



Western

Australia

RECORD OF INVESTIGATION INTO DEATH

Ref No: 41/15

*I, Evelyn Felicia Vicker, Deputy State Coroner, having investigated the death of **Susanne VAN DER SCHOOT**, with an Inquest held at Esperance Court House, 100 Dempster Street, Esperance, on 27 & 28 October 2015 find the identity of the deceased was **Susanne VAN DER SCHOOT** and that death occurred on 3 April 2012 at the intersection of the South Coast Highway and Murray Road, Dalyup, and was consistent with Multiple Injuries (external examination only) in the following circumstances:*

Counsel Appearing:

Sergeant L Housiaux assisted the Deputy State Coroner
Mr M T Trowell QC (instructed by DLA Piper) appeared on behalf of the Shire of Esperance
Mr E W Gray (E W Gray Lawyer) appeared on behalf of Ms Linda Huiskamp

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INTRODUCTION

Susanne Van Der Schoot (the deceased) was the front seat passenger in a red 1994 Subaru Liberty Station Wagon (the Subaru) being driven north east on Murray Road, Dalyup by Linda Huiskamp (the driver) at about 3:40pm on 3 April 2012. The two women had driven to Dalyup River Estate Winery seeking part time work and were returning to the South Coast Highway (the Highway) when the driver drove through the Murray Road/Highway intersection and crashed with a Toyota Prado being driven south east on the Highway.

The deceased received the brunt of the impact and died at the scene. She was 20 years of age.

Ms Huiskamp was charged with the offence of dangerous driving occasioning death with respect to the death of the deceased and on 3 August 2012 in the Esperance District Court was acquitted of that charge by a judge and jury.¹

The issue left for consideration in this court is one of public safety, and whether there were circumstances involved in the death of the deceased which could be changed, and so prevent a similar death from occurring.

The intersection between Murray Road and the Highway no longer exists for a number of reasons, and at the time of the

¹ Ex 3

deceased's death there had not been a prior fatality, or even serious crash, at the intersection despite its obvious problems.

In those circumstances this court is left with outlining the facts relevant to the death at that time, and if the situation arises, suggesting recommendations which may still be useful from a public safety perspective.

BACKGROUND

The Deceased

The deceased was born in the Netherlands on 13 July 1991. She had one younger brother and had worked in the Netherlands as a cook. She was a generally happy, healthy 20 year old at the time of her death.



Ms Huiskamp (left) and the deceased (right) – Photo provided by Family

The deceased and her friend, Ms Huiskamp, enjoyed travelling and arrived in Australia on 22 September 2011 on a one year Visa.² Their intention was to travel around Australia. They bought a red 1994 Subaru Station Wagon and used it to drive on the east coast of Australia before driving through South Australia over the Nullarbor to Esperance. They arrived in Esperance on 2 April 2012 and stayed at Pink Lake Tourist Park over night before beginning to look for employment in the area.

The Shire of Esperance

The Shire of Esperance (the Shire) is a large rural Shire in the south of the state with a low population density per area. It is mostly an agricultural community and covers a huge area to be managed by its local government.

The Shire manages the largest road network of any local government in Western Australia, approximated at 4,570 kilometres of which 3,745 kilometres are unsealed. This is a large financial burden for any Shire to accommodate relying on funding accumulated from rate payers in a low population area even when subsidised by the State and some Commonwealth funding.

This results in an asset management fund gap for those managing the Shire's budget to deal with by way of

² Ex 1, tab 8

prioritisation of required works. The gap means the Shire has to identify essential works, cost them and then prioritise them. It does this through its shire officers, employees and various local committees taking into account competing interests for the funding available.

MURRAY ROAD/ HIGHWAY INTERSECTION (the Intersection)



Google Map

Historically Murray Road/Napier Road was a continuous local road in the Shire which was bisected by the building of the Highway by the, then equivalent, of the Western Australia Main Roads Department (Main Roads). Following that bisection the intersection became a four way cross

roads with Murray Road to the southwest and Napier Road to the northeast. The Highway is the primary, through road, to Esperance, running in a northwest to southeast trajectory towards the town of Esperance.

The cross-roads occurred at the top of a ridge with Murray and Napier Roads remaining unsealed Shire roads and the Highway a major sealed highway, the responsibility of Main Roads. Murray and Napier roads remained the responsibility of the Shire, with authority to erect non-regulatory traffic signs with respect to the Highway only.³

The intersection itself is in the locality of Dalyup.

Economically the area is one of primary production with farming and quarrying needs both factors in the area to consider for the expenditure of Shire funds derived from local rate payers.

Since the creation of the intersection by the building of the Highway, the reality is it has never been a desirable intersection.

Lines of sight for all drivers approaching the intersection from any direction were restricted, including those drivers on the Highway where the road conditions would encourage drivers to assume the state default speed limit of 110 km/h

³ t 27.10.15, p106-108

was appropriate. The Austroads Guide to Road Design, Part 4, specifies factors relevant to safe intersection sight distance (SISD) and entering sight distances (EDS). Those at this intersection were never sufficient.⁴ In these circumstances adequate signage of a pending intersection is essential.

Murray Road specifically serviced the Dalyup River Wineries Estate (now closed), a lime quarry (Triple M) considered essential for farming in the Esperance area and Quallilup Lake used recreationally by both local residents, fishermen and increasing numbers of tourists.

