



Agenda

Council Meeting

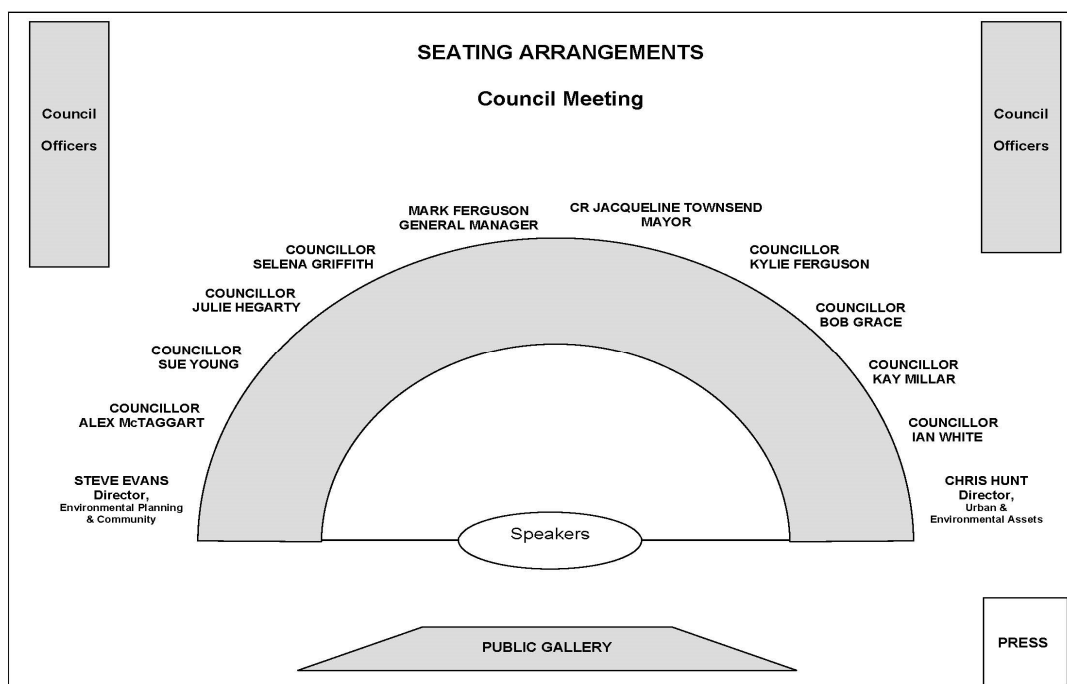
Notice is hereby given that a Council Meeting of Pittwater Council will be held at Mona Vale Memorial Hall on

20 July 2015

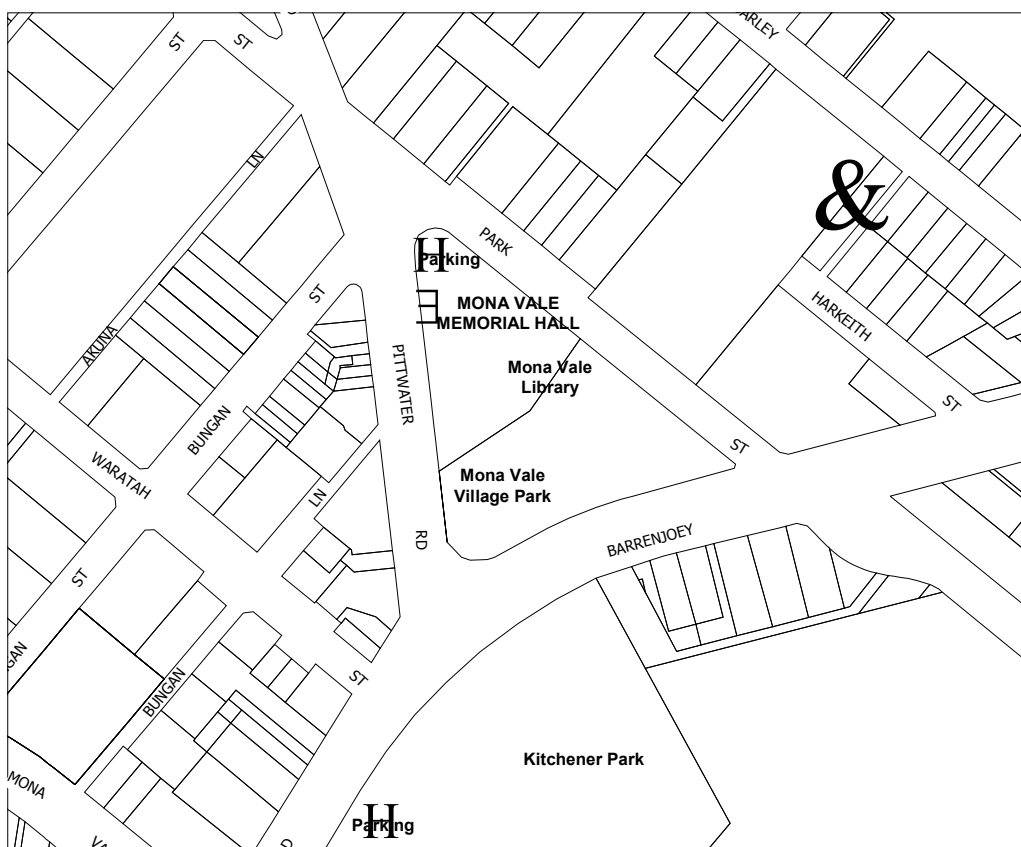
Commencing at 6.30pm for the purpose of considering the items included on the Agenda.

Mark Ferguson
GENERAL MANAGER

Seating Arrangements



Meeting Location



All Pittwater Council's Agenda and Minutes are available on the Pittwater website at www.pittwater.nsw.gov.au

Acknowledgement of Country

**Pittwater Council honours and respects the spirits of the
Guringai people.**

**Council acknowledges their traditional custodianship of
the Pittwater area.**

Statement of Respect

**Pittwater Council promotes and strives to achieve a climate of respect
for all and endeavours to inspire in our community shared civic pride by
valuing and protecting our unique environment, both natural and built,
for current and future generations.**

**We, the elected members and staff of Pittwater Council, undertake to
act with honesty and integrity, to conduct ourselves in a way that
engenders trust and confidence in the decisions we make on behalf
of the Pittwater Community.**

Council Meeting

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**The Senior Management Team
has approved the inclusion of
all reports in this agenda.**

Council Meeting

1.0 Public Forum

GUIDELINES FOR RESIDENTS - PUBLIC FORUM

Objective

The purpose of the Public Forum is to gain information or suggestions from the community on new and positive initiatives that Council can consider in order to better serve the Pittwater community.

- The Public Forum is not a decision making forum for the Council;
- Residents should not use the Public Forum to raise routine matters or complaints. Such matters should be forwarded in writing to Council's Customer Service Centres at Mona Vale or Avalon where they will be responded to by appropriate Council Officers;
- There will be no debate or questions with, or by, Councillors during/following a resident submission;
- Council's general meeting procedures apply to Public Forums, in particular, no insults or inferences of improper behaviour in relation to any other person/s is permitted;
- No defamatory or slanderous comments will be permitted. Should a resident make such a comment, their submission will be immediately terminated by the Chair of the Meeting;
- Up to 20 minutes is allocated to the Public Forum;
- A maximum of 1 submission per person per meeting is permitted, with a maximum of 4 submissions in total per meeting;
- A maximum of 5 minutes is allocated to each submission;
- Public submissions will not be permitted in relation to the following matters:
 - Matters involving current dealings with Council (eg. development applications, contractual matters, tenders, legal matters, Council matters under investigation, etc);
 - Items on the current Council Meeting agenda;
- The subject matter of a submission is not to be repeated by a subsequent submission on the same topic by the same person within a 3 month period;
- Participants are not permitted to use Council's audio visual or computer equipment as part of their submission. However, photographs, documents etc may be circulated to Councillors as part of the submission;
- Any requests to participate in the Public Forum shall be lodged with Council staff by 12 noon on the day of the Council Meeting. To register a request for a submission, please contact Warwick Lawrence, phone 9970 1112.

Mark Ferguson
GENERAL MANAGER

2.0 Resident Questions

RESIDENT QUESTION TIME

Objective

The purpose of Resident Question Time is to provide the community with a forum to ask questions of the elected Council on matters that concern or interest individual members of the community.

The following guidelines apply to any person addressing a Council / Committee meeting in relation to a Resident Question:

- 1. Residents Question Time is conducted at the commencement of the second Council Meeting of the month and prior to the handling of General Business.*
- 2. A maximum of 10 minutes is allocated to Residents Question Time.*
- 3. Each Resident is restricted to two (2) questions per meeting.*
- 4. All questions are to be in writing or made electronically and lodged with the General Manager no later than 6.15pm on the day of the Council meeting at which it is to be considered.*
- 5. Questions must be precise and succinct and free of ambiguity and not contain any comments that may be offensive, defamatory or slanderous in any way.*
- 6. A brief preamble may accompany the question to clarify the issue however only the actual question will be included in the minutes of the Council meeting.*
- 7. Responses to residents questions made at the meeting will also be included in the minutes of the Council meeting.*
- 8. Resident's questions taken on notice shall be the subject of a report to Council setting out both the question and response and shall be included in the agenda at the second meeting of the month following the resident's question.*
- 9. There will be no debate or questions with, or by, Councillors during / following a resident question and response.*

3.0 Apologies

Apologies must be received and accepted from absent Members and leave of absence from the Council Meeting must be granted.

4.0 Declarations of Pecuniary and Conflict of Interest including any Political Donations and Gifts

Councillors are advised of the following definitions of a "pecuniary" or "conflict" of interest for their assistance:

* Section 442 of the Local Government Act, 1993 states that a "pecuniary" interest is as follows:

- "(1) [Pecuniary interest] A Pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.*
- (2) [Remoteness] A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter."*

Councillors should reference the Local Government Act, 1993 for detailed provisions relating to pecuniary interests.

* Council's Code of Conduct states that a "conflict of interest" exists when you could be influenced, or a reasonable person would perceive that you could be influenced by a personal interest when carrying out your public duty.

Councillors are also reminded of their responsibility to declare any Political donation or Gift in relation to the Local Government & Planning Legislation Amendment (Political Donations) Act 2008.

* A reportable political donation is a donation of:

- \$1,000 or more made to or for the benefit of the party, elected member, group or candidate; or
- \$1,000 or more made by a major political donor to or for the benefit of a party, elected member, group or candidate, or made to the major political donor; or
- Less than \$1,000 if the aggregated total of the donations made by the entity or person to the same party, elected member, group, candidate or person within the same financial year (ending 30 June) is \$1,000 or more.

5.0 Confirmation of Minutes

"Councillors are advised that when the confirmation of minutes is being considered, the only question that can arise is whether they faithfully record the proceedings at the meeting referred to. A member of a council who votes for the confirmation of the minutes does not thereby make himself a party to the resolutions recorded: **Re Lands Allotment Co (1894) 1 Ch 616, 63 LJ Ch 291.**"

Minutes of the Council Meeting held on 6 July 2015.

