

SOUTH



AUSTRALIA

FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Mount Gambier in the State of South Australia, on the 24th, 25th, 26th and 27th of September 2002, the 7th and 8th of November 2002 and the 17th of January 2003, before Anthony Ernest Schapel, a Coroner for the said State, concerning the deaths of Lois Creama Sneath and Brendon Alan Howard.

I, the said Coroner, find that, Lois Creama Sneath aged 49 years, late of Unit 2, 88-12 Davison Street, Mount Gambier died near Caveton, South Australia on the 10th day of March 2001 as a result of multiple severe traumatic injuries.

I, the said Coroner, find that, Brendon Alan Howard aged 48 years, late of Lot 4 Williams Road, Worrolong died near Caveton, South Australia on the 10th day of March 2001 as a result of multiple severe traumatic injuries.

1. Introduction

1.1. Shortly after 11.00 pm on Saturday 10 March 2001, the deceased Lois Sneath was driving a white Ford Falcon sedan, registration number (SA) WBU-285, in a general northerly direction along Green Point Road near Caveton in the south east of South Australia. There were three other occupants of the vehicle. The wife of the other deceased person occupied the front passenger seat. Her name was Janice Maureen Howard. Seated behind Lois Sneath was Brendon Alan Howard, the other deceased person. Seated alongside Mr Howard was Lois Sneath's husband, Robert Wayne Sneath. The four occupants of the vehicle had attended a birthday party at Eight Mile Creek near Port MacDonnell. They had left the party at about 11.05 pm and were returning to Mount Gambier via the Green Point Road. They had taken a different route from Mount Gambier to Eight Mile Creek to travel to the birthday party.

- 1.2. At a point about one kilometre south of the junction of Green Point Road and Nelson Road the vehicle left the recently resealed surface of Green Point Road, rolled and came to rest on its roof.
- 1.3. Lois Sneath and Brendon Howard were instantly killed as a result of multiple injuries that they both sustained in the accident. The accident occurred at about 11.15 pm.
- 1.4. Although alcohol had been freely available at the birthday party at Eight Mile Creek, Lois Sneath had not consumed any. Alcohol was not detected in a sample of her blood taken post-mortem (see the toxicology report of Mr Traljic, Exhibit C6a). After the accident, other motorists stopped at the scene and rendered assistance to the occupants of the rolled vehicle. The police and ambulance service arrived at the scene shortly thereafter.
- 1.5. Lois Sneath was still inside the vehicle after it came to rest. She was strapped in by her fastened seatbelt. The seatbelt had to be cut to secure her release. I find in those circumstances that Lois Sneath was wearing a seatbelt at the time of the accident. In contrast, the deceased Brendon Howard was ejected from the vehicle during the course of the rollover. Constable Ian Colbey of the South Australia Police (SAPOL) attended the scene of the accident that night and checked whether any of the seatbelts for the rear seat of the overturned vehicle were fastened. Constable Colbey observed that the seatbelts for the rear seat were not fastened. I infer from his observations, which I accept, and from the fact that Mr Howard was ejected from the vehicle, that Mr Howard was not wearing a seatbelt at the time of the accident.
- 1.6. There was no other vehicle involved in the accident. At the time of the accident the weather conditions were dry and traffic was light. There was no artificial lighting illuminating any part of the vicinity.

2. **Background**

2.1. The Road

For the purposes of these findings, Green Point Road runs in a general north-south direction. Its northern most extremity is its junction with Nelson Road. Green Point Road has a sealed surface. The speed limit was 110 kilometres per hour at the point where the accident occurred.