Local residents have always considered Murray Road itself to be a hazardous road due to its unsealed condition creating dust or excessive water run off depending on weather conditions. In addition, dust as a result of the trucks carrying lime, and the natural topography of the road creating sharp crests, blind corners and difficult and changing road surfaces, as with many unsealed roads, made the road for those not familiar with its hazards, difficult.

There were consistent complaints from locals about the road to the Shire, although few specifically to do with the intersection of Murray Road with the Highway. As traffic on Murray Road increased so did the level of concern of locals

⁴ Ex 1, tab 29

and in the month preceding the deceased's death there had been two requests from residents that the Shire consider sealing Murray Road to address the dust and grading aspects of the surface.

As far back as May 1993 the minutes of the Shire's Works and Engineering Committee meetings raised a number of maintenance matters which needed progressive attention, including the Napier/Murray/South West Highway intersection and the difficulty for parents parking when collecting children from the school bus due to a visibility issue around the intersection as a whole. It was accommodated at that time by moving residential post boxes and increasing the gravel parking space available on Murray and Napier Roads to move waiting parents off the Highway.⁵

As a Main Roads asset all regulatory signage to do with the Highway remained the responsibility of Main Roads, even though located on Murray and Napier Roads. Consequently the location of new signs to improve intersection awareness required agreement from Main Roads before they could be finalised. It was agreed the Shire would undertake the work as part of a general improvement of the intersection for the School Bus drop off.

⁵ Ex 2, tab 1

Over time, with the increased production of lime from the quarry located to the south on Murray Road, so the truck access to the quarry increased. This caused problems for the road and the Shire in managing the increased road/intersection usage.

It was recognised in 2000 that Murray Road was not suitable as a road train route for the transportation of lime from the quarry to surrounding farmland.⁶ Murray Road was just under 15km in length and only sealed in the vicinity of the Highway intersection. It was the only road connecting the Triple M quarry to the Highway which could be used by trucks transporting lime. Due to the road conditions it was restricted to vehicles 27.5 metres or less in length (RAV4). Application had been made in 2006 for Main Roads to assess the road for it to be upgraded to RAV7 (36.5 metres in length) to accommodate bigger road trains.⁷

Main Roads refused the application request on the grounds the road was not suitable for that level of use, nor was the intersection with the Highway. The restricted visibility at the intersection raised a real concern slow turning trucks, out of Murray Road onto the Highway, would create a hazard for vehicles on the Highway.

Alternatives were suggested which would utilise a road running off Murray Road, at that time essentially a track,

⁶ Ex 2, tab 1, attachment 16

⁷ Ex 2, tab 2

called Chartwell Lane. The proposed intersection of Chartwell Lane with the Highway had improved visibility, however, it was a very expensive enterprise involving, amongst other things, resumption of private land. If this was to be proposed it would be an expensive and long drawn out process for the Shire and Main Roads to coordinate.⁸

Arising out of the refusal of Main Roads to allow Murray Road to be used for RAV7 traffic, the vehicles using Murray Road for the purposes of transporting lime, increased in number to accommodate the transport of lime sand from the Triple M Quarry. There was no alternative for the transport of lime sand needed by the local farming community.

By 2008 it became obvious that the large vehicles, although only RAV4, entering the Highway at the intersection were posing a risk to road users on the Highway due to the difficult intersection, reduced SISD and ESD, and the slow moving vehicles.

It became obvious to the Shire it would be necessary to upgrade Chartwell Lane to accommodate RAV4 vehicles as an alternative to the Murray/Napier/ Highway intersection. The Shire apportioned \$100,000 from their 2008/2009 budget to upgrade Chartwell Lane in an effort to

⁸ Ex 2, tab 2

accommodate a RAV4 assessment. The work needed to upgrade Chartwell Lane to a RAV4 route involved the resumption of land which was not forthcoming. Consequently, the attempted upgrade of Chartwell Lane was unsuccessful and Main Roads refused to reclassify it as a RAV4 road.⁹

Main Roads advised it would be necessary to realign Chartwell Lane to allow space for larger vehicles to turn, and also upgrade the intersection of Chartwell Lane with the Highway.¹⁰

There was no dispute the transportation of lime sand was essential to both the area and the Shire and, as a consequence, there was no alternative but to maintain the Murray Road intersection with the Highway. Due to the SISD difficulty at the intersection for both vehicles travelling on the Highway and for vehicles accessing the Highway from Murray Road, and even Napier Road, it remained a hazardous intersection,¹¹ although there were no fatal crashes despite the concerns.

The Shire remained concerned about the viability of the intersection and continued with an investigation of the most appropriate way to deal with the situation.

⁹ Ex 2, tab 2, Ex 6

¹⁰ † 27.10.15, p115-116

¹¹ † 27.10.15, p118 & 120

In early 2010 the Shire confirmed the intersection should be closed, but it was necessary to find an alternative route for RAV4 vehicles (27.5 metres) to access the Highway from the Triple M Quarry on Murray Road. The upgrade necessary for Chartwell Lane required the resumption of private land from two land holders, adjacent to Chartwell Lane, to enable the realigning and upgrade to occur.

In addition, Main Roads did not have funds to allocate to the proposed intersection of Chartwell Lane with the Highway to ensure SISD and the Shire would need to cover those works. Due to ongoing concerns by both councillors and the Road Network Working Group the Shire allocated just under \$230,000 from its 2010/2011 budget in July 2010 to close the Murray Road intersection, divert the trucks onto Chartwell Lane, and upgrade the intersection of Chartwell Lane onto the Highway.¹² The closure of Murray Road was seen as the only way to address the SISD issue at the intersection.

