



# **CORONERS COURT OF QUEENSLAND**

## **FINDINGS OF INQUEST**

**CITATION:** **Inquest into the deaths of Troy James Mathieson and Hughie Kirk Douglas Morton**

**TITLE OF COURT:** Coroners Court

**JURISDICTION:** TOWNSVILLE

**FILE NO(s):** 2019/561, 2019/562

**DELIVERED ON:** 28 April 2022

**DELIVERED AT:** BRISBANE

**HEARING DATE(s):** 16 August 2021, 14-15 September 2021; written submissions 11 October 2021 to 8 November 2021.

**FINDINGS OF:** Terry Ryan, State Coroner

**CATCHWORDS:** Coroners: inquest, death in custody, suspected offending, avoiding being placed in custody, flooding, culvert design, grates, drowning, whether death preventable.

## REPRESENTATION:

Counsel Assisting:	Ms Melia Benn
Family:	Ms Angela Taylor, ATSILS
Commissioner of Police:	Mr Ian Fraser, QPS
Townsville City Council:	Ms Sally Robb, instructed by Clayton Utz.
Officers Davies, Wylie, Stallard, Matheson and York:	Mr Calvin Gnech, Gnech and Associates
Inspector Roger Whyte:	Mr Justin Greggery QC instructed by Purcell Taylor Lawyers.

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## Introduction

1. Troy Mathieson and Hughie Morton were young Aboriginal men. They both passed away in flood waters early on 4 February 2019 at Aitkenvale in Townsville. They were aged 23 and 21 years respectively.
2. At 7:20pm on 3 February 2019, the water level in the Ross River Dam had reached 248% of full supply volume. By 8:30pm all gates were fully open, with a peak discharge of 1,888m<sup>3</sup>/s. The dam level peaked at 43.03m (251% of full supply volume) at 11:50pm on Sunday 3 February.<sup>1</sup>
3. As a result of increased flows within Ross River, river flows broke the banks within the Aitkenvale area sometime in the afternoon/early evening of 3 February 2019. The peak of these flows from the Aitkenvale breakout is estimated to have occurred between 8:00pm and 9:00pm on 3 February 2019, based on stream level-gauge records.<sup>2</sup>
4. A disaster had been declared under the *Disaster Management Act 2003* after extensive flooding as a consequence of the extreme monsoon event that had commenced in late January 2019. Several thousand homes were inundated, including many in the suburb of Aitkenvale. It was reported to be the largest rainfall event in 120 years. There had also been over 700 calls for police assistance in the Townsville area on 3 February 2019.
5. At around 3:30am on 4 February 2019 Troy and Hughie were interrupted by an unmarked police vehicle while they were on the premises of the Dan Murphy's store at Aitkenvale. After police arrived, they jumped over a fence at the rear of the property and entered a flooded drain. The depth of the water in the drain was approaching 2 metres, submerging the culvert entrance. The flood waters pushed them into the pipes in the culvert that ran under Ross River Road and exited near the Aitkenvale Library on Petunia Street. Their bodies were found in that location on 5 February 2019.

## The investigation

6. The investigation into the circumstances leading to these deaths was conducted by Detective Acting Sergeant Neil Parker from the Queensland Police Service, Ethical Standards Command (ESC), Internal Investigations Group (IIG).
7. After being notified of the deaths a team of investigators from the ESC were deployed to investigate the actions of police involved in the incident. Two members of the Crime and Corruption Commission were also in attendance to overview the ESC investigation.

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<sup>1</sup> Independent Review of Ross River Flooding, February 2019 - <https://www.igem.qld.gov.au/monsoon-trough-rainfall-and-flood-review>

<sup>2</sup> Exhibit H1, p16

8. The investigation was informed by statements and recorded interviews with all police officers involved and Troy and Hughie's families.
9. Relevant sections of the QPS Operational Procedures Manual were examined. Forensic analysis was conducted, and photographs were taken of the scene. All the police investigation material was tendered at the inquest, including dash-cam and CCTV footage.
10. Full internal autopsy examinations, with associated testing, were conducted by Senior Staff Specialist Forensic Pathologist, Dr Botterill. Further photographs were taken during this examination.

