



**CORONERS COURT  
OF NEW SOUTH WALES**

<b>Inquest:</b>	Inquest into the deaths of Stephanie Jane King, Ella-Jane Kabealo and Jacob Matthew Kabealo
<b>Hearing dates:</b>	6 - 8 May 2019
<b>Date of findings:</b>	10 May 2019
<b>Place of findings:</b>	Local Court, Murwillumbah, NSW
<b>Findings of:</b>	Acting State Coroner, Magistrate Teresa O'Sullivan
<b>Catchwords:</b>	CORONERS – manner of death – flooded river systems, hazardous road conditions, mud and silt on road, drowning of mother and two children, Dulguigan Road, Local Council failure to close road or check condition.
<b>File number:</b>	2017/102175; 2017/102191; 2017/10284
<b>Representation:</b>	Dr Peggy Dwyer, Counsel Assisting Mr Jason Downing, Counsel for Tweed Shire Council Ms Jessica Chapman, Counsel for NSW Police Force

<p><b>Findings for Stephanie King:</b></p>	<p><b>Identity of deceased person:</b> The deceased person was Stephanie Jane King.</p> <p><b>Date of death:</b> She died on 3 April 2017.</p> <p><b>Place of death:</b> The place of her death was North Tumbulgum in New South Wales.</p> <p><b>Cause of death:</b> The medical cause of death was drowning.</p> <p><b>Manner of death:</b> Stephanie Jane King died after the vehicle she was driving on Dulguigan Road, North Tumbulgum, lost traction with the road because of mud and silt that remained after flood waters, causing the van to slide onto the other side of the road and into the northern bank of the Tweed River. The road had not been closed by the Council.</p>
<p><b>Findings for Ella-Jane Kabealo</b></p>	<p><b>Identity of deceased person:</b> The deceased person was Ella-Jane Kabealo.</p> <p><b>Date of death:</b> She died on 3 April 2017.</p> <p><b>Place of death:</b> The place of her death was North Tumbulgum in New South Wales.</p> <p><b>Cause of death:</b> The medical cause of death was drowning.</p> <p><b>Manner of death:</b> Ella-Jane Kabealo died as a passenger, after the vehicle her mother Stephanie King was driving on Dulguigan Road, North Tumbulgum, lost traction with the road because of mud and silt that remained after flood waters, causing the van to slide onto the other side of the road and into the northern bank of the Tweed River. The road had not been closed by the Council.</p>

<b>Findings for Jacob Matthew Kabealo</b>	<b>Identity of deceased person:</b> The deceased person was Jacob Matthew Kabealo.  <b>Date of death:</b> He died on 3 April 2017.  <b>Place of death:</b> The place of his death was North Tumbulgum in New South Wales.  <b>Cause of death:</b> The medical cause of death was drowning.  <b>Manner of death:</b> Jacob Matthew Kabealo died as a passenger, after the vehicle his mother Stephanie King was driving on Dulguigan Road, North Tumbulgum, lost traction with the road because of mud and silt that remained after flood waters, causing the van to slide onto the other side of the road and into the northern bank of the Tweed River. The road had not been closed by the Council.
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<b>Recommendations:</b>	<p>To the Tweed Shire Council (“the Council”):</p> <ol style="list-style-type: none"><li>I. That Council consider conducting a study of roads within the Tweed Shire Council areas, to identify particular hazards during and following floods, as well as strategies to mitigate such hazards;</li><li>II. That consideration be given to updating the Council’s Standard Operating Procedures to provide for Works Officers to actively look for risks to road users arising from mud and silt being deposited on roads following floods;</li><li>III. That the Road Spotters Program be updated to seek to increase the number of volunteer road spotters who live adjacent to known critical road flooding locations and that Council also prepare a Road Closure Volunteer Instructions document that provides criteria for when to notify Council, including referring to water being on the road during floods and mud or silt being deposited on the road following floods;</li><li>IV. That consideration be given to installing warning signs on the southern and northern ends of Dulguigan Road North Tumbulgum alerting the public to hazards from mud and silt following floods; and</li><li>V. That Council considers how best to advertise to the community a change in procedure for road closures, if, as proposed in the draft Road Emergencies and Closure procedure, a road is also considered to be closed when an obvious hazard makes it unsafe or impassable for general traffic until the hazard has receded or been removed.</li></ol>
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*The Coroners Act 2009 (NSW) in s. 81(1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the death.*