- 2.2. The vehicle occupied by the two deceased and their spouses was travelling along Green Point Road in a northerly direction. The occupants had intended to travel along Green Point Road to its junction with Nelson Road where, but for the accident, they would have executed a left turn and then travelled into Mount Gambier. As one approaches the scene of the accident travelling, as the deceased and their spouses were, in a northerly direction along Green Point Road the road is straight for several hundred metres. However, one then encounters a sweeping left-hand bend. The vehicle had commenced negotiating that left-hand bend when it left the road and rolled. However, the bend was not so severe as to necessitate a sedan having to reduce its speed in dry, firm conditions from the speed limit of 110 kilometres per hour in order to negotiate it. There is no speed advisory sign for the bend. The only permanent signage relating to the bend is an arrow mounted on a diamond shaped sign pointing to the left, plainly indicating the bend's existence. That sign is quite visible. It is situated a sufficient distance before the commencement of the bend.
- 2.3. The surface of Green Point Road, and in particular the entirety of the left-hand bend I have described, had recently been resealed. The commencement of the resealed surface occurred just before the bend for Mrs Sneath's direction of travel. The resealing had taken place on Thursday 8 March 2001, two days prior to the accident. At the time of the accident, an amount of loose aggregate left from the resealing works remained on the surface of the road. The loose aggregate was meant to have been swept from the surface of Green Point Road no later than Saturday afternoon, 10 March 2001. The requirement that the road be swept in that time frame was part of the contractual arrangements between the local Council and the contractor responsible for carrying out the roadworks.
- 2.4. A number of signs designed to warn motorists of the impending change of road surface as one approached the scene of the accident had been erected upon the completion of the roadworks on Thursday 8 March. I will return to the nature of that signage in due course. However, there was no mandatory nor advisory speed signage placed at the roadworks pending their final completion by sweeping and line restoration.
- 2.5. The Issues
- I conducted an inquest in Mount Gambier and examined the following issues:
- The nature of the road surface and its inherent dangers if any;

- The reason why loose aggregate had been left on the surface of Green Point Road when the contractual arrangements that I have mentioned dictated its removal at a time prior to the accident;
- Whether the driving behaviour of the deceased Lois Sneath was a relevant factor in the causation of the accident;
- Whether appropriate warning signage had been erected and maintained.

2.6. The contractual arrangements relating to the carrying out of the roadworks.

The responsibility for maintaining Green Point Road was that of the District Council of Grant (the Council). The Council had embarked upon a ten year resealing program involving roads for which the Council had responsibility. For the year 2001, the Council had called for tenders to perform the resealing works. Gambier Earth Movers Pty Ltd was engaged to carry out the road sealing works for that year. Gambier Earth Movers contracted to carry out the resealing of a number of roads under the Council's responsibility. One of those roads was the section of Green Point Road with which this inquest was concerned.

2.7. The Specification forming part of the Local Government Works Contract (Exhibit C9f) called for the resealing of 17 rural roads, and in particular the 1.3 kilometre section of Green Point Road. It was specified that the road be resealed with 7mm aggregate. Paragraph 3 of the Specification, entitled 'Scope of Works', specified the spreading and rolling of aggregate (Clause 3 {h}) and the removal of excess aggregate from the sealed pavement surface (Clause 3 {j}). As far as the rolling of aggregate was concerned, Specification 11 stated:

'rolling shall commence immediately after the aggregate has been spread and shall continue uniformly over the whole area in accordance with industry best practice.'

Specification 12 stated:

'Until loose aggregate is removed from the sealed surface, traffic speed shall be controlled by traffic control signing and or speed limits to match the conditions in accordance with the Worksite Traffic Management Code of Practice.

Loose aggregate shall not be removed until the aggregate has properly bedded down into the binder by either trafficking or additional rolling. If a suction cleaner is used, it shall remove aggregate by suction only.

Any damage done to the seal due to the removal of loose aggregate shall be repaired by the Contractor and at no cost to the District Council of Grant.

The removal of loose aggregate and disposal from site is the responsibility of the Contractor.'

- 2.8. The Contract Specific Clauses contained the following:

'2 TRAFFIC CONTROL AND SIGNING

The contractor shall erect and maintain signs in accordance with the 'Worksign Traffic Management Code of Practice' and Transport SA Field Guide for Speedlimits on Works on Roads to warn motorists of the dangers created by loose aggregate and the lack of line marking after sealing. These signs shall be maintained by the Contractor until the road and shoulders are free of loose aggregate.

9 REMOVAL OF LOOSE AGGREGATE AFTER RESEALING

Loose aggregate is to be removed from the running lanes, by using rotary broom or suction sweeper, time frame for this work shall be no sooner than 24 hours and no later than 48 hours.'