## **The inquest**

11. These deaths were considered to have occurred in custody as Troy and Hughie were avoiding being placed in custody when they died.<sup>3</sup> They were also deaths that happened in the course of a police operation. An inquest was mandatory under the *Coroners Act 2003*.<sup>4</sup>
12. At a pre-inquest conference on 16 August 2021, those granted leave to appear at the inquest were asked to provide written submissions about the proposed issues to be examined during the inquest, the brief of evidence and the witnesses to be called. Ultimately, in addition to the findings required by s45 of the *Coroners Act*, the following issues were explored at the inquest:
  - (a) Whether having a grate installed on the culvert would have been outcome changing; and
  - (b) Whether the decision to categorise Troy and Hughie as wanted persons, instead of missing persons, was outcome changing.
13. A view of the scene was conducted on the afternoon of 13 September 2021. There was no water in the drain and culvert at that time. The inquest was held on 14 and 15 September 2021 in the Townsville Court. Twelve witnesses gave evidence over the course of the two-day hearing. The matter was adjourned for written submissions.
14. The following witnesses gave oral evidence at inquest:
  - Mr Russell Parker
  - Senior Constable Warren Davies
  - Senior Constable Simon Wylie
  - Senior Constable Grant Stallard
  - Senior Sergeant Joe Matheson

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<sup>3</sup> *Coroners Act 2003*, s 10(1)(c)

<sup>4</sup> s 27

- Inspector Glen Doyle
- Inspector Roger Whyte
- Senior Constable Michael Turner
- Senior Constable David York
- Detective Acting Senior Sergeant Neil Parker
- Dr Botterill, Senior Staff Forensic Pathologist
- Mr Grant Witheridge, Director of Catchments and Creeks Pty Ltd

15. I am satisfied that the oral evidence given at the inquest together with the documentary evidence is sufficient to be able to make each of the required findings in respect of both deaths. I also received helpful written submissions from Ms Benn and from those given leave to appear at the inquest which were of considerable assistance in the preparation of these findings.

## The evidence

### Background

16. Troy and Hughie were cousins and Russell Parker was Hughie's brother. They had grown up together on Palm Island. Russell told investigators that he believed both Troy and Hughie knew how to swim, but he had not seen them swim.<sup>5</sup> All the men lived around the area and knew the culvert at the back of Dan Murphy's.<sup>6</sup>
17. Both Troy and Hughie's parents attended the inquest as well as aunts, uncles, siblings and cousins from both sides of the family. Many travelled from Palm Island and Charters Towers to be present at the inquest.
18. At the conclusion of evidence, Ms Taylor read out the following statement on behalf of Troy's family:

*"He [Troy] was known as a happy-go-lucky fella, the most outgoing person I know. He was also independent, and travelling back and forth from Palm to Townsville, he had touched so many hearts with his loving spirit. I can say so many good things about him. There was never a dull moment when he was around. Also known as a comedian, always cracking up jokes, Troy loved his family and friends, nieces and nephews and extended family. Troy also was a good role model in the area he grew up in and also set a good example for the younger cousins and kids. He is sadly missed and never will be forgotten within our hearts and mind and our community.*

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<sup>5</sup> Exhibit B5 and B5.1.

<sup>6</sup> *ibid*

*...Troy broke so many hearts when we received the bad news. We are so confused why he has left so sudden, but we hope to see a good outcome and how questions to be answered. We put our faith in God's hands, our creator, our old people who have been and walked this land before us."*

19. At the conclusion of evidence Ms Taylor read out the following statement on behalf of Hughie's family:

*"Our beloved son, nephew, brother, cousin, Mr Hughie Morton had the most beautiful soul. He was a loving and caring young man. The life he lived was up and down but always filled with love. Our love towards Hughie overcame all of the obstacles he faced. He was a comical young man, always had something to laugh and yarn about. Hughie loved football and music. His love for his family was his life, as he breathed and lived. Family, his mother, was his greatest love.*

*This has left both parents heartbroken and life an empty shell for both and all of his family and especially the community of all indigenous peoples."*

20. I extend my condolences to both families.

## **Events Leading up to the Deaths**

21. On 4 February 2019, Troy, Hughie, Russell and another male, Edward, were at Hughie's mother's house.<sup>7</sup> She lived at 192 Ross River Road in Aitkenvale, a short walk to Dan Murphy's. The men went looking for a place to break into to get cigarettes and alcohol. Russell told investigators they first went to the Vincent shopping centre, but they decided not to break in there. They then tried a number of other places in the area but were unsuccessful. After an alarm went off, they were walking around killing time. On the way to Dan Murphy's, Edward left the group to go home.
22. CCTV footage was played during the inquest. Russell identified the men on the footage walking through the carpark at Dan Murphy's. He confirmed he could be seen holding a bag that contained bolt cutters and clothes. When they arrived, there was a gate that had a padlock on it as part of a steel fence to the left of the store. Troy and Hughie helped Russell use the bolt cutters to cut the lock. Russell told the inquest the plan was to exit back through the same steel fence.<sup>8</sup> He said the group were "wasted" from drinking. They had crossed over the creek on a pedestrian bridge near the library on the way to the shops. While there was water over that bridge there was no water near where they were walking on the banks of the creek.