*These are the findings of an inquest into the deaths of Stephanie Jane King, Ella-Jane Kabealo and Jacob Matthew Kabealo.*

**Introduction:**

1. This is an inquest into the deaths of Stephanie Jane King and two of her children, Ella-Jane Kabealo aged 11 years and Jacob Matthew Kabealo aged 7 years. Stephanie was the much loved partner of Matthew Kabealo and together they had three beautiful children, Ella-Jane, Chloe May and Jacob Matthew. It was very clear throughout the inquest that Stephanie and her children were part of a wonderful, loving family. That family has suffered enormous grief since the accident, but they continue to love and support each other.
2. Around the 28th March 2017, Ex-Tropical Cyclone Debbie moved south from where it had made land-fall in the vicinity of Airlie Beach, Queensland. The movement of this weather system resulted in heavy rainfall in the Northern Rivers area predominantly on the 30th and 31st March 2017. This heavy rainfall resulted in major flooding of river systems in the Tweed, Byron, Ballina, Lismore, Richmond Valley and Kyogle local government areas.
3. Although the Tweed area is prone to flooding, this was a particularly large flood event which resulted in thousands of people evacuating their homes, and tens of thousands of residents dealing with flooded roads, businesses and homes. Many roads were unpassable as a result of the flood and it was a significant challenge for the Tweed Shire Council (“the Council”) to manage their local roads, including road closures and re-opening.
4. By the morning of Monday 3 April 2017, the rain had finally stopped and while many residents were cleaning their own homes, others were working out how to best help other community members who had been badly affected. Stephanie and Matthew’s three children, Ella-Jane, Chloe and Jacob attended Dungay Public School on Tomewin Road, Dungay, but the school was closed that day to clean up and prepare to re-open on the Tuesday. Stephanie told Matthew that while he was at work, she would take the children to the school to help with cleaning up.
5. On her return that day, Stephanie took a different route to normal, because Hogans Road was closed due to land-slips caused by flooding. As a result, she drove east along Dulguigan Road, North Tumbulgum, towards Terranora Road. Although water had covered Dulguigan Road and it had been impassable even at 5.30pm the day before, it had not been closed by the

Council at any time during this flood event. By the time Stephanie drove along Dulguigan Road, there was no warning that it was still slippery and hazardous. At around 1.30pm, while travelling on a straight section of Dulguigan Road, Stephanie's van lost traction because of the mud and silt on the road. At that time, there was no physical barrier between the road and the river, and despite Stephanie's efforts, she could not prevent the van from sliding into the Tweed River, which hugs one side of the road.

6. As the van skidded into the water, one window hit a rock and shattered and that may have been the reason why Chloe, then aged 9, was able to get out of the van shortly after it entered the water, likely assisted by Stephanie. Ella-Jane's seatbelt was unbuckled and Stephanie was trying to do the same for young Jacob when she must have succumbed to drowning. The evidence is that this occurred extremely quickly.
7. There is no doubt that Stephanie was driving slowly at the time of the accident and received no warning that the conditions would be hazardous. The evidence is clear that she was a wonderful and responsible mother, whose care for her children was paramount, and it was entirely reasonable that she thought a road now clear of water and open to the public would be safe to drive on. We know now that it was not, and that a number of other cars travelling on the road that day struggled with the treacherous conditions.
8. I was impressed by the candour of Mr Danny Rose, Manager of Roads and Stormwater, who gave evidence about his actions and the relevant work of the Council. He acknowledged that Dulguigan Road should have been closed during the flood event.<sup>1</sup> It appears that the Council was so overwhelmed by the flood in March/April 2017, that they did not have the resources to effect road closures in accordance with the procedure in place at the time. Further, although Dulguigan Road is prone to flooding, the extent of silt and mud washed up on the road from the Tweed River was far greater after this flood than experienced previously and Council was not aware that it would cause such a significant road hazard. Had the road been formally closed, it is possible that this would have been checked before it was re-opened.
9. I am satisfied that the Council has made a significant effort to address shortcomings in their staff levels and procedures, and has erected a significant guardrail between the road and the river that would likely prevent a similar fatality at the accident site. I am also of the view that more can and should be done to minimise the risk of another tragedy on the roads in the

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<sup>1</sup> These findings were prepared without the benefit of a transcript. Following delivery of the findings but before publication I deleted the phrase in the introduction to my findings that stated 'including on 3 April 2017'.

event of a similar scale flooding disaster, and as a result, I have directed recommendations to the Council.

