement. The second level of sandstone (the sub base) was fixed to the base stone in the same manner.
 - A headstone 1.15 metres long, 0.97 metres high and 0.15 metres thick, which sat perpendicular to the sub base stone. It had a granite panel and bronze laurel on its front face, and at its rear the carved words '*Lest We Forget*'.
23. In his statement Mr Edstein described how he fixed the headstone onto the stone sub base. He stated he used a cement bedding on which to place the headstone. To align it onto the cement bedding he used two bronze threaded dowels each 10mm in diameter and 110 mm long. These were let into two holes which had been prepared in the sub base. Mr Edstein applied a fixing agent to embed the dowels 50mm deep into the sub base. He was unable to recall whether he had used cement or silicone for this purpose.
24. Mr Edstein confirmed that neither he nor anyone else to his knowledge had been tasked with checking the ongoing safety of the memorial. This was probably because it was the product of a one-off grant which had no provision for maintenance.

The construction of the memorial: evidence of Mr Hari Gohil

25. The Court had the benefit of an expert assessment of the manner in which the memorial had been constructed, prepared by Mr Hari Gohil. Mr Gohil is the principal structural engineer at Shreeji Consultant Pty Ltd. He has over forty years' experience in structural engineering, working mainly with sandstone structures in and around Sydney. He inspected the site of the collapsed memorial on 20 December 2016, and examined the headstone which was being held at Taree police headquarters.
26. Mr Gohil was asked to provide his opinion as to how and why the headstone had collapsed. He prepared two reports dated 25 March 2017 and 19 September 2018. He also gave evidence at the inquest.
27. In Mr Gohil's opinion the headstone collapsed because the manner of its fixing to its stone base was wholly inadequate. Put simply, the memorial had been constructed in such a way that its headstone was unable to resist the lateral forces expected to be imposed upon it.

28. It was Mr Gohil's evidence that the memorial did not comply with a general engineering standard which deals with structural stability. This was Australian Standard 1170.1 1989 – *Minimum design loads on structures*, which I will refer to as 'the 1989 Loading Standard'. This standard is further described later in these findings.
29. Mr Gohil explained that the 1989 Loading Standard and its current edition is designed to guide engineers, builders and stonemasons in estimating the loads to which different classes of structures are likely to be exposed, and must be able to resist. According to Mr Gohil, competent engineers, stonemasons and builders were expected to consult this standard and to identify within it a comparable type of structure, so as to ensure that their proposed structure had sufficiently stability.
30. By reference to the 1989 Loading Standard Mr Gohil calculated that the Anzac memorial needed a minimum anchor force of 7.12kN to resist the forces that would be expected to be imposed upon it under normal operational usage. In fact however it had been provided with nothing like this amount of anchor force. This was largely because the metal dowels which were intended to align the headstone to its base had been coated in silicone to fix them to the surrounding stone. Eventually the silicone had detached from each hole, causing the dowels to fail.
31. Based on his experience and training, Mr Gohil considered the dowels should have been fixed not with silicone, but with a chemical epoxy agent or a cement based grout, either of which would have been more durable and less flexible. Silicone by comparison did not percolate outwards into the sandstone to provide a sufficient degree of adhesion. In his experience, silicone was not generally used to fix structural pins.
32. Mr Gohil stated further that the footprint on the stone sub base onto which the headstone was placed had not been laid with cement, contrary to what Mr Edstein had said in his statement. Only at the perimeter of the footprint had a cement mortar and silicone been used. Cement grouting in the interior of the footprint would have provided an additional degree of resistance to toppling, although not to a significant degree.

Findings as to the collapse

33. The inquest sought to resolve a number of factual matters about why the memorial collapsed. These are as follows:
- What material was used to coat the dowels and was it appropriate? Mr Edstein could not recall whether he had used cement or silicone as a fixing agent. As I have noted, Mr Gohil found the substance to be silicone, and was not challenged on this evidence. Nor was his evidence challenged that the properties of silicone made it inappropriate for this purpose, leading to the dislodgement of the headstone. I accept his evidence on these points.