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<sup>7</sup> Transcript Day 1, p7

<sup>8</sup> Transcript Day 1, p16

23. After going through the gate the men climbed over a wooden fence to get into the back area of Dan Murphy's. They found a roller door that they thought would lead them into the shop. However, when they opened it, they realised it was only a storage room. They could not see a way through that roller door into the main shop. They closed that door and thought they would try another door. Russell recalled seeing a CCTV camera and the alarm being activated.<sup>9</sup>
24. Russell told investigators that they were about to try another roller door when he saw a car light. He stated, '*a cop light, I don't know if it was a cop light but saw a car light*'. Russell moved into the dark to hide from police because he did not think he was fast enough to jump the fence. He stayed as quiet and still as possible in an effort not to be caught by police.<sup>10</sup>
25. At approximately 3:31am, police were alerted to the attempted break in after the alarm had been activated at approximately 3:25am.<sup>11</sup> Police responded and at approximately 3:36am, the first police car driven by Senior Constable Simon Wylie entered the second driveway at Dan Murphy's. It was an unmarked four wheel drive. The first driveway near the culvert was submerged. Senior Constable Warren Davies and Senior Constable Grant Stallard were in the police car with Senior Constable Wylie. They were on their way back to the station to finish their shifts.
26. Senior Constable Davies had been deployed assisting people to evacuate flood waters using Townsville City Council trucks before arriving. He got out of the car from the rear-passenger seat at the front of Dan Murphy's. He went across the front of the building towards the steel fence to establish a cordon.<sup>12</sup>
27. The police vehicle that Senior Constable Wylie was driving was fitted with a dashcam<sup>13</sup> and the footage shows the car pulling up to a timber fence at the side of Dan Murphy's that had a trolley pushed up against it. Troy and Hughie are seen to use the trolley to assist them to jump the fence. As they went over the fence a paling was damaged which left a small gap. Senior Constable Stallard exited the car and ran to the fence. Senior Constable Stallard said that he could just see two figures running approximately five metres from the fence and Senior Constable Davies at the other side.<sup>14</sup> Senior Constable Stallard began removing the palings to gain access to the other side.

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<sup>9</sup> Exhibit B5.1, Page 7.

<sup>10</sup> Exhibit B5.1, Page 7, Transcript Day 1, p11. In his statement to police and in oral evidence Russell was adamant he attempted to jump the fence with Hughie and Troy but Exhibit D1 clearly shows only Hughie and Troy negotiating the fence.

<sup>11</sup> The alarm was remotely monitored by Woolworths incident management who remotely viewed the CCTV of the site.

<sup>12</sup> Transcript Day 1, p31

<sup>13</sup> Exhibit D1

<sup>14</sup> Senior Constable Davies' legal representative made a formal admission on Day 2 of the inquest. In the dash cam footage at 1:06 mins there are images of two people walking past followed by Senior Constable Davies.

28. The car headlights went off briefly and Senior Constable Stallard recalled calling out to Senior Constable Wylie to turn the lights back on. Senior Constable Stallard removed more palings until he could fit through the gap. He did not recall hearing a splash and was using his torch to look around.<sup>15</sup> He saw Senior Constable Davies walking towards Ross River Road along a fence line approximately 60 metres away. He saw the water travelling up on the walking path and recalled that it was 'quite flooded'. Senior Constable Stallard stated that he could not see what was under the water.<sup>16</sup> The last time Senior Constable Stallard saw Troy and Hughie was when he peered through the fence.
29. Senior Constable Davies, who had left the car at the front of the shop to meet Troy and Hughie from a northerly direction, was the last person to see them alive. He was standing outside a steel bar fence, not the gate side, and he heard someone say words to the effect of, "*they are coming for you*". He leaned forward and looked to his right where he saw two men approximately two metres from him. He shouted "*Police*" and recalled that at that point Troy and Hughie stopped and then went into the water.<sup>17</sup> There was no lighting, and his view was obscured by bushes.
30. There are two large trees between the wooden fence and the steel fence on the banks of the culvert. Senior Constable Davies said that he saw Troy and Hughie get close to the tree closest to the water. They entered the water and began to traverse across the water.<sup>18</sup> He explained that he did not think the water was very deep as he could see their upper bodies and could see them get as far as the fifth or sixth pipe (when looking from the left-hand side).
31. Senior Constable Davies recalled watching Troy and Hughie move across the flood waters towards a chain link fence (above the culvert) which was on an adjoining property. Senior Constable Davies had lost sight of Troy and Hughie as he was moving to the gate side of the fence. He believed at that point they were up against the chain link fence, although he stated he did not see them grip onto the railing. He could see dry ground on the other side of the water, as well as shrubs along the back of the fence of the adjacent pool shop.<sup>19</sup> Senior Constable Davies left that spot and walked along the side of the pool shop. He then walked up to the chemist approximately 100 metres away and climbed up on an industrial bin to wait. He told the inquest he was expecting Troy and Hughie to come in his direction after exiting the water.