10. One thing that is evident in reviewing this incredibly sad case, is the tight knit caring community in the area surrounding this tragedy, and the brave and generous spirit of those who were involved in this event, in ways big and small. A number of community members rushed to the scene and some jumped in the water with no concern for their own safety. There have been two Officers in Charge of the coronial investigation, both of whom cared deeply about the family. Detective Senior Constable Duncan King commenced the investigation and did an excellent job gathering crucial evidence. Detective Senior Constable Scott Wilcox investigated alongside Detective Senior Constable King at the time of this tragic incident and took over as officer in charge in early 2018. Detective Senior Constable Wilcox has been exemplary in obtaining remaining evidence to assist me, and his care and concern for the family. He is an exceptional police officer.
11. Chloe May Kabealo acted in a way that was brave and clever beyond her years, in exiting the vehicle after it went into the water and running a distance on the storm affected road, with bare and injured feet, to raise the alarm for her family. She is a joy for her father, her teachers and the whole community. I extend my deepest sympathies to the family of Stephanie, Ella-Jane and Jacob and I thank them for their support for the inquest and their grace in these most difficult of times.

### **The Inquest:**

12. A Coroner's functions are governed by the *Coroners Act 2009* ("the Act"), which confers jurisdiction on a Coroner to hold an inquest in certain circumstances. That includes circumstances where a person dies an "unnatural death" or in "unusual circumstances" (see sections 6 and 21).
13. The primary function is provided by s. 81 of the Act, and it is to make findings as to the identity of the deceased, the date and place of the person's death and the manner (that is, the circumstances) and cause (meaning the medical cause) of the person's death.
14. A secondary, but equally important function is provided for by section 82 of the Act, which allows a coroner to make such recommendations they consider necessary or desirable regarding any matter connected with the death. Public health and safety is specifically mentioned as an example of the type of matters that can be the subject of recommendations.

## **The Evidence:**

### ***The flooding of March/April 2017***

15. Around the 28th March 2017, ex-Tropical Cyclone Debbie moved south from where it had made land-fall in the vicinity of Airlie Beach, Queensland. The movement of this weather system resulted in heavy rainfall in the Northern Rivers area predominantly on the 30th and 31st March, 2017. This heavy rainfall resulted in major flooding of river systems in the Tweed, Byron, Ballina, Lismore, Richmond Valley, Kyogle local government areas.
16. The Tweed River is the major river within the Tweed Valley, with its origin in the Border Ranges south of Khunghur (approximately 54km south of Tumbulgum). The Tweed River has many tributaries, the major ones being the Oxley River at Byangum (approximately 30km south of Tumbulgum) and Rous River at Tumbulgum (approximately 400 metres south of the scene of the accident).
17. Although the Tweed area is prone to flooding and locals like Matthew and Stephanie had experienced flood events before, the level of flooding this time was unprecedented for many in the community, resulting in thousands of people being asked by emergency services to evacuate their homes. The flooding meant that some businesses shut and many roads were impassable.
18. NSW State Emergency Service (SES) is the lead combat agency for flood and flood rescue operations across NSW. The SES was controlling flood operations in coastal northern NSW between 28 March and 10 April 2017 and an incident management team was in place at Goonellabah. The scale of the crisis created by this weather event is reflected by the fact that the SES recorded 496 flood rescue jobs in their final Situation Report.
19. Where there is a significant weather incident, an Emergency Operations Centre (EOC) is set up and a representative from each emergency service and other relevant agencies attends as the nominated commander for that particular agency. For this flood, the EOC was established at Lismore Police Station and later moved to Lismore Council due to flood waters.
20. Dulguigan Road North Tumbulgum runs along the Tweed and Rous rivers from North Tumbulgum at its eastern most point to Dungay at its western side. The road is within a rural environment with a number of fenced paddocks on each side of the roadway. The road is lined with a number of medium to large gum trees and vegetation. There are soft shoulders on each side of the roadway, with no kerbing or guttering. There is no provision for a breakdown

lane on either side of the roadway. The vegetation and trees come right to the bitumen road edges.