- 2.9. The entire resealing program for the year 2001 was to be completed during the month of March. I was told in evidence by Mr Adrian Schutz, who is and was at the material time employed as a works supervisor by the Council, that the resealing program commenced on 5 March 2001 and was completed on 26 March 2001. The 1.3 kilometre section of Green Point Road was to be resealed on 8 March and this in fact did take place that day.
- 2.10. Gambier Earth Movers, the Contractor, was a company experienced in road resurfacing.
- 2.11. The Council also entered into a surveillance contract with a Victorian company, Road Network Services Pty Ltd. Road Network Services contracted to supervise the works undertaken by Gambier Earth Movers. The necessity for such a contract of supervision was engendered by lack of resources within the Council. In essence, the responsibility of Road Network Services was to 'make sure the contractors are doing what the Council is paying for' (T304). A representative of Road Network Services was responsible to ensure that Gambier Earth Movers were sealing the correct section of road, ensure that the right size aggregate was utilised and generally to ensure that the contractor was performing the works in accordance with the Council's wishes. The responsibilities of Road Network Services included ensuring that correct signage was displayed in relation to the roadworks. I was told that Road Network Services had no effective authority to order the contractor to perform or rectify any aspect of the works. Rather, their responsibility was to inform the Council of any performance issues that may have been encountered. The Council could then take such action against the contractor as it saw fit.

2.12. Road Network Services supplied a representative to be present at the performance of the roadworks. In this case it was a Mr Leigh Robertson who gave evidence before me in the inquest.

2.13. The nature of the roadworks on Green Point Road

The Green Point Road project called for the resealing of the 1.3 kilometre stretch of road south of the Nelson Road junction. The whole of the resealing work took place on the afternoon of Thursday 8 March 2001. There was varying evidence as to the time at which the work was said to have commenced but it is of no consequence. It is clear, however, that the work was completed sometime before 3.15 pm that day. The resealing of the road involved four processes. The first was the sweeping of the road to prepare it for the reception of fresh sealing material. The second process was the laying of the sealing material, in this case bitumen. The third process was the laying of aggregate on the sealing material. The fourth process was the rolling of the aggregate into the sealing material. All this took place on the Thursday.

2.14. An amount of aggregate is normally left on the road after sweeping has been completed. Much of this excess aggregate will be further embedded into the surface of the road by traffic. Mr Alexander Stewart, an employee of Gambier Earth Movers and who was the person in charge of the work at Green Point Road, explained the situation in these terms:

'Yes, it's got to be left for a certain amount of time for when you roll it after it's been sprayed and covered and you apply the screenings to it, the rollers will bed the new screening into the hot bitumen, but then they leave it for a period to see if the traffic will bed in what's left, because you've always got a certain amount of floating surface, so to speak, sort of thing.' (T149)

Mr Stewart was asked:

'Q. Is this position, that the specification I think you said, suggests that you can't do the sweeping before 24 hours after the job is done, is this because during that period there's still - I'll start that again, but that period of time allows for some further sticking or adhesion to occur. Is that the purpose of that or don't you know.

A. Yes. That's what I've been told and what the books tell us that after the rolling has been completed and that, it may be necessary to leave the sweeping until some traffic volumes have been over it for it to perhaps enhance the bedding of any screenings that are loose there, it may take to the bitumen.' (T159)

