



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of James Andrew Bennett**

TITLE OF COURT: Coroner's Court

JURISDICTION: Cairns

FILE NO(s): 2008/395

DELIVERED ON: 10 December 2010

DELIVERED AT: Cairns

HEARING DATE(s): 11/08/2010; 23/11/2010; 02/12/2010; 10/12/2010

FINDINGS OF: Kevin Priestly, Northern Coroner

CATCHWORDS: CORONERS: Inquest – Natural swimming hole within Council Reserve – drowning – effectiveness of warning signs and safety rails – need for exclusion zone.

REPRESENTATION:

To assist the Coroner	Ms Judy Collins
For Cairns Regional Council	Mr Doug McKinstry I/by Williams Graham Carmen Solicitors

FINDINGS

Profile

Mr Bennett was 23 years of age, having been born on 13 March 1985. He lived with his parents Andrew and Judy Bennett, together with his sister, in Bream, at a town situated south east of Hobart. In 2003 Mr Bennett joined the Royal Australian Navy, completed a Bachelor of Science while attending the Australian Defence Force Academy. In 2008, Mr Bennett joined HMAS Norman, a Mine Sweeper based in Sydney. He was active in sports and a good swimmer.

The Location

This death occurred at a location known as the Boulders; a popular swimming hole situated about 7km west of the township of Babinda on Babinda Creek. It is located at the foothills of Mt Bartle Frere and accessed at the end of Boulders Road.

On entry to the Boulders, there is a public car park and picnic area. There is a formed walking path, the Devils Pool Walk, that runs downstream adjacent to Babinda Creek. There are a number of lookouts or platforms from which visitors may view a series of huge granite outcrops, boulders and pools through which the creek flows. The creek is surrounded by rainforest.

The incident occurred at a location about 30m upstream from the Devils Pool and about 20m directly in front of the first Viewing Platform. In the appendix is an aerial view of the Boulders showing these specific locations.

The Devils Pool Lookout has a safety rail around the forward perimeter with signs warning visitors, in words and images, to stay inside the safety rail, the existence of extreme danger area beyond this point, and that many people have died in this narrow section of creek. The signs are posted in obvious locations and within full view of visitors to the platform.

At the point of entry to the Devils Pool Walk from the car park, similar warnings are given.

Surrounding Circumstances

On the afternoon of Sunday, 30 November 2008 Mr Bennett and three friends, Mr Adam Farley, Mr John Tuala, Mr Soi Tuala; met at the Boulders car park. Mr Bennett was travelling independently of the others.

The group walked downstream from the car park and picnic area on Devils Pool Walk to a location known as Devils Pool. From the Devils Pool Lookout, they saw several children, unaccompanied by an adult, jumping off rocks into a pool. They decided to venture beyond the lookout and sit down to watch the children. All members of the group climbed over or around the safety rail to which the warning signs were attached. The group stayed at this location about 10 minutes. They considered going for a swim but Mr John Tuala suggested they go back to the picnic area and swim there. The group started heading back but before returning to the walking track, they noticed a large calm pool with a massive rock to its left situated upstream of their position. Under that rock, the water was like a spa bath, bubbly whitewater. The location is commonly known to locals as the "washing machine". See photograph 1 in the Appendix.

Mr Adam Farley later reported to police that it didn't look dangerous. The group decided to swim here. Initially they sat down on a large nearby rock ledge. Shortly afterwards, Mr Bennett and Mr John Tuala went down to the water's edge, exploring the pools. Mr Farley followed Mr Bennett down to the water's edge and sat with his feet dangling in the water at a location where the outflow of water from the larger, calm pool dropped into the 'washing machine'. Mr Bennett entered the 'washing machine' and swam around in the calmer section. Mr Farley reports that he was about to get in himself when he saw Mr Bennett get pulled backwards towards white-water at the downstream end of the pool. He saw Mr Bennett try to grab an overhanging branch and heard it snap. Mr Farley raced around to the side of the pool nearest Mr Bennett to help. Mr Farley saw Mr Bennett struggling in the white-water, his face under the surface and the fingers of his extended arm just above the surface. Mr Farley moved to a position nearer to Mr Bennett and extended his leg towards him. As soon as he did, Mr Bennett struggled once or twice and then disappeared from view. Mr Farley found a six-foot branch and stuck it down into the pool. He also started yelling for help. The others in the group and other visitors to the location searched for Mr Bennett in nearby pools. Emergency services were contacted and Mr John Tuala and Mr Soi Tuala went back to the picnic area to await their arrival.