21. The road surface is sealed bitumen and caters for one lane of traffic in each direction. Dulguigan Road changes compass direction along its path but generally runs in an east-west orientation. According to measurements at the time of the accident, the bitumen surface of Dulguigan Road varied in width from 6.1 metres to 6.6 metres at the accident site, with a 1.2 metre wide gravel verge that ran to the rock wall along the riverbank on the side of the road closest to the Tweed River. The section of Dulguigan Road, North Tumbulgum where the collision occurred has a governing speed limit of 60km/h for trucks and 100km per hour for cars.
22. Under Australia's federal arrangements, state and local governments are responsible for road construction and maintenance. However, the federal government provides funding assistance under various programs. Roads are managed and maintained differently depending on how they are classified. A local road is defined as a council controlled road which provides for local circulation and access. Local roads are the responsibility of councils to fund, determine priorities and carry out works. The State Government provides limited assistance with these roads. Dulguigan Road, the site of the accident, is a local road managed and maintained by the Council.
23. At 7.46am on 30 March 2017, Terranora Road, north of the Tumbulgum Bridge was closed. Council staff placed road closure signage on Terranora Road at the Bilambil Road intersection. Access to Dulguigan Road from the north would have been lost at this time. Council was not aware of exactly when access to Dulguigan Road from the south was lost, however it appears it had been inundated with water and was impassable for several days, and certainly on 1 and 2 April. I received a statement from Noel Rieusset, who lives in North Tumbulgum in a property that overlooks Dulguigan Road. At 5.31pm on Sunday 2 April, he took a photograph on his phone that showed water right across Dulguigan Road at the accident site, such that it is hard to distinguish where the Tweed River stops and the road begins.
24. By Monday morning (3 April), Council removed road closure signage from Terranora Road.
25. Council relies on reports from staff and the general public to inform road closure information. The primary tool for communicating road closures to the public is a website known as MyRoadInfo ([www.myroadinfo.com.au](http://www.myroadinfo.com.au)). Due to resourcing priorities, the Terranora Road closure was not removed from the MyRoadInfo website until 9.43am on 4 April 2017. According to Danny Rose

from the Council, generally, unless sign posted specifically as closed, any rural road would be open once water has receded from the roadway.

26. There is no doubt that responsibility for closing Dulguigan Road fell to the Council, which did not close the road at any time during the March/April flood, in spite of the fact that it was impassable.

***The Fatal Incident:***

27. On Monday 3rd April 2017, Stephanie and Matthew and their family were at home at Bilambil Heights. They were aware that the area had been experiencing a major flood event and that Dungay Public School was closed to mop up and was due to open on Tuesday. Stephanie discussed with Matthew needing to go to Kingscliff TAFE to hand in forms to enrol in a nursing course that she was enthusiastic about. She said she might go down to the school to see if she could assist in cleaning up after the flood. As I heard during the inquest, that attitude would not have surprised those who knew her. Shortly after the accident, one of Stephanie's friends told the media that, "Stephanie was the sort of mother who would do anything for the kids. She was such a community-minded person, she would get in there and help anyone who needed a hand".

28. That morning Stephanie left home with Ella-Jane sitting in the front passenger seat, Chloe in the passenger seat behind Ella-Jane, and Jacob next to Chloe in a child seat. As usual, the children were wearing their seat-belts.

29. I learnt from Matthew that although Stephanie was familiar with the roads taken to get to the school, their typical route from Bilambil Heights to Dungay was Hogans Road over to Dulguigan Road, then along Dulguigan Road to Tomewin Road. That was the shortest, most practical route and the return trip was the same. Matthew was aware of no time before 3 April 2017 when Stephanie had driven from the intersection of Hogans Road and Dulguigan Road, east to the intersection of Dulguigan Road and Terranora Road. However on 3 April, Hogans Road was closed due to land-slips caused by the flooding. As a result, when returning home, Stephanie drove east along Dulguigan Road, North Tumbulgum, heading towards Terranora Road.

30. It appears that Stephanie had driven a distance of 10.8 kilometres along Dulguigan Road prior to the accident, and had successfully navigated a number of turns and bends as she travelled. At around 1.30pm, after a gentle sweeping right hand bend, the Hyundai iMax van lost traction because of mud and silt on the road. It commenced to rotate in a clockwise direction to the incorrect side of the roadway and proceeded over the bank of the Tweed

River, which hugs one side of the road. At that time, there was no physical barrier between the road and the river. A witness to that event, Ms Suzette Wheatley, has told police that the van “didn’t appear to be driving very fast at all” in the lead up to the accident.