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<sup>15</sup> Exhibit B6.1 Page 9.

<sup>16</sup> Transcript Day 1, p68

<sup>17</sup> Transcript Day 1, p32

<sup>18</sup> Exhibit E3, photo 36. Transcript Day 1, p32

<sup>19</sup> See photos in Exhibit E1 and E3

32. Senior Constable Wylie, the driver of the police car, was having trouble re-locking the car. After some time, he called for crews to assist setting up a cordon and then walked through the gap in the fence. He walked past the trees and met Senior Constable Stallard and had a conversation with him. Senior Constable Stallard had not seen Troy and Hughie. Senior Constable Wylie walked up to the culvert and in his words 'shimmied' across the headwall of the culvert. He made it across a short way and believed if he could do that with all the gear he was wearing, including thick and heavy shoes, that Troy and Hughie would have been able to successfully cross the culvert in the same way.<sup>20</sup>
33. Senior Constable Wylie explained that he got to a point where he thought that if he was to fall, he was going to end up in the water. He did not feel it was safe, so he moved off the headwall and yelled out to who he thought were officers coming down Alamein Street. He asked the officers to enquire with the adjoining house to see if the residents had seen or heard anyone in case Troy and Hughie were laying low in their yard. Senior Constable Wylie was aware of what the drain normally looked like and wanted to get an idea about whether or not Troy and Hughie had succumbed to the water or '*been dragged under*'.<sup>21</sup>
34. Senior Constable Wylie contacted District Duty Officer Senior Sergeant Joe Matheson (DDO Matheson) to report to him what was occurring. He initially tried to radio him, but he was busy. He then used his mobile phone and was able to speak to him. Senior Constable Wylie's evidence was that he told DDO Matheson that Troy and Hughie had gone over the fence line and disappeared. He did not know where they had gone and there was a possibility that Troy and Hughie had '*succumbed to the flood water*'.<sup>22</sup> DDO Matheson told the inquest that Senior Constable Wylie had called him and told him that a person or two persons may have entered a stream.
35. Senior Constable Davies was called back to the fence area where he could see the gate was now open. Until that point Senior Constable Davies was not aware that he could have walked through the gate. DDO Matheson arrived at the scene. Senior Constable Davies told investigators that he told DDO Matheson that he saw Troy and Hughie enter the water. He could see them up to their waists and he saw them go across the water. He said he saw them go to about the second post on top of the headwall before he lost sight of them. He also recalled thinking at the time that there would be grates fitted to all drains, and he discussed that belief with DDO Matheson.<sup>23</sup>

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<sup>20</sup> Transcript Day 1, p56