6.0 Public Addresses

The following guidelines apply to any person addressing a Council / Committee meeting in relation to an item on the Council / Committee meeting agenda:

1. *A member of the public may be granted leave to address a meeting of Council or a Committee, where such a request is received by the General Manager no later than 3.00pm on the day of the meeting. This is subject to:*
 - (a) *A maximum of up to six speakers may address on any one item, with a maximum of three speakers in support of the recommendation in the report, and three speakers in opposition.*
 - (b) *A limitation of three minutes is allowed for any one speaker, with no extensions.*
 - (c) *An objector/s to a development application is to speak first with the applicant always being given the right to reply.*

Exceptions to these requirements may apply where:

- (a) *The Meeting specifically requests that a person be interviewed at a meeting.*
 - (b) *The Meeting resolves that a person be heard at the meeting without having given prior notice to the General Manager*
2. *Once a public/resident speaker has completed their submission and responded to any Councillor questions, they are to return to their seat in the public gallery prior to the formal debate commencing.*
3. *No defamatory or slanderous comments will be permitted. Should a resident make such a comment, their address will be immediately terminated by the Chair of the meeting.*
4. *Council's general meeting procedures apply to Public Addresses, in particular, no insults or inferences of improper behaviour in relation to any other person is permitted.*
5. *Residents are not permitted to use Council's audio visual or computer equipment as part of their address. However, photographs, documents etc may be circulated to Councillors as part of their address.*

7.0 Councillor Questions with Notice

Nil

8.0 Mayoral Minutes

Nil

9.0 Business by Exception

Items that are dealt with by exception are items where the recommendations contained in the reports in the Agenda are adopted without discussion.

10.0 Council Meeting Business

Nil.

Leading and Learning Committee

11.0 Leading and Learning Committee Business

C11.1	Notice of Motion - Mandatory Use of Life Jackets by Rock Fishermen - (Motion submitted by Cr Millar)
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Meeting: Leading & Learning Committee

Date: 20 July 2015

NOTICE OF MOTION

BACKGROUND

The NSW Deputy Coroner, Magistrate Carmel Forbes, has recently investigated eight rock fishing related deaths between 2012 and 2015 (see **Attachment 1** – Coronial Inquest into Rock Fishing Deaths).

Ms Forbes stated that *“the emotional and social costs of these deaths to family, friends and the community is enormous”* and noted that the rescue operations often required were *“dangerous, resource intensive and normally undertaken in treacherous conditions”*. As a consequence, the Deputy Coroner recommended that the NSW Government should introduce legislation requiring the mandatory use of life jackets by those engaged in rock fishing.

Statistics contained in the *National Coastal Safety Report 2014* released by Surf Life Saving Australia shows that 78 deaths during rock fishing activities have been recorded along the NSW coast between 2004 and 2014. The report noted that a further 4 deaths occurred during the same period when rock fishers entered the water to rescue a companion who had been washed into the water. None of the drowned anglers was wearing a life jacket.

A discussion paper on life jackets for rock fishers was released for comment by the NSW Government in August 2013. Despite some funding to address rock fishing hazards being made available through the Water Safety Black Spot Fund, no coordinated state-wide management action or legislation to reduce rock fishing related deaths has resulted.

Motion

1. That Council write to the following Ministers:

- The Hon Mike Baird, Premier
- The Hon Troy Grant, Minister for Justice and Police
- The Hon David Elliot, Minister for Emergency Services
- The Hon Mark Speakman, Minister for the Environment
- The Hon Niall Blair, Minister for Primary Industries
- The Hon Stuart Ayres, Minister for Trade, Tourism & Major Events (Minister for Sport)
- The Hon Rob Stokes, Minister for Planning, Member for Pittwater
- and Mr Geoff Withycombe, Executive Officer, Sydney Coastal Councils Group Inc.

in support of the Coronial Inquest findings dated 2nd July 2015 and requesting that the NSW Government undertake the following actions:

- I. Introduce legislation requiring the mandatory use of life jackets by those engaged in rock fishing.
- II. Implement an education and awareness campaign on the requirement to wear a life jacket whilst rock fishing.

- III. Provide the necessary resources to improve emergency access and install appropriate signage at known rock fishing 'black spots'.
 - IV. Enforce the requirement (following a suitable period of grace) to wear life jackets whilst rock fishing.
2. That a copy of the letter, a list of recipients and a cover letter be forwarded to the Deputy State Coroner, Magistrate Carmel Forbes, for her information.

Cr Kay Millar



**CORONERS COURT
NEW SOUTH WALES**

Inquest:	<p>Inquest into the deaths of:</p> <p>Myassar Ayoub – File No 2012/224038;</p> <p>Donald White – File No 2012/341729;</p> <p>Zheng Wang – File No 2012/351532;</p> <p>Sung Su Cho – File No 2014/178522;</p> <p>Greg Walter Reardon – File No 2014/3934</p> <p>Huiqing Hua – File No. 2014/126091;</p> <p>Ding Ding Zhang – File No 2014/166145;</p> <p>Young Whan Kim – File No 2014/248856</p> <p>Jesse Jack Howes- File No 2015/35662</p>
Hearing dates:	1-5 June 2015
Date of findings:	2 July 2015
Place of findings:	Coroners Court, Glebe
Findings of:	Magistrate C Forbes, Deputy State Coroner
Catchwords:	CORONIAL LAW-Rock fishing deaths –Recommendations-Mandatory life-jackets
Representation:	<p>Counsel Assisting Dr K Stern SC instructed by J Murty, Crown Solicitor's Office</p> <p>Commissioner of NSW Police Force M Spartalis instructed by N Regeri, Makinson d'Apice</p> <p>Randwick City Council and Shoalhaven City Council C Waqa, Mills Oakley Lawyers.</p>

	<p>Office of Environment and Heritage M Kelly, Office of Environment and Heritage</p> <p>Warringah Council P Horvath instructed by S Kelly, DLA Piper Lawyers.</p>
Findings:	<p>I find that Myassar Ayoub died on 18 July 2012 Cape Banks, La Perouse, NSW. I am satisfied the cause of death was drowning after being swept into the water while engaged in rock fishing.</p> <p>I find that Donald White died on 1 November 2012 off the North Curl Curl rock platform, NSW. I am satisfied the cause of death was immersion in a person with coronary atherosclerosis and cardiac amyloidosis. At the time of his death he was engaged in rock fishing, how he came to be in the water was not witnessed and is therefore not known.</p> <p>I find that Zheng Wang died on 11 November 2012 at Little Bay, Malabar, NSW. I am satisfied the cause of death was drowning after being swept into the water while he was engaged in rock fishing.</p> <p>I find that Sung Su Cho died on 23 December 2013 at, Mermaid's Inlet, Currarong, NSW. I am satisfied the cause of death was drowning after falling 4-5 meters from a rock ledge into the sea while he was engaged in rock fishing.</p> <p>I find that Greg Walter Reardon died between 2-3 January 2014 at Turners Beach, Yamba, NSW. I am satisfied the cause of death was drowning while he was engaged in rock fishing. How he came to be in the water was not witnessed and is therefore not known.</p> <p>I find that Huiqing Hua died on 25 April 2014 at Wybung Heads, Lake Munmorah State Conservation Area, NSW. I am satisfied the cause of death was drowning while he was engaged in attempting to save a friend who had been swept into the water while engaged in rock fishing.</p> <p>I find that Ding Ding Zhang died on 25 April 2014 at Wybung Head, Lake Munmorah State Conservation Area, NSW. I am satisfied the cause of death was drowning while he was engaged in attempting to save a friend who had been swept into the water while engaged in rock fishing.</p> <p>I find that Young Kim died on 23 August 2014 off the rock platform at North Curl Curl, NSW. I am satisfied the cause of</p>

	<p>death was drowning while he was engaged in rock fishing.</p> <p>I find that Jesse Howes died on 1 February 2015 at Snapper Point, Frazer Park, Munmorah State Conservation Area. I am satisfied that the cause of death was head injury and drowning after being swept into the water while engaged in rock fishing.</p>
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IN THE STATE CORONER'S COURT
GLEBE
SECTION 81 CORONERS ACT 2009

REASONS FOR DECISION

Introduction

1. This is an inquest into 9 deaths which have occurred in NSW between 1 November 2012 and 1 February 2015. Each of the deaths arose during the activity of rock fishing on the NSW coastline.
2. The role of a Coroner as set out in section 81 of the *Coroners Act 2009* (the Act) is to make findings as to the identity of the deceased and the date and place of the person's death. A coroner must also identify the physical or medical cause of the death and the circumstances surrounding the death.
3. Section 82 of the Act provides for a Coroner to make recommendations that are considered necessary or desirable in relation to any matter connected with the death that relates to issues of public health and safety.
4. In May 2011 my colleague Magistrate MacMahon conducted an Inquest into a number of rock fishing deaths that occurred in the Bondi area between 2009 and 2011. He recommended that the Minister for Industry and Investment should undertake research to identify demographic groups most at risk of rock fishing related fatalities and identify the effectiveness of educational, enforcement and engineering safety methods used to prevent the fatalities. He further recommended that the results of the research be used to develop a rock fishing safety program for NSW.
5. In June 2011 my colleague Magistrate Buscombe conducted an Inquest in Newcastle Local Court into twelve deaths of rock fishermen. He endorsed the recommendations of Magistrate MacMahon and further recommended that the Department of Primary Industries consider expediting the erection of warning signs and provision of angel rings, consider whether the level of funding for education campaigns is sufficient and consider whether or not it should be compulsory for a rock fisherman to have a flotation device.
6. Since 2012 a further 35 people have died whilst rock fishing in NSW.
7. The emotional and social cost of these deaths to family, friends and the community is enormous.
8. Detective Superintendent M Hutchings, Commander of the Marine Area Command which is responsible for the coordination of the searches and body recovery in rock fishing accidents, described the rescue operations as dangerous, resource intensive and normally undertaken in

treacherous conditions.¹ In 2011 he stated that each death costs an average of \$450,000-\$600,000 per incident to the community.²

9. The primary purpose of this Inquest is to ascertain what more might be done to make this activity safer for rock fisherman and to prevent the fatalities from continuing.
10. Firstly, I will set out what measures are currently in place and have been put in place as a result of the two inquests in 2011, and then I will summarize the circumstances surrounding each of the nine deaths with a particular view as to how those safety measures played a role. Finally I will consider other options that may be available and whether more can be done to prevent the deaths from continuing.

What measures are in place to prevent rock fishing deaths?