- 2.15. I was also told that after the bitumen is poured it will cool, such that it hardens or cures. The result is that in due course there will be less adhesion between the loose aggregate and the bitumen. (T172-173)
- 2.16. Green Point Road is by no means an arterial road. It does not carry much traffic. Mr Robertson of Road Network Services told me that Green Point Road had about 150 to 200 a day vehicles pass over it.
- 2.17. As observed earlier, the contractual arrangements between the Council and Gambier Earth Movers, which arrangements Road Network Services was supervising, called for the removal of excess aggregate no earlier than 24 hours after the completion of the works and no longer than 48 hours after the completion of the works. In the event, the section of Green Point Road affected by the roadworks was not swept until the morning of Sunday 11 March 2001, the morning after the fatal accident. This failure to sweep contravened the contractual arrangements between the Council and Gambier Earth Movers. At the time of the accident there was still an amount of loose aggregate on the surface of the road as a consequence of that failure. I will examine the issue more closely later in these findings, but it is obvious that the presence of loose aggregate on the surface of Green Point Road was a substantial cause of this accident.
- 2.18. Signage placed after the completion of the roadworks on Thursday 8 March
Three warning signs had been placed on the left-hand side of the road for vehicles approaching the new roadworks from the same direction as Mrs Sneath's vehicle. These signs were erected by Gambier Earth Movers workers at the conclusion of the job on the afternoon of 8 March. The signs were tied to guide posts on the side of the road. The first sign stated 'Loose Surface' and it was situated approximately 410 metres before the commencement of the resealed section of Green Point Road. The second sign, depicted a sliding vehicle, was situated approximately 260 metres from the commencement of the resealed section of Green Point Road. That sign was clearly intended to warn of a possible deterioration in traction. The third sign which depicted two passing vehicles, one throwing up road debris and one with a broken windscreen, was situated 110 metres from the commencement of the resealed surface. That sign was intended to warn of possible windscreen damage. As it transpired, between the erection of this third sign and the time of the accident the sign fell over. This fact was observed by a police officer who attended the scene shortly after the

accident. It meant that the third sign was not visible to a motorist approaching the new work. There was no precise evidence as to where in relation to the commencement of the bend, the commencement of the resealed surface occurred. However, it is evident from a set of photographs that were produced in evidence that the commencement of the resealed surface occurred a relatively short distance prior to the commencement of the bend (Exhibit C22).

2.19. It is against that background that the accident occurred.

3. Circumstances of the accident and the driving behaviour of the deceased, Lois Sneath

3.1. The only witnesses who could in any sense describe the circumstances of the accident and the driving behaviour of Mrs Sneath were the surviving occupants of the vehicle, Mr Robert Sneath and Mrs Janice Howard.

3.2. Mr Sneath gave evidence in the inquest and a statement that he had given to police on 20 March 2001 was admitted in evidence (Exhibit C18). Mr Sneath told me that he had not seen his wife drink any alcohol at the party. As far as his own consumption of alcohol was concerned he said in his statement that he had consumed liquor at the party but would describe his level of sobriety on leaving the party as being good. Both he and his wife had driven along the Green Point Road on prior occasions. He said that his wife would have been familiar with that road. In his statement he described his wife as a competent driver and that she was very careful. He said she was so conscious of road safety that she had ensured that she would remain alcohol free that evening. The foursome had travelled to the party originally by a different route and I infer from the whole of Mr Sneath's evidence that there is no reason to suppose that his wife had driven along Green Point Road at any time after the resealing works had been completed on the afternoon of 8 March. Mrs Sneath had held her licence for over 30 years. Mr Sneath had on many occasions been a passenger when his wife had driven on loose surfaces. To his knowledge she had never lost control of a vehicle whilst driving on a loose surface. Her manner of driving on loose surfaces had not caused him any concern and he could not recall her expressing any concern to him about having to drive on a loose surface.

3.3. Mr Sneath confirmed other evidence to the effect that Green Point Road was not a busy road. He said that you would only encounter the occasional car.