<sup>21</sup> Transcript Day 1, p57

<sup>22</sup> *ibid*

<sup>23</sup> Exhibit B1.2, Page 24

36. DDO Matheson's evidence was that the water was very murky, and he could not see through it. He also could not see any of the barrels or openings of the drainpipes. DDO Matheson said that he had tested the water by throwing a plastic milk bottle into the stream. The milk bottle went toward the concrete headwall where he *'just saw it float'*.<sup>24</sup> DDO Matheson explained that he was expecting to see a whirlpool or an eddy.
37. Based on these observations and his discussions with the officers, DDO Matheson believed that Troy and Hughie had escaped or gone through the water, and that police were looking for suspects or wanted men as opposed to missing persons. He then directed the officers to make inquiries at the residences of relatives.
38. While DDO Matheson was talking to the officers, Senior Constable Stallard spotted Russell. Senior Constable Wylie assisted Senior Constable Stallard in arresting Russell. Russell was compliant despite officers not having hand cuffs and he was taken to the watch house.
39. DDO Matheson reported the incident to the Regional Duty Officer, Inspector Glen Doyle (RDO Doyle), at approximately 4:00am.<sup>25</sup> RDO Doyle's evidence was that DDO Matheson told him they had located one person and could not locate at least one person, with the "possibility" that one person had entered the water and not come out. The two discussed whether there would be a Significant Event Message logged and the decision was made that one would not be logged because DDO Matheson was of the opinion that Troy and Hughie had escaped.<sup>26</sup> Police undertook inquiries as part of the investigation including attending at the home of Hughie's mother, where they spoke to an unknown person who was intoxicated and unable to assist. Police searched the home to no avail.
40. RDO Doyle told the inquest that essentially his decisions were based on the information DDO Matheson gave him, which was that no one had entered the water, and that there was only a single drainpipe that was 60 centimetres in circumference.<sup>27</sup> He advised DDO Matheson to not to report the incident as a significant event message until it was established that the person was missing and not just hiding from police.
41. RDO Doyle also gave evidence that he was told by DDO Matheson that the exit point of the drain was near the Aitkenvale library and he requested DDO Matheson to search that area. However, no search was done of that area on the morning of the 4 February 2019.

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<sup>24</sup> Transcript Day 1 Page 82,

<sup>25</sup> At approximately 11 pm on 3 February 2019 RDO Doyle also took on the role of Commissioned Duty Officer

<sup>26</sup> Transcript Day 1, Page 86

<sup>27</sup> Transcript Day 2, Page 6.

42. At 5:30 am on 4 February 2019 Inspector Roger Whyte resumed command and was given a verbal briefing from Inspector Kitching about what had occurred in the 6.5 hours he was absent.<sup>28</sup> This briefing included the attempted break and enter at Dan Murphy's. Inspector Whyte directed that an investigative cell be established at some time prior to 8:00am on 4 February 2019.<sup>29</sup>
43. Around this same time Inspector Whyte reviewed the ITAS activity log and felt the need to summon the two senior sergeants who had taken over from DDO Matheson. Inspector Whyte was copied into an email from Detective Sergeant Anthony Flanders regarding all of the inquiries that had been completed in relation to Troy and Hughie.<sup>30</sup> Inspector Whyte's evidence was that the inquiries listed in the email were part of the inquiries required to satisfy himself that the two persons were missing persons in accordance with the definition in the *Police Powers and Responsibilities Act 2000*.
44. Inspector Whyte then directed that a search and rescue ('SAR') operation commence.
45. On 4 February 2019 at 12.23pm, Senior Constable David York, Search and Rescue Coordinator was advised that there may be two missing persons who had entered flood water in the early hours of the morning. Police made a request for the Rescue Helicopter (R521) to undertake an aerial search of the drainage system connected to the location where Troy and Hughie had entered the flood water.
46. Police were also tasked to walk along the edges of the drain system for approximately 3.5km from the Aitkenvale Library to Townsend Street.
47. The aerial search by R521 confirmed that the visibility over the search was good but there were numerous other drains and culverts that were not able to be checked from the air. The foot search was not able to be completed before dark and so a further search was planned for the morning of 5 February 2019 with additional support from the SES, QFES, and Police Divers.
48. At 11:00 am on 5 February 2019, Senior Constable Michael Turner, principal police diver, attended the drain area and commenced his search at 11:45 am. Four minutes later, at 11:49 am, Senior Constable Turner located Hughie's body in water less than one metre deep. He continued the search and noticed the water started to make a slow bend and at 12:02 pm he located Troy's body around 210 metres downstream from Hughie.<sup>31</sup>
49. Inspector Whyte then arranged for the Ethical Standards Command (ESC) to be engaged.

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<sup>28</sup> Inspector Whyte had been relieved of duty at 11 pm on 3 February 2019.

<sup>29</sup> Transcript Day 2, Page 23

<sup>30</sup> Exhibit B9.1.

<sup>31</sup> The locations where the bodies were found are Exhibit E2

## Ethical Standards Command Investigation

50. Detective Acting Senior Sergeant Neil Parker (DASS Parker) of the Internal Investigation Group investigated the circumstances and completed a report to the Detective Superintendent dated 25 June 2020, over a year after the deaths.

51. His ultimate conclusions were:<sup>32</sup>

- a. there were no suspicious circumstances associated with the deaths;
- b. there was no evidence to support a criminal prosecution of any person; and
- c. there was no evidence to support any breach of discipline or misconduct against any officers involved.