Emergency Response

At about 3:08pm the police from Babinda received notification of the emergency and responded to the Boulders. On arrival, both ambulance and police officers proceeded down the walking track to the first Viewing Platform. Mr Adam Farley told police what had happened. Several minutes had passed since the last sighting of Mr Bennett. While search efforts of those present continued, a request was made for the immediate deployment of the Swift Water Rescue Team from Qld Fire and Rescue Service. Babinda State Emergency Service was also requested to respond. All units responded and were deployed in the efforts to find Mr Bennett. Searches of the rapids were hampered by the difficult and dangerous conditions facing rescuers.

Over the following two days, SES crews continued to search the banks of Babinda Creek in hope of recovering the body of Mr Bennett.

At about 11am on Tuesday 2 December police officers participating in the search and rescue response saw what appeared to be a deceased body floating against a rock ledge in a deeper pool known as the Devil Pool, about 150m downstream from where Mr Bennett was last seen. The Queensland Fire Rescue Services Technical Rescue Unit and SES personnel attended the scene in support of Police divers who entered the pool and secured the body of Mr Bennett. At about 3pm that day, the retrieval team extracted the body from the creek.

No issue arises about the adequacy of the emergency services response.

Post Mortem Examination

On 4 December 2008 Dr Paull Botterill conducted a post mortem examination and concluded that the cause of death was due to drowning/immersion against a background of alcohol intoxication. Although toxicological testing of blood samples taken at autopsy revealed a spleen fluid alcohol level of 254 mg per hundred millilitres (in road traffic terms, equal to 0.25), Dr Botterill was unable to say what proportion of that alcohol level was attributable to post mortem decomposition.

Dr Botterill concluded his report stating that the history and circumstances are consistent with drowning, and no obvious alternative potentially lethal pathology was apparent at autopsy.

Mr Farley and Mr John Tuala reported to police that Mr Bennett did not appear intoxicated. While alcohol was consumed by Mr Bennett, it was only a small amount – about 1 stubby.

Given the circumstances in which Mr Bennett drowned, I find it unlikely that intoxication played any role either in his decision to enter the pool or in his capacity to extricate himself or otherwise survive a period of prolonged immersion. For these reasons, I exclude alcohol intoxication as a contributing factor.

Issues

The circumstances of the death of Mr Bennett satisfied the definition of a reportable death, namely a violent or otherwise unnatural death under s.8(3) of the Coroners Act. Therefore, pursuant to s. 11 of that Act, a coronial investigation was commenced. S.45 of the Act requires me, if possible, to make findings at the conclusion of the investigation about the following matters:

- (a) who the deceased person is;
- (b) how the person died;
- (c) when the person died;
- (d) where the person died; and
- (e) what caused the person to die.

While the evidence is sufficient to enable me to make findings about each of these matters, the element as to how Mr Bennet died requires further consideration.

Further, an objective of the Coroners Act is to help prevent death from similar causes happening in the future by allowing coroners at inquests to comment on matters connected with death including matters related to public health and safety (see sections 3(d) and 46(1)).

The circumstances of the death of Mr Bennett raise an issue of public health and safety, namely the management of visitor safety at the Boulders. What opportunities, if any, exist to significantly reduce the risk of a recurrence?

I approach this task by considering the current strategies for managing visitor safety, their effectiveness in light of the actions of the witnesses and how similar issues are addressed elsewhere. I also consider the appropriateness of Councils recent imposition of a No Go Zone in the high risk areas.

Visitor Safety Management

The Manager

The Boulders is within the Boulders Reserve. The land is owned by the State of Queensland but vested in Cairns Regional Council on trust for scenic purposes. Cairns Regional Council has control and management of the Reserve. It provides the recreational facilities, equipment and park infrastructure. It invites and permits the public to use the Reserve and its facilities for recreational purposes.

Infrastructure and Signage

Council has relied on the signage and infrastructure in the form of a walking paths and barriers to manage visitor safety. There is interpretative and safety information on signage in the car park area that maps the location and its features. There is a walking path adjacent to Babinda Creek that provides safe access to each of the vantage points. Council reports that all signage complies with the relevant Australian Standards and incorporates international language protocols.