31. I received evidence from a number of police experts, whose reports and oral evidence enable me to form an opinion as to how the accident occurred. Senior Constable Anthony Pellicane, from the Engineering investigation Unit, examined the van and concluded that there were no mechanical defects or component failures which may have contributed to the collision.
32. Senior Constable Gerry Kemp is an officer attached to the Forensic Services Group Lismore Crime Section who attended the scene. He measured any tyre or skid marks and took photographs of the area and Stephanie’s vehicle. Dulguigan Road was generally a long arcing bend of approximately 30° over a distance of 133 metres to the south of the accident site before a straight section approximately 150 metres long in front of Lot 1059. The skid marks indicating where Stephanie’s van left Dulguigan Road were in the approximate middle of the straight section, approximately 24 metres from the Lot 1059 driveway.
33. Leading Senior Constable Brett Hobbins is a member of the Metropolitan Crash Investigation Unit and he inspected the Hyundai Imax van owned by Stephanie, which was a relatively new one, purchased by the family in 2012. The vehicle is a front wheel drive automatic which seats eight people. The van was in good condition and had no mechanical defects. At the time of Senior Constable Hobbins inspection, he noted that the rear tyres had poor tread depths that were below the legal limit. In his original statement, Senior Constable Hobbins suggested that although the rear wheels do not steer or power the vehicle, the condition of the rear tyres meant that it did not have traction in the mud and silt and it was considered to be a causal or contributory factor to the accident. However in oral evidence, Senior Constable Hobbins clarified that the main cause of the accident was the mud and silt on the road which made it treacherous for any vehicle, and he stated that the tyres may not have played any contributory role. In fact, when his vehicle attended the scene at 4.35pm on 4 April, the road was still slippery and hazardous.
34. I am satisfied that the condition of the van tyres were not a significant contributory factor to the accident, and the major (and possibly only) cause was the condition of the road. I am able to state that for two reasons, first because the rear wheels do not steer or power the vehicle, and second,

because of the significant number of other vehicles whose tyres slid in the mud, even when they had perfect tread.

35. When Senior Constable Kemp attended the scene at around 10.00am on 4 April 2017, Dulguigan Road had a bitumen surface obscured by a layer of mud that varied in thickness from approximately 10mm to 200mm; the thickest layer of mud was on the edge of the road furthest from the river. Although rescue vehicles had dispersed much of the mud by the time he attended, it was still extremely slippery at the time of his examination.
36. Although some members of the community had been able to navigate the road on 3 April without having an accident, there were others whose vehicles skidded and at least one person who came perilously close to ending up in the Tweed River. Jill Liibus is a long-term resident of the area and was travelling west on Dulguigan Road at around 1.00pm, that is, about 30 minutes before Stephanie. She was travelling well under the speed limit (somewhere between 50-70kms per hour) in a Mercedes that was in perfect working order with tyres well serviced. She encountered a patch of mud across Dulguigan Road and when she drove onto it, it caused her car to ricochet across the road, from one side to the other. When she recounted that evidence in Court, she sounded genuinely distressed as she described a terrifying event. On finding out about the accident, she contacted police to relay her experience, which has been very helpful to the Court in understanding the events. The cars of other citizens slipped on the roads, as did the vehicles driven by members of the SES, Police and Ambulance, all of whom had car tyres with good tread. Suzette Wheatley described the mud as “very slippery” and like nothing she had ever seen before.
37. The absence of any substantial tyre marks on the roadway, coupled with the damage observed on the Hyundai I-Max and the position of the vehicle when located by NSW Police Divers would indicate the entire incident involved a low speed sequence. This is consistent with the evidence of Suzette Wheatley, who saw the van veer into the river and noted that it was “not travelling very fast at all” when that happened.

### ***Rescue and Retrieval***

38. A number of civilians phoned triple 0 after seeing the accident. The first triple 0 call was made at 1.37pm by Suzette Wheatley, and more followed, with multiple agencies responding.