Work was commenced by the Shire but it was soon apparent the allocated funds were not sufficient. The work undertaken with those funds would have been better directed to improving the existing intersection rather than concentrating on a diversion without adequate resourcing.¹³

¹² Ex 2, tab 2

¹³ Ex 6

Following some frustration on the part of some of the Road Network Working Group members with the Shire, the Shire decided it was necessary they commission a safety audit of the existing intersection.

2010 Safety Audit

The audit was undertaken by Miller & Associates and became known as the Miller 2010 audit.¹⁴ The audit was to identify any safety features associated with the intersection which needed to be addressed. The audit day was a Monday, 20 September 2010, and addressed both day and night time safety features. The risks associated with the intersection were outlined with a treatment approach, and ranked as high, medium or low with a high risk being *“should be corrected or the risk significantly reduced even if the treatment cost is high”* to *“should be corrected or the risk significantly reduced if the treatment cost is low”*.

The audit determined the safe distance issues associated with SISD and ESD at the intersection were substandard and the level of risk was high. The options were either, to close the intersection, or accept the substandard conditions taking into account the viability of alternate intersections, the types of vehicles necessitating use of the intersection, the familiarity of drivers with the area (local versus naïve), the increasing traffic volume and the fact there had been no

¹⁴ Ex 1, tab 29

crashes recorded at the intersection despite its obvious difficulties.

The intersection design was found to be inappropriate for the safe turning of RAV7 vehicles from the Murray Road exit onto the Highway. The audit found it was also possible the intersection was substandard for the turning of RAV4 vehicles from the Murray Road exit. The recommendation was that the geometry of the intersection be altered to ameliorate the length required for turning vehicles and the level of risk was held to be medium. There were no stop lines on either Murray Road or Napier Road emphasising the priority road bisecting them, although the level of risk was considered to be low.

The expenditure involved in correcting this was realistically the province of Main Roads who had already advised the Shire there was no additional money in the budget to assist. Also affecting the ESD from Murray Road was the positioning of a “*closed sign*” at the intersection for the Dalyup River Estate Winery which further obscured vision to the east along the Highway. The level of risk was classified as medium but obviously the cost associated with removing that risk was minor. Another medium risk which was relatively easy to overcome was the long grass on the Napier Road side of the intersection which impeded visibility from Napier Road to the west.

Similarly there was a tree branch partially obscuring the stop sign when approaching the Highway from Murray Road. Stop signs are regulatory signs and the responsibility of Main Roads, however vegetation is clearly the responsibility of the Shire and more appropriately dealt with by the Shire who are in a better position to undertake this type of maintenance.¹⁵

Two options were available which entailed either removing the tree/branch or relocating the stop sign closer to the road to make it visible all along the approach to the Highway. It was considered the level of risk was low, and while Main Roads permission would be needed to move the stop sign it was a relatively easy matter for the Shire to accommodate both options.

There was also an issue with the advance intersection warning sign in that the audit felt the name 'South Coast Highway' should be on the advance warning sign. Advance warning signs are regulatory signs in the province of Main Roads¹⁶ and the recommendations for signage prohibit certain signage with regulatory signs. However, many country roads intersecting with major highways carry this type of advisory warning sign.¹⁷

¹⁵ † 28.10.15, p204

¹⁶ † 27.10.15, p107

¹⁷ † 28.10.15, p220

Finally, water ponding was found to be an issue in the south eastern corner of the intersection creating a hazard for vehicles turning left off the Highway into Murray Road. The level of risk was considered to be medium.

Mr Furness, member of the Road Network Working Group for the Shire at that time, does not recall any discussion with the committee by the Shire as a result of the 2010 safety audit,¹⁸ although it was one of the functions of the committee to establish a priority for work needing to be done for the Shire's roads systems.¹⁹

Gavin Harris, representative of the Shire as the Director of Asset Management, responsible for the infrastructure of the Shire regarding maintenance, renewal, upgrading of existing infrastructure and the development of new infrastructure in 2010,²⁰ outlined the Shire's attempts to continue to correct the situation with respect to the intersection and Murray Road itself following that audit. The Shire needed to address both the concerns with the intersection and the topography of Murray Road to accommodate trucks utilising lime from the Triple M quarry. The ongoing negotiations had indicated there would be some difficulty in reclaiming some of the land required for the upgrade of Chartwell Lane, and the other land owner was difficult to contact. As a

¹⁸ Ex 6

¹⁹ † 28.10.15, p157

²⁰ † 28.10.15, p188

result the realignment and upgrade of Chartwell Lane was not going to be possible in the short term.

The Shire was involved in lengthy ongoing negotiations to improve the Chartwell Lane upgrade, and the problems with the intersection itself were not addressed as a separate issue requiring immediate, and some relatively low cost, input. Mr Harris acknowledged openly this was an oversight.²¹

The situation at the time of the fatal accident at the intersection was the Shire was directing its efforts towards the Chartwell Lane upgrade to enable them to close the intersection. In hindsight, the risk presented by the intersection, without relatively minor safety work, could have been ameliorated by using the almost \$200,000 which remained in the budget for realignment in June 2011, to address some of the issues at the intersection. While money was short, it was thought necessary to carry those funds over rather than complete the more minor works at the intersection, with high risk, but little expenditure. It could have been achieved, although requiring negotiation with Main Roads.