After this death, the Council conducted an audit of the signage, mapping the location and content of the signage as well as the location and condition of barriers such as railings at the lookouts and viewing platform. The map and associated images are included in the appendix.

The nature of the signage and condition of the barriers appear reasonable and appropriate to delineate safe and unsafe areas as well as warning visitors of specific dangers beyond safe areas.

The investigating police officer Sgt Matheson reported to me that there was a well worn track beyond the safety rail, indicating that for several years people have been climbing under and over the safety rail to walk to the Devils Pool.

It is also evident from the witness accounts that visitors are ignoring the warnings and readily accessing areas where dangers exist. Why?

Effectiveness of Warnings

Some insight may be gained from the attitude of those witnesses present on the day of this incident as to the effectiveness of the barriers and warning signs.

Mr John Tuala reported to police that on reaching the lookout at the Devils Pool he noticed a danger sign saying not to go down there. However, he saw about five or six kids on the opposite side of the creek jumping from a very high rock into a rock pool. He reports that the group went under the safety rail and sat under a tree watching the kids jumping off into the pool. Mr John Tuala reported feeling nervous watching the kids jumping as it was 'really high'. He suggested that they return to the car park for lunch. It was during the return trip that the group stopped and had a swim.

Mr Farley reported seeing some local kids jumping off the waterfall. He also reports that there were backpackers who were present.

Mr Soi Tuala makes no specific mention of noticing the danger signs.

Mr Paetzold Timo, a 22-year-old tourist from Germany, was with a group of friends. He told police that when they arrived at the swimming place where you are allowed to swim, there were too many people in the water. So the group decided to leave and find another place. In their search for a place to swim, they came across a steel fence which they climbed over. They sat on nearby rocks watching children jumping from a cliff into a deep pool of water. The description given by Mr Timo suggests they climbed over the fence at the Devils Pool Lookout. Mr Timo remembered seeing some signs saying that you're not allowed to swim in the area behind the fence as it is too dangerous. He also recalls the sign saying a lot of people have died from swimming in the water.

Another member of that group was Mr Joke Soren Meiners, a 22 year old male tourist from Germany. He told police that once they reached the Devils Pool Lookout he noticed people jumping off rocks into the water. Mr Meiners apparently went beyond the safety rail and, together with his friends, sat on the rocks and watched the others jumping into the water. Mr Meiners apparently did not notice the warning signs on the safety rail until immediately after the incident.

Another member of the same group of tourists was 24 year old Sven Ives Birgel. He recalled the lookout over Devils Pool and the fact that it was fenced off with about 2 or 3 signs hanging from the fence. He reported seeing the signs but not recognising what they 'really meant'. He recalled the word "danger". He reported seeing other people already over the fence and jumping off the rocks into the water. Mr Birgel reported that he just wanted to see what they were doing.

Alternative Approaches

Another popular swimming destination for locals and tourists is Josephine Falls in Wooroonooran National Park, also at the foot of Mr Bartle Frere but accessed through Mirriwinni.

In 1996 the Department of Environment, the managers responsible for the location, conducted a review of visitor safety. Josephine Falls had a history of 7 deaths, 3 in the 12 months to June 1997. There were also numerous serious accidents with people climbing over waterfalls and slippery surfaces. There is a rock formation that visitors used as a slide into a pool of water. However, its use resulted in head injuries, lacerations, broken limbs, spinal injuries and near drowning incidents. The entire area above the rock slide to the upper falls was declared a prohibited access area under powers under the Nature Conservation Act 1992. Visitors were permitted to swim in the lower rock pool. It is apparent from a review of the file from the Department of Environment that it faced a similar predicament as that faced at the Boulders, namely visitors choosing to ignore or not noticing the warning signs and rails. While the closure met with stern opposition from locals and there was a review of the area subject to the closure, a closure remained in place in respect of the high risk areas. Implementation of the closure was supported by a media campaign, the erection of prohibited entry and warnings signs, and an enforcement strategy.