- Whether a cement bedding had been used in the footprint on the stone sub base, as stated by Mr Edstein. Mr Gohil could find no evidence that this was the case. He explained that remnants of cement would still have been visible inside the footprint had it been laid throughout. The photographs accompanying Mr Gohil's first report, as well as the photographs taken by NSW Police's Forensic Services Group, support his evidence, which I accept.
 - Whether erosion of the memorial's sandstone had contributed to the collapse. Mr Gohil thought this was unlikely. It was true that moisture could break the binder in sandstone and cause particles to become loose. But this normally occurred on the surface of the sandstone, and not in its interior where the dowels were located. I accept Mr Gohil's opinion that weather erosion did not cause the dowels to de-bond.
34. Mr Gohil also thought it unlikely that cracking of the headstone's cement bed due to weathering had contributed to the collapse. He noted that the footprint had barely any cement bedding in the first place.
35. Mr Gohil's evidence as to why the memorial collapsed was cogent, well supported by the evidence, and largely unchallenged.
36. The evidence enables me to find that the Anzac memorial headstone collapsed because the manner of its fixing to its sandstone base was inadequate. The use of silicone as a fixing agent to secure the dowels to the surrounding stone did not provide sufficient adhesion. As a result the dowels were unable to resist the lateral forces to which the headstone was subject, causing the dowels to dislodge and the headstone to collapse.
37. Based on the evidence of witnesses at the Club that night, it is likely that in the period shortly before the headstone collapsed there were children climbing on top of it. This may have triggered its dislodgement. However this was not a significant focus of the inquest. Indy's family did not lay blame on the actions of children, recognising that these ought not to have caused a properly built structure to collapse in this manner.

What regulatory framework applied to the construction of the memorial in 1997? Are any changes to this process warranted?

38. Given my finding that the memorial collapsed because it was not designed and built in a manner that was structurally adequate, the question arises what regulatory oversight if any the Council exercised at the time, and whether any changes to this framework are warranted.

The consent pathway in 1997

39. Due to the passage of time since the construction of the memorial, it has not been easy for investigators to obtain details about how it came to be

approved. In many cases records no longer exist and people involved in the process have died. The facts which have been established are these.

40. On 18 February 1997 the Council received a Development Application for the construction of the memorial. This included sketches showing the dimensions of its base and headstone. The application did not include any detail which could form the basis for an assessment of its stability.
41. Soon afterwards the Council issued consent with conditions, including that a building application be submitted. However a week later the condition requiring a building application was removed.
42. There are no records known to be in existence which explain this decision. However as pointed out by Counsel for Mid Coast Council, even had a building application been required, at that time this did not mandate provision of engineering plans relating to the stability of a structure such as this. Furthermore, under the then current *Local Government Act 1993* and Regulations, there was an implied requirement that all buildings comply with the provisions of the Building Code of Australia 1990 (see clauses 25 and 52 of the *Local Government (Approvals) Regulation 1993*). This was an obligation on the building applicant and did not necessarily involve oversight by the Council.
43. The significance of this requirement, namely that building activities comply with standards set out in the Building Code of Australia, is that this would have required the designer or builder to consider the 1989 Loading Standard. This standard is referred to above in Mr Gohil's evidence. Although the applicable sections of the Building Code of Australia did not expressly cross-refer to this standard, they did require that a structure be capable of sustaining '*at an acceptable level of safety and stability ...the most adverse combinations of loads (including combinations of loads that might result in potential for progressive collapse); and other actions to which they might reasonably be subjected.*'
44. It was Mr Gohil's expert evidence that a competent builder or stonemason would have been aware of the above requirement, and that it necessitated referring to the 1989 Loading Standard and providing a structure with sufficient anchor force by reference to it.
45. I accept the evidence of Mr Gohil (and confirmed in that of Council witness Mr Paul de Szell, addressed below) that under the existing regulatory framework there was an implied obligation for the memorial to be constructed in such a way as to be able to resist loads determined in accordance with the 1989 Loading Standard. The memorial was not constructed in such a way. I accept further that in relation to the Anzac memorial, this obligation was not one which at that time required the oversight of the Council.