This then was the undisputed status of the intersection on 3 April 2012 with respect to visibility around the

²¹ † 28.10.15, p209

intersection.²² In addition, were the known difficulties with Murray Road itself in that it was unsealed, used by trucks creating dust, corrugations despite grading and it exhibited gravel spill onto the bitumen from the unsealed surface. The Shire was concentrating its efforts on upgrading Chartwell Lane so the intersection could be closed before the known hazards increased due to additional use of both Murray Road and the Highway.

3 APRIL 2012

The deceased and Ms Huiskamp apparently had a tourist map of the area taken from the information rack at the caravan park.²³ It appears to have been common ground the two young women were attempting to look for work in the area and as part of that endeavour travelled west, out of Esperance along the Highway to Dalyup, to visit the Dalyup River Estate Winery to enquire about employment.

Ms Huiskamp was driving and turned left down Murray Road at the intersection to drive south for approximately 7 ½ kilometres to get to the winery entrance. Approaching the intersection on the Highway from Esperance in April 2012 were signs advising drivers on the Highway there was an intersection and that trucks used the intersection. There was a road name sign and a sign for the winery attached to a sign at the intersection. There is no evidence

²² Ex 1, tab 29, pg7

²³ Ex 3

Ms Huiskamp had any difficulty locating Murray Road and after turning into it from the Highway it would have been apparent it was an unsealed road leading south west (towards the coast).

The only evidence of that drive is that of Peter Murray, proprietor of the winery. Mr Murray stated he left his winery at about 3:30pm on Tuesday 3 April 2012 and drove towards the Highway on Murray Road. Roughly two kilometres from his property he saw a red vehicle driving towards him with two female occupants.

Mr Murray had lived at that location for many decades and the lime quarry further south down Murray Road is operated by his brother. The Murrays' have good knowledge of the road and its various conditions. Mr Murray was an advocate for sealing the road and believed it was a dangerous road due to its blind troughs and sharp crests.²⁴

Mr Murray was quite adamant, due to the dangers associated with Murray Road, it was necessary for drivers to drive to the road conditions which, with such impaired visibility, meant prudent drivers drove on the appropriate side of the road (left). Mr Murray also considered the surface of the road, despite being unsealed, was fairly regularly graded and that, depending on conditions, speeds of approximately 80km/h were appropriate, despite there

²⁴ † 27.10.15 p91, 94

being no posted road speed and therefor the state default 110km/h applying. It is a road with which Mr Murray is very familiar and it was his view he was travelling at approximately 80km/h. In his estimate, the red vehicle was being driven in a similar manner, that is appropriately positioned on the road towards the left of its lane and travelling at a similar speed. Mr Murray had been able to see the red car for approximately 100 metres before they passed and there was nothing remarkable about the manner of driving. It seemed appropriate for all the conditions on the road.

It has been generally accepted that the red vehicle Mr Murray saw was the Subaru containing the deceased and Ms Huiskamp on their way to the winery to enquire about work.

Shortly after her husband left the house, Jennifer Murray was on the front verandah of the residence at the winery when she saw a red station wagon drive through the entrance and towards the main house. The winery was at that time closed.

Mrs Murray was not feeling well and, as a result, retreated into the house. She did not respond to the knock on the door when it occurred. She had been able to see the vehicle contained two females before she retreated inside. Mrs Murray did answer the door after a slight delay, but by

that time all she could see was two young women, with blondish coloured hair, had returned to the station wagon. Mrs Murray watched the station wagon drive out of the driveway back toward the Highway. She believed the time was somewhere around 3:30pm on Tuesday 3 April 2012.

On leaving the winery the deceased and Ms Huiskamp returned towards the Highway using Murray Road. It is common ground it was a two way unsealed road wide enough for a vehicle travelling in each direction to be abreast. From the winery back towards the Highway it is fairly straight but does have crests and troughs which impede visibility. As Murray Road reaches the intersection it slopes upwards towards the intersection with a relatively level portion at the intersection with the Highway.

Approximately 240 metres before the intersection there was a warning sign advising traffic travelling towards the Highway there is a stop sign ahead. The warning sign was on the left hand verge and was clearly visible from some distance down Murray Road.²⁵

²⁵ † 27.10.15, p30



Exhibit 1, Tab 40, Photo 1

The sign was the recognised regulatory warning advisory sign for a stop sign but was smaller than those used currently. It was clearly visible and located before the incline towards the intersection. Given Ms Huiskamp had, within the last 40 minutes, left the Highway to approach the winery, the sign should have been a clear indication there was an intersection with the Highway approaching.

The next sign was the regulatory 'stop' sign itself. In April 2012 that stop sign was on the left verge of Murray Road, approximately 9 metres before the intersection. It was placed approximately 2.3 metres to the left of the guide post at the intersection. Australian Standards allow signs to be

placed as close as 600cm to guide posts in rural locations, but they must be no closer. Between the advisory stop sign and the actual stop sign the visibility of the stop sign changed due to the presence of a large tree 34 metres from the intersection, with a branch which partially obscured the stop sign at the intersection at different points along Murray Road between the advisory stop sign and the actual stop sign. The stop sign was visible at some points and not visible at other points along the 240 metres between the two signs and was at the top of the incline, where the intersection with the Highway occurred.

The local school bus usually dropped children at the Murray Road/Napier Road intersection at 3:45pm each school day. On 3 April 2012, a Tuesday and a school day, carers and parents were gathered at the intersection in the expectation of collecting children from the bus on the Highway.