Recent Action by Cairns Regional Council

In November 2010 the Infrastructure Services Committee prepared a report to Council that recommended the creation of a No Go Zone over the Devil's Pool area of the Babinda Boulders. By way of background, the report acknowledged the history of fatalities (17 deaths) and the efforts of Council in providing ample signage to warn visitors of the dangers. It reported that Council had exhausted opportunities to barricade access to the danger areas without compromising scenic amenity. The recommended No Go Zone would exclude access to the Devils Pool area while allowing visitors to enjoy access for swimming in the calmer pool near the car park. The No Go Zone would be implemented pursuant to Local Law 26, section 16 which empowers Council to prohibit access to specified areas within parks and recreational areas. The Committee reported that the creation of a No Go Zone would enable Council Local Laws officers to implement an enforcement strategy.

On 26 November 2010 Cairns Regional Council accepted the recommendation of the Committee with minor amendments and resolved to create the No Go Zone, to erect signage informing visitors that access to the area was prohibited and those accessing the area were

liable to a fine. Council also authorised media releases informing the general public of the No Go Zone and that it would be enforced by council officers.

Findings

I find:

1. I find that James Andrew Bennett died on 30 November 2008 at the Boulders Reserve near Babinda due to drowning.
2. After seeing several local, unaccompanied children swimming and playing in the vicinity of the Devils Pool, Mr Bennett and three friends climbed over or around the safety rail and ventured onto the granite formations through which Babinda Creek runs.
3. Members of the group either did not see the warning signs or chose to ignore them or minimised the nature and extent of the dangers about which they were warned.
4. After watching the children for a period of about 10 minutes, the group decided to return to the car park. On making their way upstream, the group came upon a calm pool adjacent to the Viewing Platform and decided to have a swim.
5. Mr Bennett entered a pool known as 'the washing machine' and shortly afterwards, he was drawn underwater and out of view from his friends. He drowned due to prolonged immersion, presumably entrapped within the rapids and pools.

Comments

While it was reasonable and appropriate for Council to rely on warning signs and safety rails to manage the safety risks to visitors, it is evident that those strategies had limited effectiveness. Mr Bennett was in the company of local residents and that group saw unaccompanied children playing and jumping into pools at or near the Devils Pool. The gravity and impact of the warnings conveyed by the signage was likely ignored or minimised by the group in light of the presence of children swimming in the Devils Pool area. While it is understandable that local visitors may believe that they have a greater awareness and understanding of the dangers at a particular swimming hole, their presence beyond the safety rails and warning signs tempt others less familiar with the location and its dangers to ignore or minimise the significance of warnings. Therefore, more stringent measures are required to dissuade visitors from entering higher risk areas.

For the present purposes, I leave aside the question as to whether local residents familiar with the location are at any greater or lesser risk of harm in accessing areas beyond the safety rails.

I acknowledge that rule making in the context of safety is a process of striking a balance between a degree of restriction of individual freedom and reducing the exposure to harm of those more vulnerable. In the context of road safety, clearly there are differences in driving abilities of individuals but nonetheless the community accepts the need to impose rules such as speed limits that apply to all drivers.

In applying these principles to this situation, Council had to strike a balance between restricting the freedom of local residents against the risk of harm to less informed and aware visitors.