The Safer Coastal Waters Sub-Committee

11. In December 2011 The Safer Coastal Waters Sub-Committee inaugural meeting took place.
12. The Sub-Committee was established to develop the Government's response to the recommendations made by Magistrate MacMahon and Magistrate Buscombe in the two inquests into deaths of rock fisherman in 2011.
13. The Sub-Committee is made up of; the Department of Primary Industries (DPI), the Australian National Sport Fishing Association (ANSA), the Recreational Fishing Alliance NSW (RFA), NSW Maritime and the Surf Life Saving NSW (SLS NSW).
14. The formation of this committee was the first attempt to co-ordinate education and awareness of rock fishing related issues in NSW. All of the agencies agreed upon the following set of rock fishing safety messages:
 - Make enquiries and check conditions before you leave home
 - Observe first/fish later: watch your intended fishing spot to get an idea of the conditions over a full swell/wave cycle
 - Make sure you let family and friends know where you are going and when you will be back
 - Wear light clothing
 - Wear appropriate footwear, with non-slip soles or cleats

¹ Statement Detective Superintendent M Hutchings Vol 7 Tab150 p 9

² Ministerial briefing: Rock fishing Safety 5 May 2011

- Carry safety gear; head protection, as well as a float and line to help anyone else who might be washed into the water
 - Never fish in exposed areas during rough or large seas and be aware that conditions may change dramatically in a short period of time
 - Stay alert. Do not ever turn your back on the sea: if waves, the weather or swell threaten your fishing spot then leave immediately
 - Always wear a life-jacket
15. These safety messages formed part of the NSW Water Safety Strategy for 2013-2015. They are promoted across water safety websites.
 16. The Sub-Committee also collects rock fishing accident data. This data is important for land managers and other stakeholders to use to prepare risk management plans.

Bureau of Meteorology

17. The Bureau of Meteorology, with input from RFA and DPI, has a dedicated rock fishing weather warning page with information in English, Chinese, Vietnamese and Korean.³
18. It also has hazardous surf alert systems. Once predetermined thresholds are met, the Bureau of Meteorology notifies SLS NSW. Where a swell is identified as imminent, usually within 12-24 hours, SLS NSW releases this document to other emergency service partners, SLS NSW clubs and a media release is sent out.⁴
19. The development of similar rock fishing alerts is continuing.
20. The Bureau also has a Meteye interactive weather service which provides weather data at more specific locations. This service is the subject of ongoing development⁵ Further initiatives, including increased use of offshore wave buoys to access information about swell at particular locations are also being developed.⁶ This research is likely to enable considerable additional information for alerts. There is potential for the alerts to include SMS messages, emails, Facebook messages, twitter and interactive signage.

³ Volume 3, Tab 95, page 915

⁴ Volume 7, tab 145, page 2111.

⁵ Volume 3, tab 95, page 915.

⁶ Mr Bradstreet's letter of 22 May 2015, Volume 7, tab 145, page 2111.

Local councils and other land managers

21. The manager of Aquatic Services at Randwick City Council states that 27% of all rock fishing deaths in NSW in 2011 occurred in the Randwick City Council's area.⁷ He said that 49% of all of the drowning deaths that occurred in the Randwick City Council area between 1 July 2004 and 15 January 2013 were due to rock fishing. After the death of Zheng Wang on 11 November 2012, the Randwick City Council adopted various initiatives to seek to reduce the risks associated with rock fishing.
22. One of the initiatives involved surveying rock fishers at well-known rock fishing sites, including sites where fatalities had previously been recorded.⁸ 21% of those interviewed were on their first rock fishing trip, and 15% could either only swim and float for over one minute in swimming pool conditions or could not swim at all. 91% of those interviewed did not know any first aid. 67% recalled seeing a message relating to rock fishing safety in the past 12 months. Despite this, it appeared that the risks associated with rock fishing were not well recognised by the survey cohort. 49% of interviewees never wore a life-jacket whilst fishing, 21% regularly fished alone, 22% did not always carry a mobile phone whilst fishing, and 37% did not always wear non-slip shoes or cleats. 55% indicated that life-jackets should be mandatory for rock fishing. The Council concluded that rock fishermen do not deliberately put themselves in danger but either overestimate their abilities or underestimate the dangers.
23. The survey participants were also asked about the effect of "shock signage" which show the number of deaths in a particular location. 75% of rock fishers shown such signage said that they thought this would be likely or extremely likely to reduce the rate of rock fishing accidents and 70% said that it would influence their behaviour whilst fishing.⁺
24. The Randwick City Council includes information in relation to rock fishing on its website. This information identifies that rock fishing is dangerous, that the Randwick City Council coastline is one of the most dangerous rock fishing areas within Australia, that many deaths have been recorded within Randwick over the past few years, and states "No matter what your skill level or experience we implore you to always wear a life-jacket whilst rock fishing".⁹ There is also a link to rock fishing resources including to weather and safety information and an ability to subscribe to the RFA email alerts and the Roads and Maritime Authority weather email alerts. The site also indicates the current wave height, and includes a range of safety tips.
25. The council also has 13 angel rings in a number of locations, which are maintained and checked by ANSA and the Recreational Fishing Saltwater Trust Fund.¹⁰
26. The suggestions from participants in the survey as to how to improve safety for rock fishing included more angel rings and other safety equipment, more safety reminder signs including in different languages posted near fishing spots and at tackle shops, education and rock

⁷ Volume 3, tab 95, page 1354.

⁸ Volume 6, tab 144/3, page 2033.

⁹ Volume 6, tab 144/5, page 2093.

¹⁰ Volume 6, tab 144/7, page 2107.

fishing schools for novices, improving safe access to rock fishing spots, more helicopter patrols, a licensing requirement that requires proof of swimming ability and mandatory safety equipment including life-jackets.

27. The Randwick City Council strongly supports the mandatory wearing of life-jackets by rock fishers.¹¹ There have been six rock fishing fatalities in the Randwick City Council area between September 2011 and September 2013 and the Council notes that none of those that died were wearing life-jackets.¹²
28. Warringah Council is responsible as the land manager at North Curl Curl where Mr White and Mr Kim died. Mr Rose of Warringah Council confirmed that this rock platform is a place which is regularly used for rock fishing.¹³ He says the Council life savers do not have a line of sight to the rock platform, and that the life-savers rarely know how many people access the platform. He says the lifesavers are not on duty during the winter months and only during daylight hours in summer. He said that the primary concern of the Council is the beaches and rockpools.
29. He says that there is signage at the headland warning of the dangers for rock fishers, and an angel ring at the rock fishing platform. He confirms these were in place before the two deaths which are the subject of this Inquest.
30. Warringah Council does not have any dedicated rock fishing information on its website, but refers enquiries about rock fishing to DPI. Mr Rose gives talks to local primary schools and at these talks hands out information from DPI about rock fishing.
31. He supports the introduction of mandatory life-jackets for those engaged in rock fishing
32. The Shoalhaven City Council is the land manager responsible for the area where Sung Su Cho died at Currarong. This Council manages 165 km of NSW coastline. The Council's highest priority for risk management that relates to rock fishermen along this coastline is signage. There are also 6 areas where angel rings have been installed by ANSA. Ms Lowe, the Section Manager - Environmental Services, Shoalhaven City Council says because of the length of the coastline the Council cannot take on the safety of the rock fishermen on its own. The Council strongly supports the introduction of mandatory life-jackets as the best measure to prevent deaths of rock fisherman. It is of the view that it would be a great improvement to the safety of the fishermen in remote parts of the coastline. Some of the rock fishing spots are a two hour trip to walk in and out.
33. National Parks and Wildlife Services (NPWS) are the responsible land manager at a number of rock fishing locations including the Munmorah State Conservation Area where Huiquing Hua, Ding Ding Zhang and Jesse Howes died, and Kamay Botany Bay National Park, La Pouse where Myassar Ayoub died.

¹¹ Volume 6, tab 144/4, page 2087.

¹² Volume 6, tab 144/4, page 2091.

¹³ Volume 7, tab 148, page 2243.

34. NPWS focuses on managing exposure to the hazards of rock fishing by erecting warning signs, providing information about the dangers of rock fishing on its website and in its offices and supporting the installation of angel rings by ANSA in appropriate sites.¹⁴
35. In relation to Munmorah, the NPWS has a Risk Treatment Plan for rock fishing. This is subject to six monthly reviews.¹⁵ The risk mitigation measures at Munmorah comprise; brochures including the dangers of rock fishing and a RFA video being available at the NPWS office at Munmorah, angel ring stands which are checked at service rounds at least twice a week, signs at the car parks including advice to wear appropriate footwear and advice to wear life-jackets. Munmorah is now one of the most heavily signed rock fishing areas in NSW.¹⁶
36. RFA has also provided a box of inflatable life-jackets for rangers to hand out to rock fishers in the area when conditions are poor and they have no safety gear.¹⁷
37. NPWS are concerned that the signage and information alone does not appear to be effective in stemming the numbers of rock fishing fatalities and support the introduction of mandatory life-jackets.

Fishing associations

38. RFA and ANSA have been at the forefront of rock fishing safety for more than two decades. They have been involved in the initiative of the installation and maintenance of angel rings at key locations, with ANSA installing more than 110 life buoys at popular rock fishing locations along the NSW Coast.¹⁸ RFA has been involved in a “Don’t put your life on the line campaign” since 2006 which involves distribution of resource kits through various media. They also provide valuable information, education, and alerts on their website on an opt in basis for rock fishers. They have also been involved in face to face information sessions, including engaging anglers on rock fishing platforms, and attending high profile events.¹⁹ They have some valuable suggestions as to measures which could be implemented including alert systems, coastal live feed camera networks, increased and changeable signage, use of signage at car parks and track entrances etc, and the design of improved equipment.
39. ANSA identifies education as being a critical area for improvement, including education in relation to the ability to locate and interpret weather forecasts, the ability to predict what a fishing spot will be like before the angler leaves home, the angler’s ability to read the conditions once at a fishing spot, choice of appropriate clothing and footwear and appreciation of one’s own swimming ability. In their view, life-jackets are only a small percentage of the equation that anglers need to address on the rocks.

¹⁴ Volume 7, tab 146, page 2117 & 146/5 page 2187.

¹⁵ Volume 7, tab 146/6, page 2189.

¹⁶ Volume 7 tab 146 page 2118.

¹⁷ Volume 7 tab 146 pages 2118-2119.

¹⁸ Bradstreet report Volume 3, tab 94, page 736.

¹⁹ RFA Submission, Volume 3, tab 93, page 710.

40. ANSA expresses concern at making a boating standard life-jacket mandatory for rock fishers. It expresses concern that life-jackets with different levels of flotation all have problems in the context of rock fishing, in particular, given that there may be an impact zone near the rocks, thus requiring first that the rock fisher safely gets out of the impact zone, and then that the rock fisher is able to remain afloat.
41. Both RFA and ANSA concede that they are not aware of any incidents where a person was made less safe by wearing an Australian Standard life-jacket. Mr Poole the RFA safety project officer states he wears a life-jacket and he displays them at his education programs. Both RFA and ANSA support mandatory life-jackets as long as the jackets are appropriate for rock fisherman.