39. In an act that is extraordinary for a child her age, Chloe managed to run to a house nearby on Dulguigan Road to try to get help for her family. Benjamin Darcy was at home with other members of his family, when Chloe told him that the car had gone in the river. Some family members and a neighbour ran back with Chloe towards the bridge and Benjamin and his friends drove there. By that time a number of cars and members of the community had gathered. Benjamin Darcy and his brother in law Ryan Martin jumped into the river at the site of the skid marks and they continued to dive down to see if they could locate anyone. A third member of the community, Tom Grinham, did the same and was joined by his son Matt Grinham. Those people kept trying until members of the police and ambulance arrived. Their efforts were hampered by the fact that the water was brown, freezing and flowing.
40. The first emergency services to arrive were from the NSW Ambulance service. Grant Prendergast is an intensive care paramedic who had been employed by NSW Ambulance for over 38 years at the time of this incident. On 3 April, he was working with a Special Operations Team (SOT), which had been sent to help deal with multiple emergencies in the Northern Rivers area. Grant Prendergast responded to the Triple 0 call, with the SOT officer he was working with and another two SOT officers in another vehicle. Those SOT officers had equipment and skills to enable them to enter the water. When they arrived, a number of civilians were already in the water, and a SOT officer joined them in the search. Grant Prendergast assumed the role of Forward Commander for NSW Ambulance.
41. At 1.40pm, NSW Police sent a flood rescue activation message to the SES State Operations Centre via the Inter-CAD Electronic message system, alerting them to the fact that a car was in the river with passengers inside. NSW Police activated SES as a rescue resource. By 1.45pm, a team was enroute and by 2.03pm, the rescue team was on site with a rubber duck boat in the water to assist. A number of police units responded to the first call for assistance. The first to arrive was Senior Constable Anthony Brown, who was on the scene at around 1.50pm, having had to navigate flood water to get there. Two further officers (Senior Constables Elliot and Ross) arrived at 1.51pm and more followed after that.
42. Sergeant Darren McCaughey arrived on the scene at around 1.55pm. As he drove along Dulguigan Road, he saw a covering of mud on the roadway. He stated that he knew the Tweed River had broken its banks during flooding and that when the river subsided the mud left on the road was extremely slippery. As a result he slowed his police car down to between 10-20 kms an hour. He was still driving on the bitumen roadway, but as he began to drive towards a grass verge, he gently squeezed the vehicle brakes on to stop it. Even at that

speed, the vehicle skidded uncontrollably off the road and onto the grass verge, coming to a stop with the offside wheels on the muddy grass verge and the nearside wheels on the bitumen roadway.

43. By this stage, an SES supervisor was on scene and preparing workers trained in water rescue to enter and it was agreed with police that they should enter. Members of the Volunteer Rescue Association (VRA) attended after being triggered by the police alert. SES workers also deployed boats.

44. By 2.34pm, an SES situation report notes that:

Unit controller SES Unit Grant Frost was on scene at the job- there are 3 level 3 ops and 1 level 2. There was a tinnie in the water and 1 ark angel. VRA has 2 vehicles on the scene with an arc angel in the water as well. The Westpac helicopter had just landed.

45. The owner of a private boat approached police and offered to use his boat, which had a sonar device attached. At around 3.25pm, a sonar device identified the location of the van, about 3-5 metres south of the northern bank.

46. Rescue operations continued until the late afternoon. Sadly, by about 3.10pm, it was clear that no-one could have survived the accident. The operation was switched to one of recovery, meaning that NSW Police took over management from SES, although the SES continued to provide personnel and equipment to assist.

47. Sergeant McCaughey makes a point of writing this in a statement that I received in evidence:

“I had continued to perform Supervisory duties at the scene and began to leave about 1620 on the 3 April 2017 to return to Tweed Heads Police Station. I was near the intersection of Dulguigan Road and McCauleys Road Tumbulgum when I saw a 4 wheel drive vehicle doing a u-turn at this location. At the time the vehicle would have been doing only 5 to 10 kilometres per hour. I saw this vehicle lose traction and slip from the roadway onto the grass verge. The roadway at this point was predominately flat with a minor camber. There was river mud on the roadway and verge at this point. The 4 wheel drive vehicle could not get traction to get onto the bitumen and subsequently had to be winched off the grass verge and back onto the way to enable it to continue on its journey.”

48. Chief Inspector Dempsey was one of those who attended in the afternoon and he attempted to source police divers from Qld and NSW. Ultimately, he was

able to arrange police divers, who were flown by helicopter the next morning, 4 April. They were able to rapidly retrieve the bodies.

49. It was confirmed via external examination autopsies conducted by forensic pathologist Dr Alan Calla that the cause of death for Stephanie, Ella-Jane and Jacob was drowning.
50. I am satisfied that the Police, the SES, the VRA and Ambulance, arrived as soon as they reasonably could, given the geography and ongoing access issues, and that they did everything they could to try to rescue the family. Their work is heroic and no doubt it was an extremely challenging and difficult job for each of those individuals involved.