Natasha Keneally had left home late, at 3:38pm by her clock, and arrived at the intersection at 3:41pm in anticipation of picking up her children from the school bus. Ms Keneally had with her Ranea Jones and they were parked in Ms Keneally's car facing the Murray Road intersection on the southern side of the Highway (closest to Murray Road). Ms Keneally believes her car was approximately 25 metres from the intersection in her normal spot which is shady. After parking Ms Keneally remembered seeing a truck come out of the Murray Road

intersection and turn right onto the Highway travelling towards Esperance. She particularly noticed it was a prime mover with two trailers which caused a lot of dust around her car as it passed. Ms Keneally looked in her side mirror for the school bus as the truck drove past her car and did not see it, so looked back towards the intersection.

Ms Keneally considered she had a good clear view of the intersection when she saw a “...red flash entering the intersection from the left, Murray Road side.”²⁶ Ms Keneally believed she saw the red flash come straight out of Murray Road, approximately two minutes after the truck had disappeared south down the Highway. At the same time she registered another car approaching the intersection from the west on the Highway, followed by a crash as the two vehicles impacted on the Highway. Ms Keneally believed the red vehicle to be travelling more quickly across the intersection than would have allowed it to stop. She did not see any indication the driver made any attempt to stop.

Ms Keneally’s evidence was effectively supported by that of Justin Marr, whose vehicle was located behind Ms Keneally’s at the intersection facing Murray Road. Mr Marr was out of his vehicle, speaking to Ms Keneally and Ms Jones, beside her car when he also saw the red car come out of the Murray Road intersection. Mr Marr believed he had a clear view, of the intersection facing Murray Road for

²⁶ Ex 1, tab 10 & Ex 3, † 31.7.12, p137-154

a distance of approximately 30 metres. He could only see a short distance down Murray Road because of the surrounding vegetation, but estimated that when he first saw the red car appear its speed was approximately 80-90km/h.²⁷ To Mr Marr it appeared the red car was not stopping and had not intended to stop. It was visible to Mr Marr when it was approximately 10 metres from the stop sign and went straight out onto the Highway, into the path of a Toyota Prado coming from the direction of Ravensthorpe and travelling towards Esperance. Mr Marr did not see the Prado before the impact due to his looking at the red car.

The evidence of the driver of the Prado, Viola Barz, was she was returning towards Esperance after having picked her children up from school. She was taking them to their music lessons and she was not distracted by the children in the car. Ms Barz indicated she usually travels below the speed limit on the Highway and was driving south at the point where it goes into a dip, before the rise up to the Highway/Murray Road intersection.

Ms Barz slowed to approximately to 95-100km/h as she was going up the rise towards the intersection. She was not aware of anything which could be a problem, but knew the visibility down the roads comprising the intersection was limited due to the vegetation and buildings along the Highway. Ms Barz looked to her right as she approached

²⁷ Ex 1, tab 11 & Ex 3, t 31.07.12, p161-167

the intersection and suddenly saw a red station wagon which was not slowing at the junction come out of Murray Road.²⁸ Ms Barz applied the brakes in her car and braked in a straight line, however was unable to avoid hitting the front and rear passenger side doors of the red car. She did not believe the driver of the red car made any course correction to avoid her car.²⁹

Both cars spun and came to a stop and those waiting at the intersection for the school bus went to the assistance of those in the vehicles. In addition two Main Roads contractors who were heading back towards Esperance after their day's work arrived at the intersection shortly after the accident and assisted those at the site pending the arrival of police and an ambulance.

Mark Taylor and his passenger, Mo Tito, stopped to help and also took over traffic control pending the arrival of the police.³⁰ Mr Taylor noted a road train coming out of the Murray Road intersection and turning right onto the Highway before they were in a position to set up traffic control points. After they had set up traffic control points Mr Taylor estimated a truck came out of Murray Road approximately every 20-30 minutes during the time they were located at the intersection. Mr Taylor estimated between 5 & 10 trucks pulled out of the intersection during

²⁸ Ex 3, t 31.07.12, p128

²⁹ Ex 1, tab 9 & Ex 3, t 31.07.12, p122-136

³⁰ Ex 1, tab 13 & 14

the course of the event. These trucks would have contaminated the scene for forensic examination of the intersection.³¹

Approximately half an hour after the red car had left the winery Mrs Murray's next door neighbour attended at the Murray residence and advised Mrs Murray she had just seen an accident on the Highway. She was told by her neighbour it was an accident which involved a red coloured car. Mrs Murray immediately thought of the two young women she had seen in the red station wagon whom she believed were backpackers looking for work.³²

The deceased was certified life extinct at the scene³³ while Ms Huiskamp was extracted by FESA and admitted to Esperance Hospital with injuries. Ms Huiskamp recovered from her injuries to the extent she could be discharged from hospital however had no clear memory of the events immediately preceding the crash or apparently the crash itself.