Surf Life Saving Australia

42. In 2012 a research review of rock fishing in NSW was conducted by a Transport and Road Safety Research team²⁰ for Surf Life Saving Australia (SLS Aust).
43. The research review recommended that signage be improved and meaningful for different cultural and linguistic diversity groups, that there should be a weather risk rating system applicable to rock fishing, i.e. extreme, severe, very high, high, low-moderate risk, that there should be a risk rating system for rock fishing sites, and that portable flotation devices be made mandatory at black spot rock fishing sites and at high risk rated locations.²¹
44. In March 2013, Mr Anthony Bradstreet, the Coastal Risk and Safety Manager at SLS Aust prepared a report *Research Review of Rock Fishing Safety in New South Wales*.²² He reported in 2013, despite all efforts, that there had not been any reduction in the annual rock fishing drowning rates over the previous two years, and that the average number of rock fishing related fatalities in NSW was between 7.89 and 8.22.²³
45. Mr Bradstreet recommended continuing research into enhancing early warning for periods of heightened risk, continuing work on risk assessment of NSW coastlines, further education and communication strategies. He recommends the mandatory wearing of life-jackets, including by rescue workers at rock fishing incidents.
46. He states that the concern by RFA and ANSA as to the inappropriateness of life-jackets as currently designed do not apply to level 50 Australian Standards compliant life-jackets. He states that manufacturers are working with angling groups as regards optimum designs. He says that anglers can choose for themselves what life-jacket is most suitable according to their own competencies but that the benefits of buoyancy far outweigh any potential secondary risks.²⁴

²⁰ Volume 3, tab 89, page 539.

²¹ Volume 3, tab 89, page 548

²² Volume 3, tab 94, page 723.

²³ Volume 3, tab 94, page 713.

²⁴ Volume 3, tab 94, page 716.

47. In Mr Bradstreet's report, a matrix of risk assessment known as Haddon's matrix, is applied to rock fishing.²⁵ This identifies three stages of risk minimisation, primary meaning pre-event, i.e. preventing the angler from entering the water, secondary meaning the event itself, i.e. once the angler has entered the water, and tertiary meaning post event, i.e. once the angler requires assistance if injured.
48. Education, signage and warning systems, along with anchor points and non-slip footwear are key at the primary stage. Education, swimming skill, appropriate clothing and life-jacket use are key at the secondary stage. At the tertiary stage, education, rescue techniques, life-jacket use and other flotation device availability, and emergency markers and access for emergency services are all key. This matrix provides a useful way of looking at the issues arising in this inquest.
49. As regards the role of life-jackets, Mr Bradstreet in his report highlights the paucity of deaths where victims have been wearing life-jackets. Between 1992 and 2000, there were 74 rock fishing related drownings but no victims were wearing a life-jacket. Between 2000 and 2010, only one victim was wearing a fishing vest with flotation although this was not described as either a life-jacket or portable flotation device.²⁶ In the current inquest one of the nine (Mr Young Kim) was wearing a life-jacket, and the evidence suggests that he may well have been rendered unconscious by reason of impact to his head, minimising the effect of the life-jacket. He also refers to evidence to support the use of portable flotation devices to improve the ability of rescue authorities to recover a person, whether alive or dead.²⁷
50. Mr Bradstreet concludes that the opposition to mandatory life-jackets for rock fishers is in part based upon concern about restriction of movement, cost, and lack of support amongst rock fishers.²⁸ One of the key action items is that there be a working group established to identify and develop practical rock fishing life-jackets to improve voluntary wearing compliance.²⁹ He does not support making life-jackets mandatory in only limited locations or periods on the basis that this may lead to confusion and minimise efficacy.³⁰
51. Mr Bradstreet notes that despite SLS investing resources and energy into education and awareness campaigns surrounding life-jacket use they have not seen a significant increase in the number of rock fishers utilising life saving devices. This informs their recommendation for mandatory life-jackets.
52. SLS NSW is also involved in the dangerous surf warning initiative, and in investing in research and development of an emergency response beacon to facilitate better warning systems and enable a fast rescue response. At Munmorah, they are going to trial the emergency response beacon at Snapper Point, and this will enable an alarm to be raised,

²⁵ Volume 3, tab 94, page 751.

²⁶ Volume 3, tab 94, page 791.

²⁷ Volume 3, tab 94 page 792.

²⁸ Volume 3 tab 94 pages 793-5.

²⁹ Volume 3 tab 94 page 795.

³⁰ Volume 3 tab 94 page 797.

monitoring through CCTV and also broadcast of audible warnings to people fishing at the location.³¹

53. SLS NSW is also undertaking a state wide project, Project Blueprint, to conduct a coastal public safety risk assessment for every beach and rock platform in NSW. Following this consideration will be given to appropriate signage and appropriate public rescue equipment.

Summary of the circumstances surrounding each of the deaths in this Inquest

Mr Myassar Ayoub

54. Mr Ayoub died at Cape Banks, Botany Bay National Park, La Perouse on 18 July 2012 when he was rock fishing with his brother. He was born in Iraq and was 25 years old at the time of his death and is survived by his wife and two brothers.
55. Mr Ayoub went rock fishing regularly.
56. He was wearing long fluoro green pants and special rock fishing shoes that assisted with grip on the rocks.
57. The weather was described as fine and clear with a light westerly wind about 18 degrees. The sea conditions were calm with a rising swell and the occasional large group of swells hitting the coastline at larger intervals of approximately 9 minutes. The white water was restricted to a short distance from the rocks.
58. The pair fished on a low rocky ledge for 30 minutes before Mr Ayoub stepped down to a lower rock ledge. This ledge was almost at sea level and was low enough for waves to wash over covering most of Mr Ayoub's legs. Mr Ayoub was only on the ledge for about one minute and his brother advised him to return to a higher point. Mr Ayoub began winding in his fishing line and turned to step back up the rock ledge when a wave washed onto the lower rock ledge causing him to fall. He tried to grab hold of the rock but his hands slipped. He was washed off the ledge. Mr Ayoub tried to swim back to the rock ledge but couldn't because the waves continued to roll into the rocks and then wash back around him.
59. His brother had no reception on his phone so ran and called out for help to two gentlemen who were up on the nearby golf course. One of them threw Mr Ayoub's brother a safety buoy from the top of the higher cliff area. The buoy was attached to a Cape Banks Aquatic reserve sign. Upon running back to where his brother had been washed off, he could no longer see Mr Ayoub. One of the men on the golf course contacted '000'; and Police and the Westpac Rescue Helicopter, quickly arrived on the scene. Officer Hair said that he could see the body for short periods of time near the rocks, but that it would then disappear from view. It was too dangerous for the police to enter the water from the rocks given the force of the waves.
60. Mr Ayoub's body was recovered by a diver from the helicopter rescue crew shortly after 11am and CPR was commenced. NSW Ambulance officers met the helicopter crew at the air base and assisted. A NSW Ambulance Helicopter had also arrived. A Doctor pronounced

³¹ Volume 7, tab 145, page 2112.

Mr Ayoub life extinct at 11:20am. An autopsy determined his cause of death was drowning³².

61. The officer in charge of the investigation noted that on examination of the area there was little or no signage of the dangers of rock fishing, and that the area is known to be popular with rock fishermen.³³
62. The area where Mr Ayoub was fishing is within the area of the Randwick Council but responsibility for the particular location is under the care of the National Parks and Wildlife Service (NPWS).
63. Mr Ayoub's brother gave moving evidence in this Inquest. Not a day goes by that he doesn't think about this incident. He told this court that he used to always go rock fishing but he hasn't been since his brother died. He said that now when he thinks about rock fishing without a life-jacket he equates it to driving without wearing a seatbelt. He said his brother was only a couple of meters out to sea but the waves took him and he couldn't stay afloat long enough for help to arrive.

Mr Donald White

64. Mr White died while he was rock fishing off the rock ledge at North Curl Curl on 1 November 2012. He was 71 years old at the time of his death and is survived by his son and two daughters
65. Mr White was fishing on his own and was wearing a high visibility rain jacket and shoes with metal cleats. There were no dangerous weather warnings for that day.
66. His family reported that he was a very experienced and cautious rock fisher, and that he had been going to that same spot to fish for over 40 years.
67. At about 8:10 am Mr Jun, a rock fisher who was fishing approximately 50 meters south of Mr White's position, heard a male yelling for help and saw that Mr White was no longer on the rock platform. He ran and saw Mr White in the water struggling to keep his head above the water line.
68. Mr Jun called for help to three gentleman, Michael Power, Alex Bellissimo and Don Atkinson, who were in the process of making an updated safety video about rock fishing and were filming about 80 metres south of Mr White's position.
69. Mr Power ran to where Mr White was in the water and saw him floating face down. Mr Power dived into the water and swam to Mr White. Mr Bellissimo threw him a life buoy which had been attached to the side of the rock cliffs. Mr Power managed to manoeuvre Mr White into the life buoy, and attempted to give him CPR.
70. Mr Bellissimo contacted '000' and advised emergency services of the situation.
71. At the time of the incident, there were no Council life guard crews on duty at North Curl Curl Surf Life Saving Club (SLSC). Senior Constable Clinton Harwood, obtained a

³² Autopsy Report for the Coroner, Volume 1, tab 3, page 13

³³ Volume 1, tab 5, page 29.

paddleboard from the SLSC and paddled out to Mr White and Mr Power. At that time Mr White was showing no signs of life and it took the two men almost 40 minutes to paddle Mr White back to shore. Mr Power had been with Mr White in the water for close on an hour (he was wearing a life-jacket). Ambulance officers confirmed Mr White was deceased and a later autopsy determined that the cause of death was immersion, in a person with coronary atherosclerosis and cardiac amyloidosis. The forensic pathologist concluded that it was likely that a combination of heart disease and inhalation of water resulted in the death.³⁴

72. Mr Power gave evidence at this Inquest that he always wears a life-jacket when he is rock fishing. It was fortunate for Mr White on this occasion at it placed Mr Power in a position to be able to offer his courageous and kind assistance in this lengthy rescue.

Mr Zheng Wang

73. Mr Wang died on 11 November 2012 at Little Bay, Malabar while he was rock fishing with his two friends. He was 39 years old at the time of his death, and is survived by his wife and two young children and his mother and father.
74. At about 6:30am on Sunday 11 November 2012, Mr Wang attended Little Bay, Malabar with two friends, Wei Zhang and Bo Hu. They walked to the flat rocks on the north side, an area which is known to be particularly hazardous due to the strong swell and lack of escape route. The spot they were fishing was about five meters from the rocks edge. They fished for about 1.5 to 2 hours with no incident.
75. At around 9:10am the three men saw a large wave approaching. They grabbed hold of each other. The wave crashed into the group and knocked the three men down. They were all dragged into the bay. Mr Hu, who was the only one wearing a life-jacket, was able to make it back onto the rocks. Mr Hu said that the life-jacket took him to the surface of the water, and that he then could climb onto the rocks and reached a fishing rod to drag Mr Zhang onto the rocks. They saw Mr Wang struggling in the water about 5 metres from them. They attempted to assist Mr Wang by throwing a bucket and life-jacket attached to rope and to reach the rod towards him. These attempts were unsuccessful and Mr Wang was seen to swallow a lot of water and after a while to roll onto his stomach in the water. It was estimated that he was face down in the water for about five minutes. Neither of the men entered the water because they were both incompetent swimmers, although once Mr Zhang could reach Mr Wang he jumped in and pulled him onto the rocks. When the paramedics arrived on the scene, Mr Wang displayed no signs of life and an autopsy determined that the cause of death was drowning.³⁵

³⁴ Volume 1, tab 24, p 111.