Consent pathway in 2018

46. The regulatory framework for building activities has substantially altered since 1997. What would the procedure now be, if the Committee wanted to build a memorial on the site at which the 1997 memorial stood?
47. The court heard evidence about this from two witnesses: Mr Paul De Szell, who is acting Director of Planning and Natural Systems with Mid Coast Council, and Ms Lynne Sheridan, Director of Codes and Approval Pathways at the Department of Planning and Environment.
48. Mr De Szell was of the view that for a memorial of these dimensions a process of Application and Construction certification would now be required. This is because in his opinion a structure of the design, size and scale of the Anzac memorial could not fall within the category of *'exempt development'*. Due to its minor impact, an exempt development does not require consent from a consent authority. Familiar examples are small building projects such as decks and driveways.
49. Mr De Szell explained that the *State Environmental Planning Policy (Exempt and Complying Development) 2008*, known as the 'Codes SEPP', specifies those developments which have the character of exempt developments. Relevantly these include:
- *'A landscaping development other than a retaining wall'*, governed by clauses 2.47 and 2.48 of the Codes SEPP
 - *'An outdoor sculpture or other form of freestanding artwork'*, governed by clauses 2.77 and 2.78 of the Codes SEPP.
50. In Mr De Szell's view the Anzac memorial would be of a character which fitted the first, but not the second category of exempt developments. But although it met the description in the first category, it would not meet the development standards specified therein in clauses 2.48(c) and (d). These include the requirement that it comprise masonry construction standing less than 1 metre from ground level. Therefore the Anzac memorial would not be an exempt development of this class.
51. According to Mr De Szell, the memorial could not be characterized as *'an outdoor sculpture or other form of freestanding artwork'*. Therefore it could not be an exempt development of the second class either.
52. If Mr De Szell's evidence about the proper characterisation of the memorial is accepted, the only approval pathway for a memorial of this size and location would be to submit a development application. If granted, the developer would be required to then seek a construction certificate on the basis of detailed engineering drawings. These would be assessed by the engineers of the consent authority with a view to ensuring structural stability. No construction work could commence on the development until this certification issued.
53. Ms Sheridan also provided evidence to the inquest as to whether under the current framework, the Anzac memorial would require a process of

development application and construction certification. She agreed with Mr De Szell's opinions regarding clauses 2.47 and 2.48 as they applied to this monument. That is, the memorial could be characterised as '*a landscaping development other than a retaining wall*', but it did not meet the requirement of clause 2.48(d), because it comprised masonry construction higher than one metre from ground level. In these circumstances it could not be an exempt development.

54. In contrast with Mr De Szell however, Ms Sheridan considered the memorial could also fit the character of '*any outdoor sculpture or other form of freestanding artwork*', governed by clauses 2.77 and 2.78 of the Codes SEPP.

55. This difference of opinion emerged as a significant issue, because unlike clause 2.48, clause 2.78 does not contain a height restriction in relation to masonry structures. If Ms Sheridan's opinion is accepted, a masonry structure of the same height as the Anzac memorial could be built as an exempt development, and not be subject to the requirements of a development application and construction certificate.

56. This raised the question whether a height restriction on masonry work should be inserted into the development standards in clause 2.78, similar to that in clause 2.48, so that masonry memorials of the same height as the Anzac memorial or greater could not be constructed as exempt development.

57. It is fair to note that stability safeguards do exist for exempt developments. Clause 1.16(a) of the Codes SEPP requires that an exempt development must '*meet the relevant deemed-to-satisfy provisions of the Building Code of Australia, or if there are no such relevant provisions, must be structurally adequate*'.

58. For exempt developments however, there is no oversight of compliance with clause 1.16(a) regarding whether, and how, structural adequacy is to be achieved.

Should there be an amendment to the Codes SEPP?

59. In her comprehensive submissions, Counsel Assisting the Inquest suggested there would be merit in recommending that the Department of Planning and Environment consider amending clause 2.78 of the Codes SEPP, by adding a provision imposing a height restriction on masonry structures falling within the description of '*outdoor sculpture or other form of freestanding artwork*'. The purpose would be to address the current situation whereby a masonry structure of the same height as the Anzac memorial could be built as an exempt development.