### ***Road closures- the actions of the Tweed Shire Council***

51. There is ample evidence that Dulguigan Road was open for traffic at the time of the accident and also that Stephanie was a cautious driver who would never have put her children at risk if there had been a road closure or if she had understood the dangers that remained on that stretch of road. As Matthew Kabealo told police, Stephanie was a very cautious driver and there is no way that she would have driven along Dulguigan Road if there were any indications it was closed. In his words, "safety is paramount, she enjoyed driving and it would not have bothered her one bit to have to back-track and drive back down Cane Road into Murwillumbah to come back home".
52. As I have already said, I am grateful for the full and frank evidence of Danny Rose, who acknowledged that, in accordance with Council procedures at the time, Dulguigan Road should have been closed after it was covered in water so that access from the north and south were blocked. In 2017, the procedure for Council to close Dulguigan Road would have required them to put up a sign to say that the road was closed and to post it on the MyRoadinfo website. The road was not closed, largely because Mr Rose was operating with restricted staff resources. I heard evidence that heavy rainfall made it difficult for some staff to attend work on Thursday 30 March and as rainfall continued that day, the majority of staff residing outside Murwillumbah left work to make their way home before they became isolated. That included key administration staff who normally assisted in inputting road closures into MyRoadinfo.
53. Once the water subsided from Dulguigan Road it would likely have been re-opened by Council. Although Council was not familiar with the extent of the mud and silt that was likely to build up on the road and were not expecting

that it would be such a hazard, it is possible it would have been checked before a decision was made to re-open the road. The mud and silt was not just at the sides of the road, but was spread across it at points. Council has access to machinery to grade the road and remove mud and silt. This is what should have been done before the public was allowed to access Dulguigan Road, particularly given that its proximity to the Tweed River made it so treacherous.

54. Council had experience in dealing with floods and had in place a Flood Risk Management Policy and a Tweed Shire Flood Emergency Sub Plan (2014) that set out the responsibilities for different agencies in the event of flooding, including the Council, SES and Police. However it was not well enough staffed and resourced to deal with road closures. That meant that Dulguigan Road was not closed when it should have been, and was not checked before it came to be used by members of the public, including Stephanie and her family. That is a terrible tragedy and, given the likelihood of another major flood in this area, lessons must be learnt.

### ***The actions of the Tweed Shire Council since this tragedy***

55. I received evidence of substantial actions taken by Council since this accident. Most notably, they include the installation of a 220 metre guardrail on the river side of Dulguigan Road, extending across the crash site and beyond on either side. They also include:

- Council's list of "flood spotters" was updated in April 2018, and reviewed again in October 2018, and with permission, their details were shared with the SES.
- Council conducted training for nine staff members on the use of MyRoadInfo on 28 November 2018, which expanded Council's capacity to post road closure information on the administrative pages of the website.
- In February 2019, the Council launched its Emergency Dashboard Website. This provides members of the community with a centralised source of information during emergency situations. It includes links to external websites, including MyRoadInfo, SES, Bureau of Meteorology, and utility providers, and social media links including ABC North Coast (the emergency broadcaster) and Tweed-Byron Police.
- In May 2019 Council expects to finalise updates to the "Road Emergencies and Closures" procedure (Version 1.4).
- Under the revised Procedure, Council has amended the "flood spotters" program such that Council will proactively call flood spotters

located in areas of concern, rather than wait for them to contact Council, as per the previous version.

- Under the revised Procedure, there is a new role for Council's Communications and Customer experience unit to support the Roads and Stormwater Unit in the collection and dissemination of road closures notifications and information.

56. I am satisfied that there is more that can be done, and I intend to make recommendations that will encourage that work to be completed as soon as the Council is able to resource it.

## ***Recommendations***

57. To the Tweed Shire Council ("the Council"):

- I. That Council consider conducting a study of roads within the Tweed Shire Council areas, to identify particular hazards during and following floods, as well as strategies to mitigate such hazards;
- II. That consideration be given to updating the Council's Standard Operating Procedures to provide for Works Officers to actively look for risks to road users arising from mud and silt being deposited on roads following floods;
- III. That the Road Spotters Program be updated to seek to increase the number of volunteer road spotters who live adjacent to known critical road flooding locations and that Council also prepare a Road Closure Volunteer Instructions document that provides criteria for when to notify Council, including referring to water being on the road during floods and mud or silt being deposited on the road following floods;
- IV. That consideration be given to installing warning signs on the southern and northern ends of Dulguigan Road North Tumbulgum alerting the public to hazards from mud and silt following floods; and
- V. That Council considers how best to advertise to the community a change in procedure for road closures, if, as proposed in the draft Road Emergencies and Closure procedure, a road is also considered to be closed when an obvious hazard makes it unsafe or impassable for general traffic until the hazard has receded or been removed.