- 3.4. Mr Sneath also told me that his wife had driven along Green Point Road both during the day and at night time.
- 3.5. On the night in question Mr Sneath was seated in the left rear seat of the sedan. He had his seatbelt on but he could not recall if Brendon Howard had his seatbelt on. The two female occupants both had their seatbelts on.
- 3.6. At some stage prior to encountering Green Point Road, they had been travelling along a white metal road. Mr Sneath had there advised his wife to be careful of bends that she had to negotiate on that road. By this I did not understand Mr Sneath to be in any way critical of his wife's driving. He referred to the fact that she had never been along that metal road on a prior occasion as far as he could recall and that the road was, to use his words, 'twisty and bendy' (T38). He said that he believed that his wife was unfamiliar with the dirt road and that had prompted him to warn her about the bends. There was nothing about the manner in which his wife was driving that caused him any concern as they proceeded along Green Point Road (T42). However, the evidence of Mrs Howard is different from Mr Sneath's in relation to the bend in respect of which Mr Sneath uttered his warning. I deal with this issue.
- 3.7. In his witness statement Mr Sneath said that on Green Point Road he had felt comfortable with the speed of the vehicle. He said it was about 90 kilometres per hour. He described his next recollection as hearing the sound of gravel under the vehicle and then the rear of the car drifting to the right. His wife made an exclamation and the accident occurred. Mr Sneath did not claim to have looked at the speedometer of the vehicle at any stage of the journey. He said in evidence that he was comfortable with his wife's manner of driving generally. Mr Sneath confirmed his estimate of 90 kilometres per hour in evidence, but conceded that he might have had some difficulty in determining whether she was travelling at 90 kilometres per hour as compared to 110 kilometres per hour. Mr Sneath said that his understanding was that the speed limit along that road was 110 kilometres per hour and that in his experience the bend in question was not such that you would have to reduce your speed from 110 kilometres per hour in order to negotiate it. He said that he generally maintained a speed of 100 or 110 kilometres per hour along that stretch of road and that his wife, as a general practice, would have driven at similar speeds. He agreed that it would have been unusual for his wife to have travelled on that straight stretch of bitumen at 90 kilometres per hour if her usual practice was to drive along the road

at a greater speed. He did not detect any variation in her speed prior to the vehicle overturning. However he said that he didn't know whether he would have noticed any variation in speed.

3.8. Mr Sneath told me that there was a time gap between hearing the car entering the loose surface section of the road and control of the vehicle being lost, although he did not specify how long that was. He did not know whether his wife had applied the brakes prior to the car overturning.

3.9. As far as the observation of signs were concerned Mr Sneath told me that he was not aware of the warning signs. On the other hand, there appears to be much about this journey that Mr Sneath does not recall or would rather forget. It may be that Mr Sneath observed the warning signs but has forgotten having seen them. Alternatively, it may be the case that he simply wasn't paying attention because he wasn't the driver of the vehicle. However, there is nothing in Mr Sneath's evidence to positively demonstrate that his wife either observed the warning signs or altered her driving behaviour in any way if she did see them. Mr Sneath did tell me that generally his wife would slow down on loose surfaces. She was usually aware of signs that indicated an imminent loose surface and would slow down in response. He was unable to say whether she did slow down prior to entering the loose surface section of Green Point Road.

3.10. The other surviving occupant of the vehicle, Mrs Howard, also gave evidence at the inquest. In addition, a witness statement taken from her on 23 March 2001 was admitted in evidence (Exhibit C14). A further statement taken from her, as I understand it by a solicitor, was also admitted in evidence (Exhibit C15). That statement was taken, again as I understand it, just prior to the commencement of the inquest.

3.11. In her original statement of March 2001 Mrs Howard said that Lois Sneath had only consumed Pepsi at the party. Mrs Howard herself had also only consumed Pepsi.

3.12. In her original statement Mrs Howard said:

'Lois was driving carefully with the lights on high beam but I can remember Robert saying to Lois 'be careful there are a couple of bends up ahead.' I felt that maybe she was travelling a little too fast if she didn't know the area or the roads. The speed of the

vehicle would have been about 90 kilometres per hour in my opinion although I did not look at the vehicles speedometer at any time.' (Exhibit C14)

3.13. In her more recent statement she said:

'I remember Robert saying something to the effect of 'be careful there are a couple of bends up ahead', he was talking to Lois. I remember turning to the front and I looked at the speedo. I believe now that Lois was travelling over 100 kilometres per hour when I looked at the speedo. This was well before the accident happened that I looked at the speedo. Looking at the statement I gave to Senior Constable Colbey..... 'I did not look at the speedo at any time'. When I made that statement I meant that I did not look at the speedo at that time or just before Lois lost control. The time that I looked at the speedo would have been a couple of (sic) minutes before Lois actually lost control of the car. I can not now accurately recall just how fast Lois was going when I look (sic) at the speedo. If I thought Lois was driving too fast or dangerously I certainly would have said something. I can say that at the time that I did look at the speedo, I felt uncomfortable with her driving. However, it was not uncomfortable enough to speak to her and ask her to slow down. Also I did not know the road that we were travelling on but it was clear to me that Lois and Robert both knew the road.' (Exhibit C15)