60. In considering such a proposal, the court needs to weigh the public interest in enhancing public safety, with that of ensuring as far as possible that unnecessary regulatory burdens and costs are not imposed on land owners and developers. In her evidence Ms Sheridan emphasised the flexibility that is afforded to land owners by the exempt development pathway.

61. However, the recommendation for a height restriction on masonry structures is not that all monuments be removed from the scope of exempt development. The recommendation would extend only to masonry structures of a height one metre or greater. Arguably this would not produce an unduly onerous regulatory burden.
62. The submissions made on behalf of Mid Coast Council adopted and supported the recommendations proposed by Counsel Assisting. In their submissions, Indy's family specifically supported the proposed recommendation, urging that it would enhance protection for members of the public in and around monuments. The Department of Planning and Environment declined to make a submission, and the proposed recommendation was not addressed in the submissions of the other parties.
63. I am persuaded that it is necessary and desirable to make the proposed recommendation. The evidence at inquest indicated that if classified as an outdoor sculpture, a masonry structure could be constructed as exempt development even if it had dimensions considerably greater than that of the Anzac memorial (up to 3 metres in height and 3 metres in diameter if in a residential zone, and up to 6 metres in height if installed in other zones). There would be no regulatory oversight of the structure's compliance with stability standards. This is anomalous and not in the interests of public safety.
64. For this reason I will make the recommendation that has been proposed.
65. I now consider whether there existed standards for the construction of the memorial; whether they were complied with; and whether existing standards are adequate for public safety.

Was the memorial subject to any standards for construction in 1997 and if so were they complied with?

66. The evidence established that in 1997, as now, there did not exist any construction standards applying specifically to memorials such as the 1997 Anzac memorial.
67. However as noted above, there did exist an Australian Standard that was generally relevant and applicable to the memorial's construction, namely the 1989 Loading Standard. It was Mr Gohil's evidence, supported by that of Mr De Szell, that under the existing regulatory framework there was an implied obligation for the memorial to be constructed in such a way as to be able to resist loads determined in accordance with this standard.
68. As I have found, the memorial was not constructed in a way which enabled it to comply with this standard. Using the 1989 Loading Standard as a reference point, the Anzac memorial had not been provided with sufficient anchor force to resist the forces expected to be imposed upon it under normal operational usage.

69. The court heard that in addition to the 1989 Australian Loading Standard, other Australian Standards were relevant to the construction of the memorial as points of reference. These were AS 4204:1994 *Headstones and Monuments* [AS 4204], and AS 4425 *Above ground burial structures*. These standards do not technically apply to structures outside the cemetery setting. But in Mr Gohil's opinion it would have been proper for a designer or builder to cross reference these for a comparable structure. By way of example, clause 2.8 of AS 4204 provides that pointing and grouting materials should contain cement or other material '*of equivalent durability*'. As I have accepted, silicone could not provide the durability equivalent to cement.

Are existing standards of construction for such structures adequate to meet the needs of public safety?

70. The current edition of the 1989 Loading Standard is AS/NZS 1170.1 2002 2016. It is not materially different to the 1989 version.

71. Counsel for the Henderson family Ms Gerace noted that AS 4204 and AS 4425 are currently under review. She submitted that this presented an opportunity to consider whether its operation should be extended to comparable structures outside the cemetery setting. Alternatively, could there be utility in developing a new standard that applied specifically to monuments outside the cemetery setting?

72. The inquest heard evidence about the process involved in preparing a new Standard and bringing it into force. Mr Adam Stingemore, General Manager of Strategy and Engagement at Standards Australia Ltd, explained that his agency does not initiate proposals for the development of standards. It relies on stakeholders to submit a proposal which demonstrates net benefit and broad stakeholder support.

73. When a standard is developed, the standard of itself does not create an obligation to comply. This is created when governments choose to reference the standard into legislation, or when the standard is made the condition of planning consents or contracts.