## ***Final remarks***

58. I would like to thank my Counsel Assisting, Dr Peggy Dwyer and her instructing solicitor, Ms Johanna Geddes from the Crown Solicitor's Office. They are the reason I am able to hand down these findings so soon after the inquest was held.
59. Finally, I would like to acknowledge the family statements in this matter. I take on board what Matthew Kabealo said, in a statement beautifully read by Detective Senior Constable Wilcox. He did not want to be seen as a victim, but rather a survivor of this tragedy, and indeed he is, along with his exceptional daughter Chloe.
60. Matthew told the Court of his wife Stephanie, who had many friends, and was heavily involved in the community and school activities. He said that "everyday was a celebration and Stephanie celebrated every day" and that "Steph was a hero and [his] best friend and will always be remembered as the life of the party". Ella-Jane was "wise beyond her years but still so young and innocent". She was academic and loved to read and was an absolute delight for Matthew and Steph. They had seen her perform twice at the Opera House in her short life. Jacob had completed the family perfectly and Matthew coached his soccer team and taught him how to ride a bike.
61. Although Matthew is a survivor and his courage is obvious, it was abundantly clear to me that he has been profoundly affected by this tragedy, and words cannot do justice to the pain and anguish he must be living with. He expressed the hope that through this tragedy, there is something positive in that other families are safer on the roads in the event of further flooding.
62. Stephanie's brother, John King, spoke on behalf of the King family in New Zealand and he too expressed his family's hope that some positive outcomes could come from the inquest to "prevent this tragedy, pain and loss that [they] have suffered as a family and a community from happening to others". On behalf of the family, John thanked the members of the public who so selflessly risked their lives to save others, the emergency rescue and response teams and the Police. In relation to the Police, his tribute is worth setting out in full, since it captures the nature of their fine work. John said:

"To the Police of whom on the day were involved in responding to the accident; the detectives who have shown us compassion and respect over this difficult time, and to all members of the Tweed Byron Police Department who have supported us since the tragedy, we give our heartfelt thanks".

63. I too thank the Police officers for their extraordinary work in this matter, in particular, Detective Senior Constable Duncan King, Detective Sergeant Matt Woods and Detective Senior Constable Scott Wilcox.

64. To all of Stephanie's family, I offer my genuine and heartfelt condolences.

### **Findings required by s. 81(1) of the Act**

As a result of considering all of the documentary evidence and the oral evidence heard at the inquest, I am able to confirm that the deaths occurred and make the following findings:

#### ***Stephanie King***

##### **Identity of deceased person:**

The deceased person was Stephanie Jane King.

##### **Date of death:**

She died on 3 April 2017.

##### **Place of death:**

The place of death was North Tumbulgum in New South Wales.

##### **Cause of death:**

The medical cause of death was drowning.

##### **Manner of death:**

Stephanie Jane King died after the vehicle she was driving on Dulguigan Road, North Tumbulgum, lost traction with the road because of mud and silt that remained after flood waters, causing the van to slide onto the other side of the road and into the northern bank of the Tweed River. The road had not been closed by the Council.

#### ***Ella-Jane Kabealo***

##### **Identity of deceased person**

The deceased person was Ella-Jane Kabealo.

##### **Date of death:**

She died on 3 April 2017.

##### **Place of death:**

The place of death was North Tumbulgum in New South Wales.

**Cause of death:**

The medical cause of death was drowning.

**Manner of death:**

Ella-Jane Kabealo died as a passenger, after the vehicle her mother Stephanie King was driving on Dulguigan Road, North Tumbulgum, lost traction with the road because of mud and silt that remained after flood waters, causing the van to slide onto the other side of the road and into the northern bank of the Tweed River. The road had not been closed by the Council.

***Jacob Kabealo*****Identity of deceased person:**

The deceased person was Jacob Matthew Kabealo.

**Date of death:**

He died on 3 April 2017.

**Place of death:**

The place of death was North Tumbulgum in New South Wales.

**Cause of death:**

The medical cause of death was drowning.

**Manner of death:**

Jacob Matthew Kabealo died as a passenger, after the vehicle his mother Stephanie King was driving on Dulguigan Road, North Tumbulgum, lost traction with the road because of mud and silt that remained after flood waters, causing the van to slide onto the other side of the road and into the northern bank of the Tweed River. The road had not been closed by the Council.

I close this inquest.

Magistrate Teresa O'Sullivan  
A/State Coroner

**Date: 10 May 2019**