3.14. In her more recent statement Mrs Howard said that she had always regarded Lois Sneath as a good safe driver and had always had full confidence in her driving. In her evidence Mrs Howard said that the remark by Mr Sneath to his wife about the existence of bends up ahead was made, to use her words, 'quite a way back'. However, she said that between the utterance of that remark and the accident they had not negotiated any bends and so she inferred that Mr Sneath had been referring to the bend where the accident was ultimately to occur and had been warning his wife as to the existence of that bend. She said that the road had been completely straight until then. It is to be observed, however, that Mr Sneath said that he made this remark in relation to bends on the metal road at a time prior to them engaging Green Point Road. It would seem odd, although not impossibly so, for Mr Sneath to have reminded his wife of the existence of a bend on a road with which she was all too familiar.

3.15. The more recent statement taken from Mrs Howard is difficult to reconcile with what she said in her statement to the police in March 2001. In her original statement she said that she did not look at the speedo at any time. In the more recent statement she explains that away by saying that she had meant that she had not looked at the speedo at the time or just before Mrs Sneath lost control. However, it seems to me that what she was trying to convey in her original statement was that her estimate of 90 kilometres per hour, not based on any observation of the speedo, was made in the

context of Mr Sneath's warning about bends. In her subsequent statement she says that she believes that Mrs Sneath was travelling at over 100 kilometres per hour when she looked at the speedo at the time Mr Sneath made his warning remarks.

- 3.16. In the light of all that, it would be very difficult for me to place total reliance on Mrs Howard's evidence as to speed. Her original estimated speed of 90 kilometres per hour is very much in keeping with the estimate given by Mr Sneath. Mrs Howard explained her original estimate of 90 kilometres per hour by saying that the police officer who had taken her statement, who incidentally was Constable Colbey, had asked her at what speed she thought the vehicle had been travelling and she had said that she didn't know, to which Constable Colbey had said 'do you think it was about 90?' In response she had said 'I suppose'. She said that she just said 'I suppose' because, to use her words, 'I've got no idea' (T16). Constable Colbey, in his evidence, rejected the suggestion that he had effectively put words into Mrs Howard's mouth. Although Constable Colbey had taken Mr Sneath's statement prior to taking that of Mrs Howard, and already knew of Mr Sneath's estimate of 90 kilometres per hour, I do not believe that Constable Colbey said what Mrs Howard alleges. I would have thought that by the 23 March 2001, when her original statement was made to the police, that her having looked at the speedometer of the vehicle and seeing a speed in excess of 100 kilometres per hour would have been worth mentioning to Constable Colbey. In any event, I do not think that her estimate of a speed in excess of 100 kilometres per hour can be relied upon as being necessarily referable to the speed maintained by Mrs Sneath at a time just prior to her entry into the loose surface section of Green Point Road. It may well be that at some point in time during the journey Mrs Howard looked at the speedometer and saw a speed in excess of 100 kilometres per hour. However, I am satisfied from the evidence of Mr Sneath that his warning to his wife about bends in the road occurred on a different road from Green Point Road and that he was not referring to the bend where the accident occurred. This being the case, it seems to me that if any reliance is to be placed on Mrs Howard's evidence that she looked at the speedometer and saw a speed in excess of 100 kilometres per hour, then the most it can be said is that she may have observed this at a time well before Green Point Road was encountered. Indeed, Mrs Howard herself concedes that whilst she didn't notice whether the vehicle slowed or accelerated for any reason over the course of the journey, the vehicle's speed may

have been reduced from 100 kilometres per hour down to 90 kilometres per hour and that she may not have noticed it (T16).