³⁵ Autopsy Report for the Coroner, Volume 1, tab 35, page 150.

76. Mr Zhang gave evidence at this Inquest. He said that he has been rock fishing more than fifty times. He was not aware there was available information about the dangers of rock fishing. He said the weather was calm and that the wave that swept them was unexpected. He said that since this incident he always wears a life-jacket.

Sung Su Cho

77. Sung Su Cho died while he was rock fishing on 23 December 2013 at, Mermaid's Inlet, Currarong. He was 28 years old at the time of his death.
78. Mr Cho was fishing with his friends Hernan Hong, Hayden Luo and Oliver Jia Wang.
79. The group arrived at Mermaid's Inlet well after dark and set up their gear near some rock caves and observed the water for a while. Mr Hong says that the waves were crashing on the rocks at some locations, and that they chose a spot to fish where the waves were not crashing as much. The visibility was poor as it was overcast and there was not much light from the moon.
80. At around 2 am Mr Cho and Mr Hong went to the water's edge to retrieve water to fill a small live bait pool. They were using a 20-25 litre bucket attached to a length of rope to retrieve water from the ocean which was 4-5 meters below. They did this about four times, holding onto each other to prevent falling into the water. On the fifth time, the unexpected weight of the bucket pulled Mr Hong forward and off balance, and Mr Cho fell into the water. Mr Hong threw various items into the water so Mr Cho could grab hold of something, including buckets, fishing rods, and a small plastic pool they had with them to hold bait. One of their other friends grabbed a life buoy which was located on the track down to the beach to no avail. Mr Cho attempted to tread water and swim back towards the rocks.
81. Several of the friends and other fisherman dialled '000'; and called for assistance. There was some confusion regarding their exact location.
82. Rescue helicopters searched the area in combination with Marine Rescue vessels but Mr Cho's body was not found.
83. Mr Hong gave evidence at this Inquest that a life-jacket would definitely have helped in this incident.
84. Dzarko Mitrovic was camping nearby. He was an experienced rock fisherman, having fished since he was 13 years old. Whilst he had a life-jacket at the time of this incident, he did not always wear it when he was rock fishing because he had felt safe enough even though he had had some close encounters of nearly being swept off rocks by waves. He says that after this incident, he will wear a life-jacket if he returns to fishing.
85. On 13 June 2014 Mr Cho's remains were found by Dale Hurst, (a keen rock fisherman), in a nearby location. I accept the police opinion that Mr Cho died as a result of drowning within a short time of falling into the water.³⁶
86. Mr Hurst has provided a statement describing an incident in November 2011 when he was rock fishing at Bondi and was washed into the water by a freak wave. He was wearing a

³⁶ Volume 2, tab 81, page 484.

manually inflatable life-jacket with a whistle attached. He describes feeling like he was constantly getting pulled under the water for a minute and a half, then activating the life-jacket to inflate it. He said this pulled him up out of the whitewash where he could float and breathe. He was then in the water for approximately 2 hours in the dark of night, before being rescued by a police boat after police heard the sound of his whistle blasts. He believes that the only reason he is still alive is because he was wearing a life-jacket.

Greg Walter Reardon

87. Mr Reardon died between 2-3 January 2013 while he was rock fishing at the Yamba break water at the northern end of Turners Beach. This is described as a wall constructed of rocks to protect the harbour, and being commonly used by rock fishermen. He was 62 years old at the time of his death and is survived by his wife.
88. Unfortunately there are no witnesses.
89. At 6.15am on 3 January 2014, another fisherman found Mr Reardon's body floating in the water near Turners Beach.
90. Police officers identified Mr Reardon's fishing gear, and reported that there was a fishing rod with the reel end facing down towards the water, quite thick fishing line, and a lure which was stuck in the rocks. Police believe that Mr Reardon attempted to cast a large lure into the water and the lure was caught in the rocks. It is presumed that he slipped and fell into a gutter of water that ran along the length of the break wall. The gutter has a very strong current pulling a large volume of water out to sea and would have made swimming very difficult.
91. Mr Reardon was wearing jeans, sand shoes and work shirt.
92. At autopsy it was determined that the cause of death was consistent with drowning.³⁷

Huiqing Hua and Ding Ding Zhang

93. Huiqing Hua and Ding Ding Zhang died on 25 April 2014 while they were rock fishing at Wybung Heads at Wybung National Park in the Lake Munmorah State Conservation Area.
94. Huiqing Hua was 24 years old at the time of his death and was studying at the University of Western Sydney. He was on a student visa. He resided with his girlfriend, Shihu Zhu.
95. Ding Ding Zhang was 20 years old at the time of his death and was also studying at the University of Western Sydney.
96. On 25 April 2014 at around 2pm, Mr Hua, Mr Zhang, and their friends Shihui Zhu, Yang Yu, Sheng Zhong Liu, and Zepeng Lu arrived at Wybung Head. It was a beautiful day with

³⁷ Autopsy Report for the Coroner, Volume 1, tab 46, page 209.

hardly any waves and no wind. They began fishing about 2 ½ metres above water level on flat rocks.

97. At around sun set, Mr Hua caught a salmon and everyone became excited. As they prepared to leave and started packing everything up, Ms Zhu (whose back was to the ocean) was washed into the water by a large wave. Her foot became tangled in a fishing line and she called for help.
98. Mr Hua jumped into the water in an attempt to save her. He was able to swim out to her, untangle her foot, and very calmly said, "Let's go back, follow me." Ms Zhu began to swim back to shore but lost sight of Mr Hua. She floated to a location where the water was not so rough.
99. Mr Lui said that he heard Mr Hua call out for help three or four times, but after that he did not hear him anymore.
100. Mr Liu, Mr Zhang and Mr Lu used their clothes to make a rope. Mr Lu threw a life ring into the water (they had bought the life ring on the way to Wybung Head). They all went closer to the edge in an attempt to see and hear Mr Hua and Ms Zhu more clearly. Another big wave came and they themselves were dragged into the water.
101. Mr Lu was able to climb back out of the water, but Mr Zhang was not. He was not a strong swimmer.
102. Ms Zhu also managed to climb back out of the water onto the rocks. She describes trying to get back onto the rocks but that big waves were crashing around her and would pull her away from the rocks and she could not initially get out.
103. Police and ambulance officers arrived shortly before 7pm. A search was commenced by NSW Police (including Pol Air), the Volunteer Rescue Association, the State Emergency Service, Rural Fire Brigade, National Parks and Wildlife Service and SLS NSW.
104. Mr Hua's body was found the next morning on 26 April 2014 at around 10:30am floating about 200m east of Wybung Head. The body of Mr Zhang has never been recovered.
105. The Westpac helicopter was called and Water police and police rescue were summonsed. A joint abseiling and helicopter winch rescue lifted Ms Zhu off the rocks.
106. An autopsy on Mr Hua determined the cause of death to be saltwater drowning.³⁸
107. I accept the opinion of the police that Mr Zhang drowned shortly after being swept into the sea.³⁹
108. Mr Lu gave evidence at this inquest. He said that he had never seen any education about the dangers of rock fishing and that he didn't read carefully the rock fishing warning signs at Wybung Head. He said that if he had a life-jacket on he could have jumped in to save his friends and that it would have been best if everyone was wearing a life-jacket.

³⁸ Autopsy Report for the Coroner, Volume 2, tab 57, page 267

³⁹ P79B Report of Suspected Death to the Coroner, Volume 2, tab 57, page 267

Young Kim

109. Young Kim died while he was rock fishing at North Curl Curl on 23 August 2014. He was 42 years old at the time of his death and is survived by his wife Kyung Kim. He was the only one of the deceased to be wearing a life-jacket at the time of their death, however, he had a significant head injury that may have caused unconsciousness before he drowned.
110. At around 7:00am on 23 August 2014 Mr Kim and his wife were fishing on the North Curl Curl headland. There were two other men, Maxime Tran and Jae Young Ko, also fishing. Mr Tran said that the weather was good and the waves were not that high.
111. At around 10:30am the swell got bigger suddenly. A wave approached and swept over the area, washing the three men into a rock pool just behind them. Mr Kim had his back to the water at this time, and appeared to be getting more bait out of his bucket. He was washed backwards into a rock face directly behind. There was a large set of waves which made it difficult to get out of the pool.
112. Mr Tran found Mr Kim face down in the rock pool. Mr Ko noticed a large gash on Mr Kim's head and dragged him from the rock pool. Mrs Kim went to get help and Mr Tran and Mr Ko began CPR.
113. '000' was contacted and paramedics arrived and took over the CPR.
114. Mr Kim was airlifted by NSW ambulance helicopter and was transferred to an ambulance which transported him to Manly Hospital where life was pronounced extinct.
115. Mr Kim had been wearing a PFD type 2 Bourke life-jacket, which was compliant with Australian Standards and waterproof boots at the time of his death. On 26 August 2014, Professor Johan Duflou conducted an autopsy on Mr Kim and determined the cause of death to be drowning⁴⁰. The autopsy also identified an 8cm laceration of the posterior surface of the scalp with partial avulsion of scalp tissue. Other smaller abrasive type injuries were noted on the body, consistent with contact with rocks. The appearance suggested the deceased was stuck by a wave, causing him to strike his head against a rock. This may have caused unconsciousness, the deceased then likely drowned.⁴¹ Dr Duflou said that the injury may have caused severe head injury and he suspects that it is more likely than not that the deceased was initially unconscious as a result of the inevitable blow to the head.⁴²
116. Mr Tran gave evidence at this Inquest that he and his colleague, Mr Ko always wore life-jackets and that Mr Ko was able to carry Mr Kim out of the water because he was wearing a life-jacket.

Jesse Howes

117. Jesse Howes died on 1 February 2015 while he was rock fishing at Snapper Point, Frazer Park in the Lake Munmorah State Conservation Area. He was 23 years old at the time of

⁴⁰ Limited Autopsy Report for the Coroner, Volume 4, tab 102, page 1077.

⁴¹ Limited Autopsy Report for the Coroner, Volume 4, tab 102, page 1077.

⁴² Volume 4, tab 102B.

his death. He is survived by his de facto partner, son, his parents and his brother. He enjoyed fishing off a boat, lake fishing and rock fishing. He was an experienced and keen rock fisher.