POLICE INVESTIGATION

The police conducted an investigation with respect to the crash and concluded that:-

³¹ Ex 1, tab 30

³² Ex 1, tab 20

³³ Ex 1, tab 3

- The involved Toyota was travelling in a south easterly direction on the Highway towards the intersection of Murray Road;
- The Subaru was travelling in a north easterly direction on Murray Road;
- Entry onto the Highway from Murray Road is controlled by a single stop sign, erected on the left verge, preceded by a stop sign warning sign;
- The Subaru entered the intersection and a collision occurred with the front of the Toyota colliding with the left side of the Subaru;
- The collision occurred within the intersection in the south east traffic lane of the Highway;
- The Subaru came to rest on the verge of the north eastern side of the intersection. It was close to the fence line and was facing in a north west direction. The Subaru had been approximately 30 metres from the point of a collision on the road way at an angle of approximately 59° to the right at its initial direction of travel. The Toyota came to rest on the road's edge on the south eastern side of the intersection. The Toyota had been displaced approximately 30 metres from the point of collision on the road way at approximately 15° to the left of the original direction of travel;
- Intrusion damage on the Subaru station wagon was not indicative of an impact of any significant angle;
- From the physical evidence at the scene, the speed of either vehicle cannot be objectively determined at the

time of the collision. However post impact displacement and damage of both vehicles is not indicative of the Subaru either stopping at the intersection prior to the collision or in the process making a right turn when the collision occurred.³⁴

Also relevant to the consideration of the situation at impact was input from a Mr Bob Davey, a motor vehicle accident consultant who provided a report after consultation with the police confirming that:-

- No calculation could be undertaken which would confirm the approach speed of the Subaru to the intersection between the advisory sign and the intersection itself. However, confirming an agreed speed of the Subaru at impact was approximately 45km/h;
- The point of impact would place the Subaru towards the left of Murray Road as the stop sign was passed and there was no physical evidence which would indicate what the driver of the Subaru was doing at that point in time.

There could be no definitive calculation of the point at which the view of the stop sign at the intersection from Murray Road would be completely unobscured, other than from 34 metres from the intersection which is where the tree

³⁴ Ex 1, tab 25, attachment 3

obscuring vision was growing. Prior to 34 metres from the intersection it is clear the stop sign was visible but to what extent is not definable. This left the issue of a reasonable breaking distance totally obscured for the purposes of a criminal trial.³⁵

Main Roads also visited the scene following the accident to determine if there were any road environment features which may have contributed to the crash which could be rectified by recommendations to reduce or eliminate any hazard identified. Main Roads concluded there were no road environment findings which were directly attributable to the crash, however, there were some which were possibly attributable to the fatal crash causation. These were:-

- the fact the stop sign was obscured at some points between the advisory stop sign and the stop sign due to the branch of a tree;
- that the approach sight distance for drivers on Murray Road approaching the Highway was insufficient;
- there was insufficient sight distance for the intersection from the Highway with respect to both Murray and Napier Roads;
- there was no stop line adjacent to the stop sign at the intersection of Murray Road with the Highway, and;

³⁵ Ex 1, tab 30

- the advanced warning sign was smaller than the current specifications.³⁶

These findings essentially reflect the concerns of the September 2010 safety audit with the intersection for sight distances relating to use of the intersection for trucks.

POST MORTEM REPORT

The post mortem examination of the deceased was carried out by State Forensic Pathologist, Dr Dan Moss, on 10 April 2012 and was, at the request of the family of the deceased, an external examination only.

The external post mortem examination revealed multiple skin and soft tissue injuries to the body and x-ray indicated fractures of the left clavicle, left leg, multiple ribs and pelvis fractures. There was also a linear band like abrasion across the left shoulder onto the chest consistent with a seatbelt mark.

Toxicology showed no evidence of alcohol or common prescription or drugs of abuse.

At the conclusion of his external examination Dr Moss concluded the death of the deceased was consistent with multiple injuries.

³⁶ Ex 1, tab 28

Due to the fact the deceased and Ms Huiskamp had been seen less than half an hour earlier by Mrs Murray at the Dalyup River Estate Winery, in an apparently fit and healthy state, it is not unreasonable to assume the death of the deceased resulted from injuries she had received in the crash.

MANNER AND CAUSE OF DEATH

I find the deceased died as a result of injuries she received when the vehicle in which she was a passenger on 3 April 2012 crashed with a Toyota Prado on the South West Highway at the intersection with Murray Road.

I find death occurred by way of Accident.

COMMENTS ON THE PUBLIC SAFETY ASPECT OF THE MURRAY ROAD/SOUTH WEST HIGHWAY INTERSECTION RELEVANT TO THE DEATH OF THE DECEASED ON 3 APRIL 2012

There is no dispute, in my opinion, the intersection between Murray Road and its continuation, Napier Road, with the South West Highway, created historically by the building of the South West Highway as a priority road, created a difficult and hazardous intersection.

The evolution of the lime quarry to the south of the intersection on Murray Road, which necessitated use of the intersection by trucks, exacerbated the difficulties with the

intersection, especially for those on the Highway. The lines of sight in any direction meant there was a risk for motorists approaching the intersection where there was the likelihood of large and slow moving trucks pulling out of the intersection, carrying with them gravel and dust from the unsealed road.

It is also the case that as of April 2012, despite being depicted as a “*black spot*” by the Shire in seeking extra road funding, there had been no serious crashes at the intersection and black spot funding was refused. For a Shire with responsibility for such a large amount of unsealed roads, in proportion to the roads the responsibility of Main Roads, prioritising those which should receive funding, as supported by the Road Network Working Group committee advice was always going to be contentious.