- 3.17. My view that it is unlikely that Mr Sneath's warning was referable to the bend where the accident occurred is reinforced by the fact that Mr Sneath was used to his wife driving at a speed approaching the 110 kilometre per hour limit on Green Point Road and that she was familiar with that road. In those circumstances it seems to me that there would have been no need for Mr Sneath to warn his wife of the approaching bend in the road, especially where in normal circumstances the bend, in his opinion, could safely be negotiated at such a speed.
- 3.18. Mr Sneath's assessment that his wife was driving at a speed of approximately 90 kilometres per hour was an estimate. For the reasons that I have stated I do not think that the evidence of Mrs Howard in so far that it might suggest that Mrs Sneath was driving at a speed in excess of 100 kilometres per hour is reliable. Her original estimate of 90 kilometres per hour is in keeping with Mr Sneath's estimate. As far as the speed at which the vehicle entered the loose surface section of Green Point Road is concerned, the evidence is such that I do not think that I could make any finding other than that the vehicle was probably travelling no less than 90 kilometres per hour at that time. In the light of Mr Sneath's evidence that his wife would drive at speed of around 100 to 110 kilometres per hour, her speed may have exceeded 90 kilometres per hour to some degree, but any evidence to that effect in my view can not be relied on to any great extent.
- 3.19. The only other evidence as to the speed of the vehicle was given by Mr Craig Wilson. His statement was also adduced in evidence (Exhibit C19). Mr Wilson was returning from a fishing trip and believes that he encountered Mrs Sneath's vehicle when the vehicle in which he was a passenger had to give way to Mrs Sneath's vehicle. This has occurred at a junction with Green Point Road approximately 10 to 15 kilometres south of the accident scene. He turned onto Green Point Road and headed in the same direction as Mrs Sneath's vehicle. He was to arrive at the scene of the accident a little time after the accident occurred. He remembered that the vehicle to which his vehicle had to give way was a white Ford sedan, the type of vehicle driven by Mrs Sneath. There was little traffic so he probably saw her vehicle. At the junction he said that he couldn't estimate the speed at which the white Ford sedan was being driven but said

‘to me when we gave way and they have come past on the road they weren’t travelling very fast’ (T72).

- 3.20. Mr Wilson said that the vehicle was definitely within the speed limit. He assumed that limit to be 100 kilometres per hour, although in fact it was 110 kilometres per hour. After his vehicle turned into Green Point Road he did not take particular notice of the white Ford. Ultimately his vehicle was overtaken by another vehicle. In due course he noticed what he believed to be the brake lights of that second vehicle come on and as he approached the bend in question, he noticed that this vehicle had stopped. He saw that the white Ford sedan had overturned. He rendered assistance.
- 3.21. The vehicle in which Mr Wilson was travelling did not catch up with the white Ford sedan. He said that the occupants of his vehicle were in no hurry to get home after their fishing trip. Given that Mr Wilson’s observations of the white Ford sedan were made several kilometres before the scene of the accident, in my view little can be inferred as to the speed of the vehicle at the time it encountered the loose surface.
- 3.22. Evidence was given that suggested quite clearly to me that the vehicle suffered a loss of control on the resealed surface causing it to leave the road and roll. There was evidence of skid marks on the resealed surface of Green Point Road. The marks progressed into the dirt verge and pointed to the position where the vehicle ultimately came to rest. It was plainly evident that these marks had been left by the vehicle that Mrs Sneath had been driving.
- 3.23. Constable Colbey who investigated this accident gave evidence that the commencement of these skid marks occurred at a distance of about 200 metres from the commencement of the resealed section of the road. There was no evidence of any other marks on the road in that 200 metre stretch that may have suggested a loss of control prior to the point where skid marks were observed. I think it can be inferred from this that the vehicle did not suffer any loss of control until the position where the observed skid marks commenced, that is to say after it had travelled approximately 200 metres on the resealed surface. As earlier observed, Mr Sneath said that there was a time gap between the vehicle’s entry into the resealed, loose section and the commencement of the vehicle sliding. This is consistent with the position of the skid marks. On the other hand, Mrs Howard suggested in her evidence that the sliding of the vehicle commenced simultaneously with its entry onto the loose surface. In my