52. His opinion was that their deaths were not preventable:

*“The circumstances of the deaths of Troy and Hughie were not preventable by the attending police as the action of Troy and Hughie could not have been prevented and the consequences of them entering the water could not reasonably be mitigated by specialist police or QFES after the fact as it was highly likely that they had died quite quickly after being sucked into the drains. The only way the deaths could have been prevented was if both Troy and Hughie had chosen not to enter or cross the flood water.”*

53. DASS Parker adopted those findings and conclusions in oral evidence.

## Autopsy results

54. Dr Paull Botterill conducted an autopsy examination of Troy and Hughie on the 11th February 2019.

55. With respect to both Troy and Hughie, Dr Botterill noted that post-mortem examination showed skin surface changes in keeping with water immersion. Troy had scratches over the side of the left leg. Both men had bruising under the skin of both sides of the forehead and right top of the scalp, an excess of fluid in the lungs, and body changes in keeping with after death decay related effects.

56. Further investigations were subsequently performed in relation to Troy. Testing for drugs and poisons showed the presence of inactive cannabis metabolite and a blood alcohol of 100 mg/100 ml (i.e. a blood alcohol of 0.10 in road traffic terms). Dr Botterill concluded that the cause of Troy's death was drowning/immersion.

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<sup>32</sup> Exhibit A3, Page 27

57. Further investigations in relation to Hughie included microscopic examination showing fluid within the lungs. Testing for drugs and poisons showed the presence of active cannabis metabolite and methylamphetamine in the blood. The blood alcohol level was 12 mg/100 ml (i.e. a blood alcohol of 0.01 in road traffic terms). Dr Botterill concluded that the cause of Hughie's death was drowning/immersion, although the presence of methylamphetamine may have impacted upon his behaviour prior to the death.

## **Findings required by s. 45**

58. I am required to find, as far as is possible, the medical cause of the deaths, who the deceased persons were and when, where and how they came by their deaths. As a result of considering all the evidence, including the material contained in the exhibits, I make the following findings:

### **Troy Mathieson**

<b>Identity of the deceased:</b>	Troy James Mathieson
<b>How he died:</b>	Troy entered flood waters flowing through a culvert while trying to avoid being placed into police custody. The force of the water forced Troy through the culvert. He drowned at an unknown time, likely within minutes after being forced under water.
<b>When he died:</b>	4 February 2019
<b>Where he died:</b>	In the vicinity of the culvert adjacent to 4 Petunia Street, Aitkenvale.
<b>What caused his death:</b>	Drowning/immersion. The other significant condition contributing to death, but not related to the drowning, was alcohol intoxication. <sup>33</sup>

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<sup>33</sup> Exhibit A1.2, Page 6.

## Hughie Morton

**The identity of the deceased:** Hughie Kirk Douglas Morton

**How he died:** Hughie entered flood waters flowing through a culvert while trying to avoid being placed into police custody. The force of the water forced Hughie through the culvert. He drowned at an unknown time, likely within minutes after being forced under water.

**When he died:** 4 February 2019

**Where he died:** In the vicinity of the culvert adjacent to 4 Petunia Street, Aitkenvale.

**What caused his death:** Drowning/immersion. The other significant condition contributing to death, but not related to the drowning, was methamphetamine intoxication.<sup>34</sup>

## Conclusions on Coronial Issues

### ***Whether having a grate installed on the culvert would have been outcome changing.***

59. The history of the culvert and the easement located adjacent to Dan Murphy's was the subject of evidence in the inquest. In the early 1980s the culvert was designed and constructed by the Department of Main Roads.<sup>35</sup>
60. The current car park connected to Dan Murphy's was constructed with the culvert in the position that it is found in today.<sup>36</sup> The Townsville City Council ('TCC') noted in its response that it did not appear that any major works had been done to the infrastructure since it was constructed in the 1980s.
61. The easement immediately before the entry to the culvert is granted to TCC. TCC is also '*responsible for the culvert, parts of the open channel in the culvert area, and the storm water drain*'. Included in those responsibilities is maintenance of the culvert. The TCC is also responsible for removing debris but the fencing and trees around the easement remain the responsibility of private property owners.<sup>37</sup> The properties immediately surrounding the drain and culvert are owned by six different entities, including individual residents.

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<sup>34</sup> Exhibit A2.2, Page 7.