118. At around 6am on 1 February 2015 Mr Howes and two friends, Todd Hollard and Anthony Griffin, went to Snapper Point to go rock fishing. There had been some swell warnings, but Mr Griffin said that the swell did not seem so bad from the headland. Mr Hollard said it was rough but seemed fine.
119. They walked to the top of the rocks and sat there for twenty minutes or so watching the waves.
120. They then proceeded down to the rocks and stepped over a crevice Mr Griffin saw a wave coming and called out but Mr Howes did not hear him. He said this was a freak set of waves.
121. Mr Howes and Mr Hollard climbed out to the edge of the rocks to a hole about six meters in diameter and about 15 meters deep, in which water from the ocean churns quite violently. A wave came through the opening of the hole and pushed Mr Howes causing him to fall into the hole. Mr Griffin describes the wave breaking against the rock and white wash covering his friends and then Mr Howes was gone. Mr Griffin heard Mr Howes call out for help.
122. His friends immediately threw an angel ring which was located on a stand nearby into the crevice. Mr Griffin saw Mr Howes swim to it. Mr Howes stayed in the ring for about 3-4 minutes but it slipped away from him and was sucked up into the cave.
123. Mr Hollard grabbed a second angel ring and threw it, and Mr Howes managed to stay with it for a couple of minutes. After 10 minutes Mr Howes appeared to lose consciousness and went out of sight. At the time the surf was extremely rough with swells in excess of 3 metres with larger waves crashing into the rock face and surrounding cliffs and beaches.
124. '000' was called and NSW Police officers, the Westpac Helicopter, Pol Air, water patrols by SLS NSW, Marine Area Command, Police Rescue and Police diver personnel all failed to find Mr Howes.
125. On 3 February 2015 his body was located in a crevice under the rock ledge and was successfully recovered by police divers. An autopsy determined that the cause of death was head injury and drowning.⁴³
126. SLS NSW statistics indicate that 15 rock fishing related deaths, including Mr Howes, have occurred since 2008 on a 3 kilometre stretch between flat island and Wybung Head.⁴⁴ Apparently since 1 February 2015 there have been further rescues at this location.⁴⁵
127. Mr Hollard gave evidence at this Inquest that he had been rock fishing on many occasions prior to this event. He said that he had never seen any education about the risks of rock fishing. He said that on this day they had checked and that there were no dangerous weather warnings. He said they watched the waves for half an hour before they commenced their fishing. He said that the wave that swept Mr Howes into the water was

⁴³ Autopsy Report for the Coroner, Volume 5, tab 125, page 1254.

⁴⁴ Volume 5, tab 127, page 1270.

⁴⁵ Volume 5, tab 127, page 1275.

random and that the swell looked otherwise safe. He said that he has not been rock fishing since this tragic event.

What more can be done?

128. None of the nine deaths considered by this Inquest occurred on days with warnings for dangerous weather conditions. Many of the fishermen were experienced rock fisherman.
129. These facts are reflected in the research review into rock fishing in NSW conducted by Transport and Road Safety, University of New South Wales in 2012. That report concluded that in the 74 deaths in NSW between 1992 and 2000, the overwhelming majority of deaths were of seasoned rock fishers and 94% of them entered the water after a large wave engulfed the area they were standing.
130. In the face of those statistics it is evident that experience, information and education play only part of the role in preventing rock fishing deaths. The frequent causes of the deaths are the combination of a larger unexpected wave sweeping the fisherman into the sea and then, the fishermen not being able to stay afloat long enough for assistance to arrive.
131. There is no doubt that rock fishing locations by their nature are isolated and away from immediate assistance. It is also clear that tide, wave and weather conditions at an apparently safe location for rock fishing can become dangerous. In those circumstances the evidence informs us that the best precaution for a rock fisherman who is unexpectedly swept into the sea is a life-jacket that will keep them buoyant until assistance arrives.
132. The NSW Water Safety Advisory Council has recommended that the mandatory wearing of life-jackets be considered by the NSW Government.
133. Ms Vicki D'Adam, the Chief Executive Officer of the Ministry for Police and Emergency Services states that the NSW Government is currently addressing options to increase the wearing of life-jackets by rock fishers and is continuing discussions with stake holders to ensure that any measures implemented are effective in reducing rock fishing drownings. She has indicated that any recommendations made as a result of this Inquest will be included in the material being considered by the NSW Government.⁴⁶
134. Ms D'Adam has indicated that the "options" currently being considered by the NSW Government are: a major coordinated education campaign, voluntary wearing of life-jackets, mandatory wearing of life-jackets in high risk locations or high risk conditions, wearing of life-jackets in certain situations, a trial of mandatory wearing of life-jackets for a certain time period in a certain location, mandatory wearing of life-jackets.
135. Commander Mark Hutchings, the Commander of the NSW Police Marine Area Command (which has responsibility for all Marine Search and Rescue incidents in New South Wales),⁴⁷ and who is also the chair of the Safer Coastal Waters Sub-Committee, states that despite concerted efforts on the part of volunteer organisations and government agencies to

⁴⁶ Volume 4, tab 116, page 1139.

⁴⁷ Volume 7, tab 149.

educate the public, the average number of rock fishing fatalities remains static.⁴⁸ He is of the view that education and awareness alone do not deliver a reduction in fatalities.⁴⁹

136. He gave evidence that he speaks on behalf of the NSW Police Force and he recommends the introduction of mandatory wearing of life-jackets without any restriction as to location. He says that “in a nutshell, rock fishing at any location is a high risk activity”.⁵⁰
137. Commander Hutchings says that a primary function of his command is to conduct reactive and proactive compliance operations and these are conducted through intelligence led police strategies including the identification of high risk locations and activities. He is content that strategies can be developed and modified to achieve effective enforcement of mandatory life-jackets and that the cost of compliance would be far exceeded by the cost of current search and rescue operations.⁵¹ He supports the introduction being made with a twelve month grace period where fines would not be applied.
138. Mr Leahy, Chief Executive Officer, Westpac Life Saver Rescue Helicopter gave evidence in this Inquest that every rock fisher wearing a life-jacket that they have attended has been successfully rescued. He said that the rock fishermen swept into the sea wearing a life-jacket have floated away from the impact zone and he is not aware of any incident where a life-jacket has made someone less safe. He gave evidence that patients not wearing life-jackets “go under” before the helicopter rescue can get to them. He said that life-jackets do not impede on the rescue procedures in any way. He strongly supports the introduction of legislation requiring the wearing of life-jackets by rock fishermen.
139. This Inquest has heard instances of survival stories that support Mr Leahy’s evidence. By way of example, on 18 October 2014 a 27 year old male slipped from the rocks into the ocean at Winney Bay, NSW, whilst rock fishing. He was wearing a life-jacket at the time and was successfully rescued. On 18 April 2015 a man was washed into the ocean by a large wave whilst rock fishing at Birdie Beach, Budgewoi off the NSW Central Coast. He was able to stay afloat for 20 minutes in a life-jacket and swam back to the rocks where he climbed up to safety. On 27 May 2015 around 6.10 pm a man was swept off the rocks by a large wave whilst rock fishing. He was wearing a life-jacket, rock fishing cleats, a head light and high visibility clothing and was washed back onto the rocks, escaping with only a cut to his leg.
140. Commander Hutchings sets out information about three other survival stories where life-jackets were worn,⁵² including one at Fraser Beach where Jesse Howes died.
141. Mr Patchett, Manager, Stakeholder and Community Engagement in the Maritime Management Centre is a member of Standards Australia Committee on life-jackets and is a member of the Safe Coastal Waters Sub-Committee. He stated that life-jackets are central to the loss of life on the water. He gave extensive evidence about the appropriateness of life-jackets for rock fishing use. He said that there is a distinction between life-jackets approved for surf lifesaving competitions where other people are in the vicinity to aid assistance and life-jackets appropriate in accidental immersions in isolated areas with rough seas.

⁴⁸ Volume 7 tab 149 page 9.

⁴⁹ Volume 7 tab 149 page 10.

⁵⁰ Volume 7 tab 149 page 13.

⁵¹ Volume 7, tab 149 page 18.

⁵² Volume 7, tab 149, page 19.s

142. He stated that the life-jackets for rock fishermen need to be certified in accordance with the Australian Standards or an equivalent standard and that jackets can be tested for compliance with the Australian Standards. He confirmed that there could be a degree of flexibility for the design of life-jackets for rock fisherman within the bounds of the Australian Standards.

Conclusion

143. The introduction of the wearing of mandatory life-jackets is supported by all of the stakeholders involved in these deaths. This includes the land managers of the areas where the deaths occurred, the rescue agencies involved, SLS NSW and many of the bereaved families and friends or witnesses involved in the deaths. RFA and ANSA support the introduction provided that the life-jackets are appropriate.
144. As to the disadvantages, there is the inevitable loss of autonomy for rock fishers. There is also the cost of the jacket and any fine that might be imposed as a result of not wearing it.
145. It is clear from the evidence that these costs are far outweighed by the saving of lives and the subsequent reduction of social and financial costs associated with the loss of lives in rock fishing.
146. There are, of course, precedents for similar mandatory measures, such as the mandatory wearing of seat belts, bike helmets and life-jackets in certain boating situations. All of these measures have had successful outcomes.
147. Fishing in New South Wales is already regulated to the extent that a licence fee must be paid for a permit to fish.
148. It has been estimated that 1 million residents in NSW apply for a fishing licence each year. Of these it has been estimated that 15-20% engages in rock fishing.⁵³ Since the last two Inquests the measures that have been put in place to protect the rock fishermen have not seen any reduction in the annual rock fishing drowning rates. The average annual number of rock fishing fatalities remains at 7-8.⁵⁴
149. In conclusion the weight of all of the evidence shows that it is desirable and in the interests of public health and safety for the introduction of legislation requiring the mandatory use of life-jackets by those engaged in rock fishing.
150. It is also clear that the successful targeting of rock fishing fatalities and injuries must involve the continuation and further development of the information, education and safety device programs already in place.
151. I extend my sympathies to the families and friends of these rock fishermen. I trust that the lessons that have been learnt from the circumstances surrounding their deaths will assist in preventing these tragedies recurring.

⁵³ Research review of rock fishing in NSW, Volume 3, tab 89, page 566.

⁵⁴ Research review of rock fishing in NSW, Volume 3, tab 94, page 173

FINDINGS

I find that Myassar Ayoub died on 18 July 2012 Cape Banks, La Perouse, NSW. I am satisfied the cause of death was drowning after being swept into the water while engaged in rock fishing.

I find that Donald White died on 1 November 2012 off the North Curl Curl rock platform, NSW. I am satisfied the cause of death was immersion in a person with coronary atherosclerosis and cardiac amyloidosis. At the time of his death he was engaged in rock fishing, how he came to be in the water was not witnessed and is therefore not known.

I find that Zheng Wang died on 11 November 2012 at Little Bay, Malabar, NSW. I am satisfied the cause of death was drowning after being swept into the water while he was engaged in rock fishing.

I find that Sung Su Cho died on 23 December 2013 at, Mermaid's Inlet, Currarong, NSW. I am satisfied the cause of death was drowning after falling 4-5 meters from a rock ledge into the sea while he was engaged in rock fishing.

I find that Greg Walter Reardon died between 2-3 January 2014 at Turners Beach, Yamba, NSW. I am satisfied the cause of death was drowning while he was engaged in rock fishing. How he came to be in the water was not witnessed and is therefore not known.

I find that Huiqing Hua died on 25 April 2014 at Wybung Heads, Lake Munmorah State Conservation Area, NSW. I am satisfied the cause of death was drowning while he was engaged in attempting to save a friend who had been swept into the water while engaged in rock fishing.

I find that Ding Ding Zhang died on 25 April 2014 at Wybung Head, Lake Munmorah State Conservation Area, NSW. I am satisfied the cause of death was drowning while he was engaged in attempting to save a friend who have been swept into the water while engaged in rock fishing.