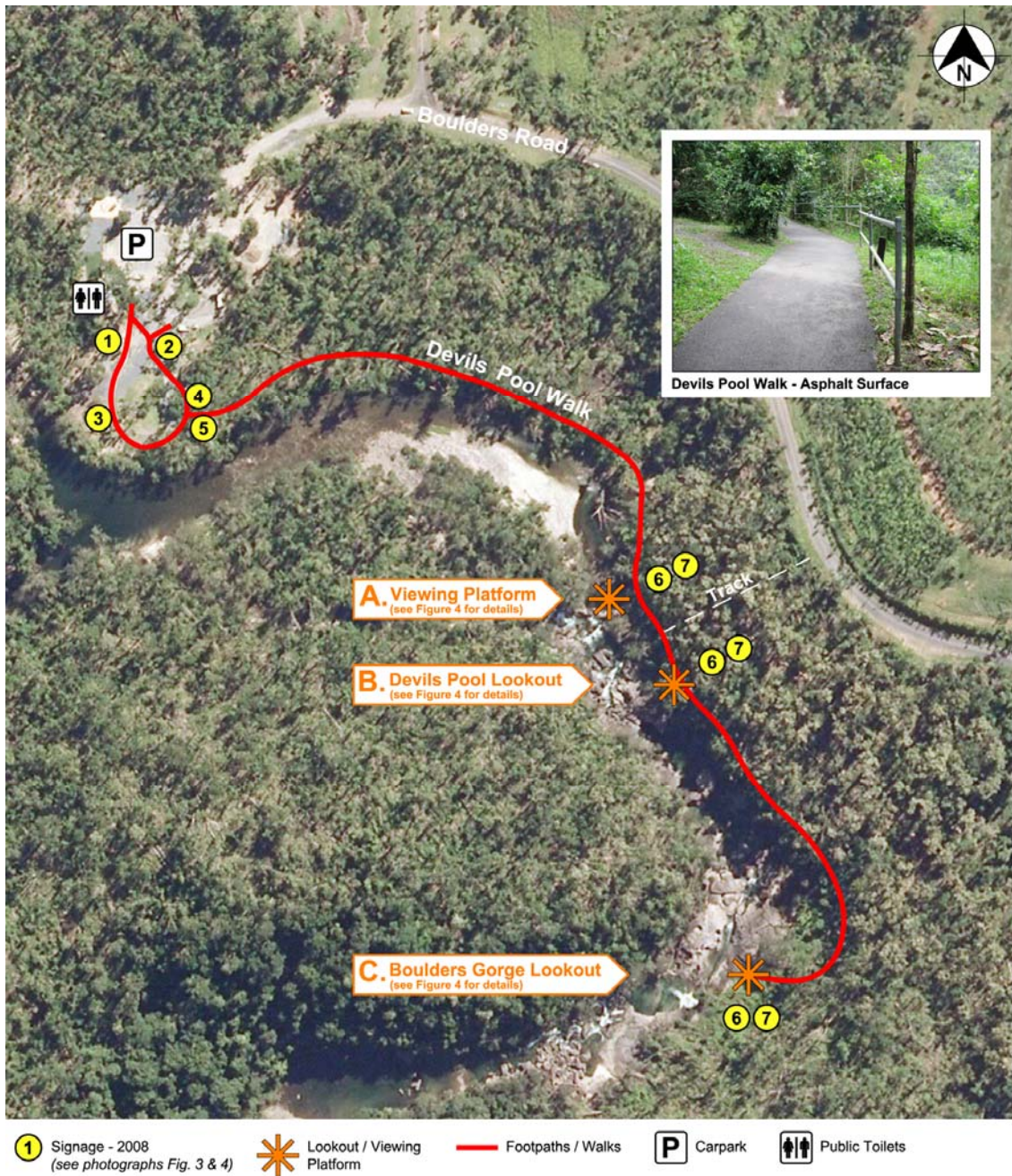
To my mind, and in light of numerous fatalities at this location, restricting access to the calmer pool adjacent to the car park is a minimal restriction in return for a substantial reduction in risk to life of other visitors.

I commend Council for taking the action of declaring a No Go Zone and have no hesitation in indicating that I would have formally made that recommendation if Council had not acted.

I extend my condolences to the family and friends of Mr Bennett.

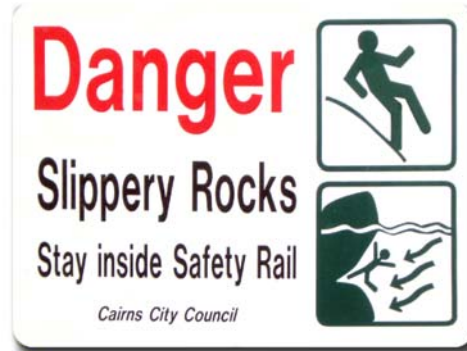
This Inquest is closed.

Kevin Priestly
Northern Coroner
Cairns
10 December 2010

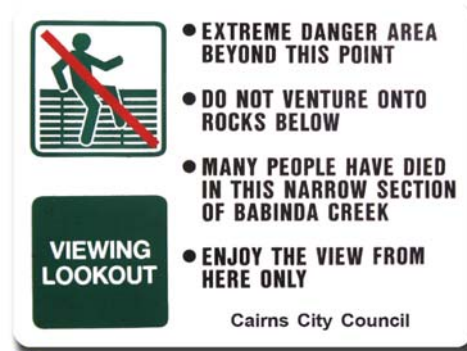


Aerial View of the Boulders Reserve

Signage Legend



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Signage on the Safety Rail/Fence at Devils Pool Lookout