<sup>35</sup> Exhibit 1, Townsville City Council response, 7 September 2021

<sup>36</sup> ibid

<sup>37</sup> ibid

62. TCC had not conducted any risk assessment of the area nor engaged a storm water engineer to carry one out in relation to the culvert and surrounding areas. There is no applicable legislation. The relevant guideline is the Queensland Urban Drainage Manual ('QUDM'). The QUDM operates as guidance only – it may or may not be referred to in Development Codes. There is no requirement in legislation, the Townsville City Plan or the QUDM for the TCC to conduct a risk assessment, including by a storm water engineer.<sup>38</sup>

63. TCC clarified that in determining the appropriateness of a risk assessment being conducted at the location of the Inquest (or any other location), TCC has regard to the Townsville City Plan which provides the following criteria in of section SC6.4.4.4.3 (emphasis added):

*(13) Barriers at inlet and outlets*

*Provision shall be made for the safety of the public including children in regards to the inlet and outlet of the stormwater system and should be based on the following criteria:*

- 1. no opening into an underground system shall be wider than 150mm except at head walls to pipes and box culverts;*
- 2. headwalls on the inlets and outlets to underground drains in which the drain is longer than 30m and has a cross sectional area greater than 0.5m<sup>2</sup> must be protected with handrails, guard rails or fencing which restricts easy access to the entry structure;*
- 3. trash screens or other forms of grates are not favoured across the front of inlets and are unlikely to be approved by council unless there is a tidal barrier on the outlet of the stormwater system – this may be considered by council;*
- 4. any grates over field inlet pits shall be set above the top of the pit so as to provide a 50mm gap between the top of the pit and the bottom of the grate. In areas of open space, marker posts must be used to identify each corner of the pit; and*
- 5. under no circumstances, should fixed barriers or grates be placed at the end of stormwater outlet.*

64. There is also no legislation or guideline that mandates the use of inlet grates/screens on culverts like the subject culvert or storm water pipes.

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<sup>38</sup> ibid

65. The court was assisted by the evidence of Mr Grant Witheridge of Catchments & Creeks Pty Ltd. Mr Witheridge is a civil engineer who specialises in hydraulics concentrating on creek engineering, water engineering and stormwater engineering.<sup>39</sup>
66. Mr Witheridge's evidence was important in understanding whether having grates or screens over the pipe inlets would have prevented Troy and Hughie from being forced into the pipes. Mr Witheridge undertook a review of the subject area by assessing photos that were included in the brief of evidence as well as attending the view of the scene.
67. Mr Witheridge was the last witness to give evidence at the inquest and observed all witnesses giving their evidence. Mr Witheridge commented at the commencement of his evidence that having heard all of the evidence, the assumptions he made in his reports were confirmed.
68. Mr Witheridge explained his opinion that most of the water flowing to the culvert would have been 'local run-off', and that event was in fact a creek event as opposed to a river event. Mr Witheridge's evidence was that Townsville was experiencing a major storm, not a minor storm which is what the stormwater inlet was designed for. Mr Witheridge also considered that *'the conditions that were faced that night were hydraulically the worst possible conditions that could have existed.'*<sup>40</sup>
69. All witnesses gave evidence that they could not see the culvert's barrels, that the water was lapping the headwall or going over the top of the culvert. Some witnesses observed water coming from the opposite direction from the car park. Mr Witheridge's evidence was that the water level was *'just submerged'* which meant the pipes were *'pretty much taking 100 percent of the flow.'* He said that this water level would be close to the most dangerous flow condition that this type of structure could have, as far as a person in the water was concerned.
70. In terms of the flow of water, Mr Witheridge's evidence was that the flow was *'subcritical flow'*. This meant that the highest velocity of water was at the surface in the middle of the drain. The velocity decreases as the water travels towards the banks and towards the bed. The top layer of water slows down and stops close to the headwall of the culvert. The effect of that was *'there is almost like an undercurrent forming close to a headwall.'* Mr Witheridge explained that a person standing five metres from the culvert would feel different forces than if they were standing three metres from the culvert. Mr Witheridge also stated that the water flowing into the culvert on the night would have appeared peaceful.<sup>41</sup>
71. Ultimately, Mr Witheridge concluded that a grate *may* have made a difference to the outcome of Troy and Hughie's decision to enter the water.

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<sup>39</sup> Exhibits G1 and G1.1

<sup>40</sup> Transcript Day 2, p62

<sup>41</sup> Transcript Day 2, p72

However, he would not have recommended installing a grate or a screen in this area when weighing up other competing factors.<sup>42</sup> Mr Witheridge said that installing a grate may in fact lead to more 'negative outcomes':

*if you placed the screen at this particular intersection, it would cause several complications and it would probably increase the likelihood of a loss of life on Ross River Road. So you would benefit in one respect, but you would pay a price as a – as a direct consequence of it.*<sup>43</sup>

72. I agree with the submission of Counsel Assisting that it is not possible to know if a grate would have been outcome changing after considering the different factors at play in the early hours of 4 February 2019, including but not limited to:

- the flow of the water,
- the unknown volume of debris under the top layer of the water,
- the drag effect of Troy and Hughie's clothing and their personal strength and swimming abilities.