74. According to submissions made on behalf of Standards Australia, due to the existence of relevant and applicable Australian Standards there was not a need in this case for new standards to be developed or existing ones to be extended. Counsel for Standards Australia relied upon Mr Gohil's opinion, strongly expressed at the inquest, that there was no practical need for a specific code for memorials constructed outside the cemetery setting. In Mr Gohil's opinion the current edition of the 1989 Loading Standard provides sufficient guidance as to stability, together with the reference points provided by AS 4204 and AS 4425. This was also the submission of Counsel Assisting.

75. I accept the submission of Counsel Assisting, that on the evidence heard at inquest there already exists a current engineering standard which guides the construction of structures such as the Anzac memorial. This standard has

been incorporated into the consent pathway processes, as described above. Other standards, namely AS 4425 and AS 4024, serve as reference points for memorial construction. Taken together these provide sufficient guidance for the stability and durability of such structures.

76. For the reasons given above, in my view it is not necessary or desirable to make any recommendations to extend existing Australian Standards in this area or to develop new ones. For the same reasons there would not be utility in providing a copy of these findings to the stakeholders involved in the current review of AS 4204, as proposed in the family's submissions.

Was anyone responsible for maintenance of the memorial? If not, should there be changes in this area?

77. None of the witnesses giving evidence at the inquest could recall that any maintenance of the memorial was carried out after its construction. There was no evidence of a requirement upon any person or body (for example the Council) to conduct such inspection and maintenance activities.

78. It was Mr Gohil's evidence that a properly constructed memorial would not require ongoing maintenance.

79. The court heard that as a result of Indy's death, the Mid Coast Council has commenced a process of identifying and inspecting all monuments on council-owned and council-controlled land within its area, including monuments inside cemeteries. The project will document all such structures, then perform inspections of their stability. This is a very welcome step. And it may provide comfort to Indy's family to know that it could help to prevent such a terrible thing happening to another family.

80. Should the Council undertake to carry out this program in relation to monuments on privately-owned land as well? Mr De Szell did not support this proposition. This, he said, was the responsibility of the land owner. In addition, as well as the costs of such an enterprise there would likely be practical difficulties in locating monuments on private land and accessing them for inspection.

81. I accept it is not necessary or desirable to make such a recommendation. However I commend Mid Coast Council for its initiative in identifying and inspecting monuments on council-controlled land. I would like to encourage other local councils to consider adopting this measure. I intend to adopt the proposal of Counsel Assisting, that a copy of these findings be provided to the Local Government Association so that the Mid Coast Council's inspection project can be considered by other member councils.

Conclusion

82. To Indy's family I offer the sincere sympathy of everyone at the Coroners Court for the tragic loss of their little girl. Although they will always mourn for

her, I hope that this inquest has helped to answer some of their questions, and gives them some hope for change.

83. It was very moving to hear that after Indy died, with the Council's assistance a special little memorial has been built in her honour. It is a timber look out platform built on the coast line nearby, for people to use for whale watching. I hope that visiting this special place brings some comfort to Indy's family

84. I thank the excellent support provided by Counsel Assisting the inquest Ms Mitchelmore SC and by Ms Natoli of NSW Crown Solicitors. I thank also the representatives of the parties for their assistance, and all those who provided evidence to the inquest. Thanks are also due to the Officer in Charge of the investigation, Detective Sergeant Natalie Antaw for her comprehensive brief of evidence and her assistance throughout the inquest.

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.

Identity

The person who died is Indy Henderson, born 3 February 2013.

Date of death:

Indy Henderson died on 26 November 2016.

Place of death:

Indy Henderson died at Manning Base Hospital, Taree NSW 2430.

Cause of death:

Indy Henderson dies of multiple crush injuries to the chest and abdomen.

Manner of death:

Indy Henderson died as a result of the collapse of a sandstone headstone which had not been properly affixed to its base.

Recommendation pursuant to s82

To the Minister for Planning and Environment (NSW):

That the Department of Planning and Environment consider amending the development standards in clause 2.78 of the *State Environmental Planning Policy (Exempt and Complying Development) 2008*, known as the 'Codes SEPP', to provide that a development not comprise masonry construction higher than one metre from existing ground level.

I close this inquest.

E Ryan

Deputy State Coroner

Glebe

Date

17 December 2018