I find that Young Kim died on 23 August 2014 off the rock platform at North Curl Curl, NSW. I am satisfied the cause of death was drowning while he was engaged in rock fishing.

I find that Jesse Howes died on 1 February 2015 at Snapper Point, Frazer Park, Lake Munmorah State Conservation Area. I am satisfied that the cause of death was head injury and drowning after being swept into the water while engaged in rock fishing

RECOMMENDATIONS:

To the Minister for Justice and Police

I recommend the introduction of legislation requiring the mandatory use of life-jackets by those engaged in rock fishing including:

- a) A requirement that the life-jackets comply with the Australian Standards

- b) The consideration of a twelve month grace period
- c) The legislation be introduced with a dedicated education campaign
- d) The consideration of accompanying the introduction of mandatory life-jackets with initiatives to facilitate the wearing of appropriate life-jackets such as coupons or gift vouchers for free or subsidised life-jackets or life-jacket borrowing schemes for those engaged in rock fishing.

To the Minister for the NSW Department of Primary Industries

- 1. I recommend that consideration be given to schemes that might increase the uptake of the wearing of life-jackets such as coupons or gift vouchers for free or subsidised life-jackets or life-jacket borrowing schemes for those engaged in rock fishing.
- 2. I recommend that consideration be given to utilising the fishing fee collection process to offer an “opt in” service that would provide alerts, education and other safety information regarding rock fishing.

To the Chief Executive Officers of Shoalhaven City Council, Warringah Council, Randwick City Council and National Parks and Wildlife Services

- 1. I recommend a review of the size and location of current signage relating to rock fishing and to consider the erection of further appropriate signage at known rock fishing sites warning of the hazards of rock fishing and promoting the wearing of life-jackets.
- 2. I recommend considering the use of shock signage, indicating the number of deaths or serious injuries associated with rock fishing in a particular location, at identified locations of particular danger for rock fishing.

C Forbes

Deputy State Coroner

June 2015

C11.2	Submission Upper House Inquiry - General Purpose Standing Committee No. 6 - Fit for the Future
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Meeting: Leading & Learning Committee

Date: 20 July 2015

COMMUNITY STRATEGIC PLAN STRATEGY: Corporate Management

COMMUNITY STRATEGIC PLAN OBJECTIVE: To ensure local democratic representation

DELIVERY PROGRAM ACTION: Submission to the Upper House Inquiry

1.0 EXECUTIVE SUMMARY

1.1 SUMMARY

To acknowledge and note Council's submission on the Terms of Reference of the Upper House Inquiry regarding the Fit for the Future program. The submission addresses the Terms of Reference of the Inquiry.

2.0 RECOMMENDATION

That the attached submission to the Upper House Inquiry on the Fit for the Future program be noted.

3.0 BACKGROUND

3.1 PURPOSE

Council's submission to the Legislative Council has been sent on 2 July 2015 (Attachment 1).

3.2 BACKGROUND

3.2.1 The Inquiry is currently before the Upper House / Legislative Council and is to be conducted by the General Purpose Standing Committee No. 6. There was a call for submissions which closed on 7 July 2015 (extended from 5 July 2015).

3.2.2 Council made a submission (Attachment 1) and in accordance with normal practice the submission is now reported to Council.

3.3 POLICY IMPLICATIONS

In accordance with Council's resolution of 5 March 2012 that all submissions on legislative or policy review matters be referred to Council for prior approval (or notation in instances of urgent deadlines).

3.4 RELATED LEGISLATION

Local Government Act 1993 and Constitution Act 1902

3.5 FINANCIAL ISSUES

3.5.1 Budget

Nil

3.5.2 Resources Implications

Nil

4.0 KEY ISSUES

- 4.1 The Submission addresses all of the Terms of Reference of the Inquiry.
- 4.2 The submission addresses Community and Council concerns with the State Government's agenda and the detrimental impacts of amalgamation on the Northern Beaches.
- 4.3 The submission addresses many issues relating to Council finances and State Government benchmarks.
- 4.4 The submission addresses the inadequate timeframe with the Fit for the Future Program, lack of clarity in the scale and capacity concepts and the inability of IPART to provide a comprehensive evaluation of submission within the timeframe set.
- 4.5 The Inquiry, to be chaired by the Hon. Paul Green MLC, is to conclude on 17 August 2015.

5.0 ATTACHMENTS / TABLED DOCUMENTS

Submission to Upper House Inquiry (**Attachment 1**).

6.0 SUSTAINABILITY ASSESSMENT

6.1 GOVERNANCE & RISK

6.1.1 Community Engagement

The submission provides a community based view of the Government's agenda. It addresses the inadequate timeframes within the Fit for the Future process, lack of clarity in the benchmarks and inability for IPART to provide a comprehensive assessment of submissions.

6.1.2 Risk Management

Nil.

6.2 ENVIRONMENT

6.2.1 Environmental Impact

There will be no environmental impact.

6.2.2 Mitigation Measures

No mitigation measures are required.

6.3 **SOCIAL**

6.3.1 **Address Community Need & Aspirations**

The submission addresses community and Council concerns with the State Government's agenda and the impacts on local democracy, representation and local character.

6.3.2 **Strengthening local community**

The submission reflects local concerns and uses quotes from community representatives to reinforce the strength of the community and the solidarity of view with the Council.

6.4 **ECONOMIC**

6.4.1 **Economic Development**

The submission addresses many issues relating to finances, State Government benchmarks and local financial autonomy.

Report prepared by
Steve Evans

Mark Jones
ACTING GENERAL MANAGER



PITTWATER COUNCIL

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Mark Ferguson, General Manager
8am to 5:30pm Mon - Thurs, 8am to 5pm Fri

2 July 2015

The Director
General Purpose Standing Committee No.6
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Director,

Please find attached Pittwater Council's submission to the General Purpose Standing Committee No. 6 on the Terms of Reference to the inquiry into local government in New South Wales.

Yours sincerely,


 Mark Ferguson
GENERAL MANAGER

Email pittwater_council@pittwater.nsw.gov.au Web pittwater.nsw.gov.au

Mona Vale Customer Service Centre
Village Park 1 Park Street, Mona Vale

Avalon Customer Service Centre
59A Old Barrenjoey Road, Avalon

Support Services
Units 11, 12, 13 + 16/5 Vuko Place, Warriewood

Boondah Depot
1 Boondah Road, Warriewood

**PITTWATER COUNCIL'S SUBMISSION TO
THE GENERAL PURPOSE STANDING COMMITTEE NO. 6
ON THE TERMS OF REFERENCE TO THE INQUIRY INTO LOCAL GOVERNMENT IN NEW SOUTH WALES**

The following responses outline Pittwater Council's submission to the General Purpose Standing Committee No. 6 on the Terms of Reference to the inquiry into local government in New South Wales.

Terms of Reference

(a) the New South Wales Government's 'Fit for the Future' reform agenda,

Council Response:

The Government, in the Fit for the Future process, is concentrating on only a small section of the wide range of 'reform' opportunities that the local government industry demonstrated a willingness to consider.

The Government's Fit for the Future agenda has failed to present an evidence based approach to structural reform. Rather it relies upon a doctrinaire approach to introduce amalgamations as a structural panacea for metropolitan local government. In doing this, the Government has established arbitrary targets for groupings of councils and established ill-defined concepts of 'scale' and 'capacity'.

The Government appears to have a bias towards financial benchmarks with social, community, governance and representative democracy being of secondary note.

Even when a Council establishes financial sustainability, the population size remains a threshold criteria to 'pass' or 'fail'. This 'pass' or 'fail' criteria is applied across the metropolitan area in an ad hoc and inequitable manner. There is no consistency between the projected population sizes of the Independent Review Panel's recommended amalgamated councils. Further the State Government has removed the Panel's alternate recommendation to form Joint Organisations in what appears again to be a focus on achieving larger councils and less of them in the metropolitan area.

It appears that the Government's agenda, in simple terms, reflects a desire to deal with fewer metropolitan councils. The Government in reducing State Government bureaucracy has had less capacity to deal with the number of councils in the metropolitan area. It appears that they are of the opinion that it is too difficult to deal with multiple views around the table. Rather than looking at the Government's own deficiency in providing leadership, goals and integrated systems, it prefers to blame local government.

(b) the financial sustainability of the local government sector in New South Wales, including the measures used to benchmark local government as against the measures used to benchmark State and Federal Government in Australia,

Council response:

It can be acknowledged that NSW Local Government has financial pressures upon it that must be addressed. NSW Local Governments 'Destination 2036' Conference acknowledged those pressures and began a process of investigation for possible avenues of reform.

In 2011, NSW Treasury Corporation (TCorp) was appointed by the NSW Office of Local Government and NSW Treasury to investigate and assess the financial sustainability of all 152 local councils in NSW.

TCorp developed a definition of financial sustainability that incorporated elements of financial strength, service and infrastructure requirements, and the needs of the community. As such, TCorp defined financial sustainability as:

"A local government will be financially sustainable over the long term when it is able to generate sufficient funds to provide the levels of service and infrastructure agreed with its community." (TCorp, 2013)

A set of Financial Sustainability Ratings (FSRs) were developed to benchmark current performance and Outlook Ratings were assigned based on whether these ratings were anticipated to improve or deteriorate based on each council's Long Term Financial Plan.

The FSR methodology was used to assess and assign each council an individual rating ranging from 'Very Strong' to 'Distressed'. To be considered financially sustainable, a council must have been assessed at a 'Moderate' or higher level. TCorp then assigned an Outlook rating of 'Positive', Neutral or Negative' depending on each council's expected performance over a three year period.

The results of the analysis suggested that three quarters of councils were achieving a moderate or higher FSR rating. However, nearly half of all councils were determined to have a negative FSR outlook based on the high number of operating deficits and large asset maintenance and infrastructure spending gaps. (KPMG, 2015)

Pittwater Council in its TCorp assessment has been rated as Sound/Neutral demonstrating that a medium size Council has the ability to be financially sustainable in the long term regardless of its size and in opposition to the threshold criteria of 'scale' as set down by the State.

In terms of the relativity of the actual benchmarks (Fit For the Future (FFF) Metrics) used in assessing councils financial sustainability, Council as a part of its Fit for the Future submission engaged experts in the field; Professor Brian Dollery (University of New England's (UNE) economist and government specialist) and KPMG to assess benchmarks as stipulated by the NSW State Government. They formed the opinions as follows:

In general, Professor Dollery surmises that it is,

"Unwise in the extreme to make far-reaching decisions based on ratio and benchmark analysis of the kind undertaken by TCorp (ultimately used in the FFF metrics). It has been shown that there is no statistically significant relationship between financial sustainability ratios for NSW metropolitan councils and council population size (being the ultimate measure of scale by the NSW State Government).

This completely undermines the argument by the Panel that wholesale council amalgamation will improve financial sustainability in NSW local government.

Scholarly literature contains numerous caveats on the use of financial ratio analysis for the assessment of local government financial sustainability sighting that quantitative data alone simply cannot adequately convey the current state and likely future expenditure on infrastructure assets (Walker and Jones, 2012; Van Daniker and Harris 1999; Falconer 1991).