**Whether the decision to categorise Mr Mathieson and Mr Morton as wanted persons instead of missing persons was outcome changing.**

73. Until Inspector Whyte considered all matters it was clear that all police witnesses were of the view that Troy and Hughie were suspected offenders and that they were looking for wanted men.

74. Mr Witheridge's evidence was that the soonest someone would have emerged from the other side of the 170-metre culvert that Troy and Hughie entered was one minute. As there was a junction chamber in the middle of Ross River Road it is possible that period would have been longer.

75. Senior Constable Turner who has been with the police diving unit for 10 years gave evidence that if he was in the same situation as Troy and Hughie, where he was suddenly underwater, he would not have been able to hold his breath for much longer than 30 seconds.

76. RDO Doyle's evidence was that even if Search and Rescue (SAR) had been able to attend, he estimated that it would have taken between 30 minutes and 45 minutes before they would have arrived at the scene before even contemplating the deployment of SAR personnel into the water. In addition, due to fatigue reasons SAR personnel had been stood down from duties at 4:00am on 4 February 2019.

77. Based on those two observations, I agree with submissions from Counsel Assisting that Troy and Hughie would likely have been deceased by the time they exited the culvert near the Aitkenvale library, or soon afterwards.

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<sup>42</sup> See Exhibits G1 and G1.2 and also Transcript Day 2, p68

<sup>43</sup> *ibid*

78. Even if Search and Rescue personnel had been able to enter the water within 30-45 minutes of the men going missing, it is likely Troy and Hughie would have already passed away.
79. I consider that regardless of whether Troy and Hughie were categorised as missing or wanted persons the outcome would not have changed.

## **Comments and recommendations**

80. Section 46 of the *Coroners Act*, insofar as it is relevant to this matter, provides that a coroner may comment on anything connected with a death that relates to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future.
81. Submissions on behalf of the next of kin proposed that I should make recommendations to address the lack of signage and preventative barriers to the culvert. It was submitted that the installation of signs and more appropriate barriers would be the most efficient way to address the risk the drain presents going forward; and the installation of better fencing surrounding the access points to the drain leading into the culvert would be prudent to minimise risks of entry to the culvert.
82. I do not accept that signage would have made any difference to the decisions of Troy and Hughie to enter the water on 4 February 2019. I also do not consider that it would have affected the risk assessments being undertaken by the attending police on that night.
83. When the drain and culvert were viewed in September 2021, there was no water present. The culvert had substantial fencing in close proximity. While there is access to the drain further upstream from neighbouring streets, I do not consider it necessary to recommend that all of those locations should be fenced off having regard to the potential unintended consequences of barriers that would restrict the natural flow of water into the drainage catchment. The Townsville City Council manages 201km of open drains.<sup>44</sup> The cost of fencing for each of those would be prohibitive.
84. Neither signs nor fences would prevent a person determined to enter the flooding drain from doing so.
85. The next of kin also submitted that I should recommend that the Queensland Government adopt legislation that follows the Queensland Urban Drainage Manual to standardise the approach to culverts across Queensland, and ensure culverts are as safe as possible. There was insufficient evidence before the inquest to justify a recommendation that the QUDM be given legislative force. Mr Witheridge's evidence was that mandating the use of 'inlet grates' or 'safety screens' on all pipe and culvert inlets would be "a bad thing for Queensland", potentially resulting in a range of adverse outcomes.

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<sup>44</sup> Exhibit H1, p2

86. The next of kin also made several submissions with respect to possible enhancements to policing operations including:

- The introduction of a flood water training module for QPS members to make them aware of the dangers water can present and to assist them in decision making when faced with flood waters;
- The establishment of a protocol to be followed when someone is seen entering floodwaters and not leaving. It was submitted that there should be an automatic assumption that a person is missing in flood waters if they are not seen leaving floodwaters and Police Search and Rescue are brought in to consult on the potential disappearance at the earliest opportunity, whilst land based enquires are being conducted.

87. The submission from the Commissioner of Police welcomed the submissions from the next of kin and noted the proposed recommendations. The Commissioner indicated that the proposed recommendations will be considered by the QPS as part of its review processes. As such I do not make a formal recommendation on those matters.

88. I close the inquest.

Terry Ryan  
State Coroner  
BRISBANE