In the case of this particular intersection the major cause for concern was the lack of appropriate sight distances for all drivers approaching the intersection. The priority was closing the intersection, however that necessitated an alternate route for the trucks needed commercially by the Shire and its residents to exit onto the Highway. To provide a suitable intersection for the turning of RAV4, let alone RAV7, vehicles, a completely new intersection had to be designed. That entailed major earth works for the levelling of crests at the existing intersection, or realigning Chartwell Lane into a suitable configuration for trucks, including an

intersection with the Highway with appropriate sight distances. This also was an extremely expensive proposition for the Shire and necessitated the resumption of land which caused further delays. While this was happening Murray Road needed to stay open. Neither the Shire, nor Main Roads had sufficient funding at the times the audits were carried out to fund the necessary changes.³⁷

I accept there were some, much less expensive, modifications which could have been made to the intersection to increase its safety from the perspective of those travelling on Murray Road onto the Highway. These were relatively inexpensive and should have been given priority. They appear to have been lost in the general concern with creating a new functional intersection as soon as possible.

Issues concerning the separation of responsibilities between the Shire and Main Roads did not assist clarity around the affordable options.

Regulatory Signs (Main Roads)

The reality is the regulatory signs were all present and while not optimal, were significant visual clues which an attentive driver should have considered. Argument now about compliance with current standards, when at the time of

³⁷ † 27.10.15, p120

implementation they were apparently acceptable regulatory signs, is not really helpful.

In addition, the fact there could be improvements in road safety generally as outlined in the Main Roads fatal crash report post the event, does not remove from any driver the responsibility to drive safely accordingly to the road conditions. This is fully accepting the difficulty for drivers on Murray Road approaching the Highway, with irregular visibility of the regulatory stop sign adjacent to the intersection as a result of the overhanging tree branch, and its positioning with respect to the guide posts. Moving the stop sign closer to the guide posts with the consent of Main Roads, and removal of the overhanging tree branch by the Shire were maintenance issues which could have been corrected, and as I am sure the Shire and Main Roads accept, should have been corrected.

Having said that I am satisfied that, despite its size and reflective problems, the advanced regulatory sign, also a responsibility of Main Roads, was clearly visible on the left hand side of Murray Road at a distance of more than 240 metres from the intersection.

A driver noting the advisory stop sign which was clearly visible, and looking for the actual stop sign should have seen it at some point before reaching the intersection. At

120 metres from the intersection the stop sign was visible.³⁸ At a speed of 110km/h, 120 metres would not be considered a suitable stopping distance for an unsealed road. However, there is no suggestion a driver would approach the intersection at 110km/h after having passed the advisory stop sign and with knowledge the Highway was ahead, having turned off it within the last half hour. It seemed to be agreed at trial, and so was accepted at inquest,³⁹ that a vehicle travelling at 84km/h would be able to stop in 105 metres.⁴⁰ A vehicle travelling appropriately on the left hand side of Murray Road passing the advisory sign at 80-90km/h or even 110km/h, should have been able to stop had adequate notice been taken of that advisory sign. There was however, an issue with the unsealed surface of the road and gravel wash at the intersection which may further affect stopping ability.⁴¹

Due to the incline, the bitumen of the Highway did not become visible from Murray Road until reaching the level area near the intersection and the vegetation along the side of the Highway gave the impression Murray Road was continuous with Napier Road, without knowledge of the Highway, and without observation of the warning signs.

³⁸ † 27.10.15, p21

³⁹ † 27.10.15, p21

⁴⁰ † 27.10.15, p25

⁴¹ † 27.10.15, p145-147

While there is no direct evidence of the placement of the Subaru on Murray Road I have no reason to believe it was anything other than safely placed towards the left hand side of the road and probably travelling in the order of 80-90km/h at the time the advisory sign was approached and passed. Its significance must have been obvious.

I accept the intersection itself was not visible at that time and the vegetation and buildings alongside the Highway at the intersection would have given the impression to an approaching, un-warned driver, Murray Road was a continuous through road due to its continuation with Napier Road on the other side of the Highway. The fact it was a reasonably hidden intersection would have been obvious to a driver who had driven on the South West Highway and turned left onto Murray Road.

Despite the troughs and crests along the length of Murray Road which impede visibility in the long distance the advisory warning stop sign was clearly visible. The fact it related to the South West Highway for someone who had recently turned off that Highway should have been obvious. It was also obvious it was a difficult intersection.

Visibility of the stop sign itself is a vexed issue, but for the purposes of a coronial discussion on the balance of probabilities, I am satisfied that at some points along the distance between the advisory sign and the stop sign it

would have been visible for a driver looking for it. Precisely when, where and how often would depend on the position of the vehicle on the road the height of the driver, vehicle and eyesight.

It would have been optimal if the stop sign was closer to the guide posts at the edge of the intersection and visible for the entire 240 metres between the advisory and the intersection stop signs. I accept it was not.

At the intersection the view from Murray Road along the Highway, while less than the desirable SISD for a slow moving heavy truck, is in the order of over 150 metres looking north west for a vehicle leaving Murray Road and turning right towards Esperance.

Due to the difficulties with establishing the speed of the Subaru at the intersection due to the road surface and contamination of the site by trucks between the time of the crash and police examination, the difficulty with determining the stopping distance on an unsealed road with changing conditions and differences in reaction times, it was generally considered that an acceptable estimate of speed for the Subaru at impact was in the order of 45km/h.⁴²

⁴² Ex 1, tab 30

The impact point of the Subaru with the Prado on the Highway and eye witness accounts are consistent with the Subaru being on the left hand side of Murray Road and not turning right at the intersection, which suggests the driver believed Murray Road was continuous with her line-of-sight for Napier Road, until probably very shortly before impact. There does not appear to have been any attempt on behalf of the Subaru to evade the Prado.