Even where ratio analysis is supported, caveats are typically required regarding the need to address differences in circumstances when performing comparative analysis and the need to conduct analysis over a sufficiently long time horizon (three, five or ten years) (Lowery, 2005; Dommel and Nathan, 1978; Kloha, Weissert and Kleine, 2005a). Further, financial sustainability rating approaches which ignore qualitative data, population demographic data, shifts in the valuation of the tax base and lack of transparency are at best weak and misleading (Kloha, Weissert and Kleine, 2005)" (Dollery, 2013)

In addition, KPMG have cited further limitations regarding the benchmarks used.

KPMG indicate that:

"Operating performance ratio

The Fit for the Future benchmark is for the operating performance ratio to be greater than or equal to a break-even (zero) average over a three year period. It is noted that better practice for councils should be to set internal benchmarks greater than a 'break even' operating position in the long run to prevent deterioration of their financial positions.

Own-source revenue ratio

The Fit for the Future benchmark is for own source revenue to be greater than 60 per cent of operating revenue averaged over a three-year period.

A limitation of this indicator is it is sensitive to capital grants and contributions which tend to be notoriously 'lumpy' over time and therefore is not an entirely consistent measure across councils over time.

Building and infrastructure asset renewal ratio

The Fit for the Future benchmark is for the building and infrastructure asset renewal ratio to be greater than 100 per cent averaged over a three-year period.

A limitation of this indicator is it is highly sensitive to how councils estimate depreciation expenses. Assumptions underpinning depreciation calculations may vary significantly over time and across similar councils. Also, depreciation is an accounting estimate and not necessarily a real reflection of an asset's degradation.

Infrastructure backlog ratio

The Fit for the Future benchmark is for an infrastructure backlog ratio less than two per cent averaged over a three-year period. This is widely viewed as an ambitious target with a major limitation of this indicator being that the data source stems from a non-audited item (Special Schedule 7) and is therefore not measured consistently across councils. This raises questions regarding the reliability of the indicator which, perhaps, may be better used to establish a trend line rather than as an accurate measure of infrastructure backlogs across councils.

Asset maintenance ratio

The Fit for the Future benchmark is for an asset maintenance ratio greater than 100 per cent averaged over a three-year period.

A limitation of this indicator is its declining usefulness as a forward-looking indicator. Long term financial planning assumptions for most councils will set a standard level of maintenance based on what's required to maintain a desired ratio. Changes to a council structure may have differing effects on these assumptions.

Debt service ratio

The debt service ratio measures the "appropriate and affordable" level of debt servicing by councils. The indicator has been included in the Fit for the Future criteria to address whether councils use a combination of council finances and borrowings to reduce any infrastructure backlog.

The Fit for the Future benchmark is for a debt service ratio greater than zero and less than or equal to 20 per cent averaged over a three-year period. The use of loan borrowings was considered to be integral to 'fit for the future' councils with sufficient 'strategic capacity' to partner with the State Government.

A limitation of this indicator is that an assessment of a council's debt service ratio needs to consider the broader context of a council's financial performance, e.g. its ability to service debt. Similarly, this indicator does not account for what purposes a Council is accruing debt and whether borrowings are being used to fund long life infrastructure assets.

Real operating expenditure per capita

The real operating expenditure per capita indicator is the sole criterion used to measure 'efficiency' by examining trends in a council's 'real operational expenditure per capita' over a period of time. The Fit for the Future benchmark is for the real operating expenditure per capita to decrease over time – that is, achieve a downward trend. Importantly, this benchmark does not depend on comparison of performance across councils, but rather involves comparing a council's performance against itself over time with a view to generating efficiency dividends.

A limitation of this indicator is that it does not take into account varying community expectations of services levels provided by council. Council's with higher operational expenditure may well be responding to community demands for increased service levels." (KPMG, 2015)

As demonstrated above, there are significant schools of thought by scholars and professionals in this field that express concerns that the benchmarks used in assessing councils under the Fit for the Future regime are inadequate.

In terms of comparing the benchmarks used for NSW Local Government as against those used for state and federal levels of government, Council has no insight into the benchmarks used in other tiers of government. It would be difficult to draw comparisons due to the fact that all three levels face differing financial and social constraints. An example of a differing constraint is that both state and federal levels of government are not subject to rate capping and significant cost shifting which significantly restricts NSW Local Government's ability to be masters of their own income and expenditure.

(c) the performance criteria and associated benchmark values used to assess local authorities in New South Wales,

Council Response:

See Council's response for Terms of Reference (b).

(d) the scale of local councils in New South Wales,

Council Response:

Pittwater Council has clearly demonstrated and presents sound argument in its submission to IPART that current and projected operations are at least as good as or better than that recommended by the Independent Review Panel in achieving scale and capacity.

Strategic Capacity and being 'Fit for the Future' should not be viewed through the lens of 'scale' and in particular population size. Professor Dollery in his report *"Bigger is not always Better; An assessment of the Independent LG Review Recommendation that Pittwater Council be Amalgamated"* (2013) at page 63 assessed that there is to be no relationship between the financial sustainability ratios for metropolitan councils and council population size states: - inter alia, *"...This completely undermines the argument by the Panel that wholesale council amalgamations will improve financial sustainability in NSW local government."*

The use of population size to demonstrate strategic capacity is a folly. The largest councils by population in the metro area are not performing as well as many smaller councils in terms of the benchmarks for 'fit Councils'.

The Independent Panel's recommendations proposed the option of amalgamations or 'strong Joint Organisations'.

The Panel's recommendations relating to population sizes of grouped Councils is inconsistent, irregular and not supported by any analysis as to what the optimum council size should be. In this regard, Table 8 of the Final Report of the NSW Independent Review Panel's report presents scenarios of amalgamated councils with populations (2031) varying from 307,400 to 669,000 with some medium councils remaining unaffected by amalgamations with populations of 81,500 and 93,300.

The Review Panel itself acknowledged that local councils in NSW provide a wide range of goods and services for local communities and this can be expected to continue to diversify and expand. As such, the issue of 'scale' (population size) may not be as relevant and a more local understanding of 'strategic capacity' is required. For instance, the priorities and expectations of communities will differ from council to council, and it is therefore this context that should be drawn to determine 'strategic capacity'.

In KPMG's Report *"Independent Review of Structural options for Manly Council and Pittwater Council-compendium report and appendices April 2015"*, which forms part of the Council's submission to IPART, it states that:-

"There is strong rationale for defining and measuring 'strategic capacity' beyond the narrow focus of 'scale' and population size. Ideally, clearly defined benchmarks could be established to appropriately measure the quantitative and qualitative performance of Council."

However, understanding the 'strategic capacity' in this context is complex and the Independent Pricing and Regulatory Tribunal (IPART) noted the difficulties around measuring such a concept.

For the purpose of this review, it is suggested that 'strategic capacity' should be addressed and understood not simply in terms of 'scale' and 'population size, but as an outcome – based assessment."

(e) the role of the Independent Pricing and Regulatory Tribunal (IPART) in reviewing the future of local government in New South Wales, assisted by a South Australian commercial consultant,

Council Response:

Pittwater is concerned that the highly regarded Tribunal has been placed in the position of having to work to and defend a time frame for review and consultation applied by the Government. IPART's agreement to the inappropriate time frames may in itself indicate a lack of independence. It is noted that less complex assessments, undertaken by IPART, have been allocated much longer time frames for receiving responses and for consultations.

The time frames mandated by the Government make it is impossible for IPART to demonstrate that a comprehensive assessment was carried out in relation to the release of the 'Assessment Methodology'. Likewise, the time frame for IPART to review further submissions to council responses by August 2015 and the actual finalisation of all submissions by 16 October 2015 raises concern as to the depth of consideration that will be applied to the council and community submissions to allow balanced detailed recommendations to the Minister. It is feared that the integrity and reputation of the Tribunal will be severely compromised.

The web page of 'Pittwater Forever' (a grouping of 18 Pittwater Resident Associations) states, inter alia:-

"..every major criteria in the IPART document for evaluating a council's "fitness" seems to erode the people's voice in favour of the state bureaucracy's wants for larger, less independent, less local based councils in NSW. The Pittwater Forever group believes the people, not just of Pittwater but of the whole State of NSW, have been betrayed and should be enraged with the appointment of IPART to evaluate councils" (Pittwater Forever, 2015)

The Palm Beach and Whale Beach Association's (PBWBA) Storm Jacklin says the IPART appointment is a mockery to democracy. *"The appointment of IPART, driven by financial outcomes instead of the appointment of the promised independent panel, completely undermines and disenfranchises the residents,"....Pittwater community groups and Council are now writing to IPART to voice their concerns. (Pittwater Forever, 2015)*

Clareville and Bilgola Plateau Resident Associations (CABPRA) President, David Owen says *"...issues which concern the residents – community, environmental, cultural, independent, local and democratic values – seem not be addressed by the IPART process at all.....IPART, driven by 'scale and capacity' outcomes, effectively shuts the residents out of any balanced evaluation procedure,"*. (Pittwater Forever, 2015)

A primary concern of Pittwater in relation to the role of IPART is that the mandatory reliance upon scale and capacity as a deeming factor to determine whether a council is fit is unreasonable and may even be unlawful. Pittwater bases this upon a belief that IPART's methodology may be firstly contrary to Section 51 of the NSW Constitution Act that requires a system of the Local Government Act be constituted in accordance with the Laws and Legislation. Secondly, by assessing the fitness and structure of a council, it could be argued IPART has placed itself in the shoes of the Governor and Boundaries Commission so any determination should be based upon the relevant considerations set out in the Local Government Act, 1993.

The current statutory framework of a council does not have a mandatory requirement of scale or population size. Thus, it would not be fair or equitable for IPART to list as a threshold criteria a measurement that currently is not a statutory requirement for the existence or measure of the performance of a council. Pittwater submits IPART should not make the threshold question criteria that is not currently a statutory requirement for a council.

Councils embarked upon this process four years ago and the original Destination 2036 Vision was 'Strong Communities through Partnership'. The Terms of Reference define the scale and capacity criteria as; 'has the scale and capacity to engage effectively across community, industry and government'. It further states that its assessment should be as a threshold criterion. IPART has now proposed that failure to satisfy the key elements defined may deem councils unfit. In eliminating the opportunity for councils through partnerships such as shared services and other similar organisations, Pittwater submits IPART has acted contrary and undermined the fundamental intent of the process.

The appointment by IPART of a 'commercial consultant' with experience in local government indicates an admittance that the role of IPART is not accustomed to dealing with the matters before it in this review. How one person will be able to accommodate the role of plugging gaps in IPART is questionable.

(f) the appropriateness of the deadline for 'Fit for the Future' proposals,

Council Response:

There are considerable concerns with the timing of the 'Fit for the Future' process. The community has raised concerns with the tight time frames, limited time to digest reform documents and limited time to respond.

The community is extremely sceptical as to how IPART could consider the multitude of submissions relating to their assessment of methodology.