Discretionary Signage (Shire)

As a separate issue from the regulatory signs there was some concern in the safety audits, both pre and post 3 April 2012 there were a lack of co-incidental visual clues to an un-warned driver as to the existence of the Highway, without knowledge the intersection was being approached when on Murray Road.

The regulatory advance warning sign did not have a Highway identification sign displayed with respect to the upcoming stop sign. Apparently many in the surrounding locality did. Mr Harris stated there was a prohibition from putting discretionary signs on regulatory signs. While it would have been a reasonable negotiation with Main Roads, or as a separate discretionary sign, it is difficult to assess the significance of its absence. A driver should have seen the advisory sign, understood its significance and driven looking for the stop sign, which I am satisfied was visible to differing degrees along the intervening 240 metres.

If I accept Ms Huiskamp was driving in an unremarkable manner for the road, as the evidence suggest, then there must, objectively, have been some other subjective factor involved in her apparent inattention to the significance of the approaching intersection.

I can only assume this was because she either didn't see the sign or ignored it as an advisory visual clue. If I accept counsel on behalf of the driver's submission on page 7 of his original submissions, then I am left with the proposition:-

- there were regulated visual clues, albeit not optimal;
- there had not been a fatality at that intersection before, or even a serious crash, despite its obvious difficulties for all drivers;
- the driver had driven off the South West Highway less than half an hour before the crash, and the advisory sign was clearly visible;
- the driver must have been aware there was a serious intersection pending but was still apparently surprised by the fact of the intersection.

I really do not believe the situation for the driver was as simple as counsel for the driver suggests and maintain my concern regarding people unfamiliar with Australian driving conditions on an isolated stretch of unsealed road. The visual clues I am referring to on that level are almost

subliminal, and it is those for which there was a particular difficulty at this intersection as it was on 3 April 2012.

The trees and buildings at the intersection obscured the opportunity for any subtle visual clues to be effective. It is for this reason it is preferable this type of intersection have more than regulatory advisory signs. Because it was a through road, which prevented the use of chevrons, now at the Murray Road boundary visible for Napier Road, all the visual clues indicated the road was a continuous road, aside from the regulatory signs which were there.

I accept the regulatory signs were not optimal but they were there, and the only explanation for the driver not appreciating the significance of the regulatory signs was she had not seen them, possibly because she was not looking in the right place.

Other than that aspect there would appear to have been nothing about her driving which was of concern. The driver appears to have been driving on the correct side of the road for a through road, she does not appear to have been speeding in the event it was a through road, but she did not stop for the reality it was an intersection with a priority road, for which there had been a clear advisory warning stop sign.

Maintenance

The Shire is fully cognisant of the fact there were low cost reasonable steps which could have been taken to improve the safety aspects of the intersection, not the least of which would have been clearing vegetation which prevented clear view of the regulatory signs between one another, and removal of vegetation to improve sight distances once at the intersection. The Shire's focus was elsewhere. It was not unreasonable there was a priority with providing an alternative route and intersection for slow moving vehicles entering the Highway, but that should not have removed the need for the improvement of those aspects which were within the Shire's ability to improve the intersection. It was never going to be optimal while Murray Road remained open.

It was necessary Murray Road remained open until an alternative was provided. Consequently, removal of vegetation impeding visibility of essential signs should have been conducted with funds which were available for that level of input. Discretionary, warning signs, should also be considered in the future where there are accepted difficulties and expectations tourism will increase.

I am satisfied the relationship between the Shire and Main Roads is now somewhat stronger in that the Shire has two full time workers to ensure optimal maintenance of regulatory and other visual clues on its very extensive road

network. It works with Main Roads to negotiate appropriate safety outcomes where there are overlapping concerns around regulatory assets on Shire road networks.⁴³

Outcome

The Shire closed the intersection on 13 October 2014 and there was close collaboration between the Shire and Main Roads over the new intersection of Chartwell Lane and the Highway. The fact the intersection is now closed, and the Murray Road boundary with the Highway carries a chevron to improve visibility of an intersecting major road for those on Napier Road removes the difficulties which surrounded the intersection for the driver of the Subaru on Murray Road on 3 April 2012.

It is unclear as to whether the advisory committee for the prioritisation of spending of funding on the road network continues but it appears to be a valuable asset to the Shire which should be maintained and have more formalised communication lines, especially on the outcome of safety audits.

I do not feel in a position to comment upon the suggested recommendation on behalf of the driver of the Subaru with respect to local government and Main Roads taking more account of international signage where it was not a matter

⁴³ † 28.10.15, p204-206 & † 27.10.15, p115

put to Mr David Moyses on behalf of the Main Roads Department.

I have no doubt Main Roads has reasons for accepting the signage utilised around Australia and it would be inconsistent with other States to suddenly alter signage in one State.⁴⁴

Finally, the evidence is clear the deceased was a well-loved friend, daughter and sister. Cases where people who were close to one another have been involved in fatal traffic accidents are always overwhelmingly tragic. There are no comfortable outcomes when anyone dies in these circumstances, let alone someone so young, full of life and good intentions. The same observations apply to Ms Huiskamp, who will forever wish she and the deceased were someplace else on that awful day.

E F Vicker
Deputy State Coroner
21 April 2016

⁴⁴ † 27.10.15, p142-143