view Mrs Howard's evidence in this regard cannot be correct given that there is no evidence of a loss of control before a distance of 200 metres. However, it has been suggested that Mrs Howard's impression of a loss of control occurring at about the same time as the entry of the vehicle onto the loose surface, coupled with the fact that it travelled 200 metres before that loss of control occurred, suggests that the vehicle was travelling at a very fast speed. However, a vehicle travelling at 110 kilometres per hour would still take six seconds to cover a distance of 200 metres. Neither Mr Sneath or Mrs Howard suggested that the vehicle was exceeding that speed at any time. I do not think in those circumstances that Mrs Howard's impression as to the simultaneous nature of the loss of control and the entry onto the loose surface is any safe guide or indication of an unusually high speed. In my view the evidence of Mr Sneath in this regard that there was a delay in the loss of control is to be preferred in the circumstances.

- 3.24. Neither Mr Sneath nor Mrs Howard could be certain as to whether Mrs Sneath applied the brakes of the vehicle at any stage.
- 3.25. As observed, there was no indication of any skidding or loss of control that could be attributed to the vehicle within the first 200 metres of its journey along the resealed surface. Constable Colbey was of the view that the skid marks left by the vehicle commencing at the point of 200 metres were more probably caused by the vehicle sliding rather than by the application and locking of its brakes. I think this is probably correct. However, in my view nothing turns on whether or not Mrs Sneath applied the brakes at a time after she had entered the loose surface section of Green Point Road. Braking, if it was required, should have occurred before the loose surface was entered.
- 3.26. Mrs Howard, like Mr Sneath, could not remember seeing any warning signs at the side of the road. Had either person seen the signs and remembered having seen them it may well be that such a recollection may have inspired a further recollection as to whether or not Mrs Sneath responded by reducing the speed of the vehicle. On the other hand, both witnesses said that Mrs Sneath uttered an exclamation when the loose surface was encountered. It may be that she was taken by surprise by the loose surface. There is no evidence that Mrs Sneath responded to signage. It is possible that Mrs Sneath did nothing to reduce her speed prior to encountering the loose surface, but I cannot safely conclude that she did not.

4. The condition of the resealed section of Green Point Road.

- 4.1. There was a great deal of evidence given at the inquest about the condition of the resealed section of Green Point Road. That evidence came from a number of sources. Those sources included an employee of the Grant Council, an employee of Road Network Services and employees of Gambier Earth Movers. I also heard evidence as to the condition of the road from a number of police officers who made observations on the night in question. Another source of direct evidence as to the condition of the road was Mr Wilson. No daylight observations were made by any police officer or by an expert as to the condition of the road. This was due to the fact that by the time the investigating officer, Constable Colbey, re-attended the scene the road had already been swept of loose aggregate. However, Mr Adrian Schutz of the Grant Council caused photographs to be taken of the surface of the road in the condition in which it existed before the road had been swept. They were said to have been taken by an employee of the Council, a Mr Ferguson, some time on the Sunday morning. The photographs which were adduced in evidence through Mr Schutz became Exhibit C22(a-i). Mr Ferguson was not called to give evidence. However, there is no reason to doubt that these photographs were taken at the time they were said to have been taken and that they reasonably depict the condition of the road before it was swept.
- 4.2. Mr Stewart, the on-site supervisor employed by Gambier Earth Movers, gave evidence about the processes adopted in respect of the resealing works. He told me that the 1.3 kilometre stretch of road was resealed in three sections and that each section was rolled a sufficient number of times for the aggregate to be embedded into the bitumen. As to whether the amount of loose aggregate left after sweeping was in anyway excessive he said this:
- 'Yes, it's hard to say what is exactly just right, we don't go to the extreme and just throw it willy-nilly on the road. I've only got so much allocated to me in screenings in the stockpiles to use for the jobs and the rates and that would be worked out for the quantities we put there.' (T156)
- 4.3. Mr Stewart inspected the job after rolling had been completed. He said 'it looked no different to what any other normal road we'd done in and previous to that' (T145). He drove a Holden utility along the entirety of the resealed section at 'probably 30, 40km/h at the most' (T216). He did this just after the job was completed. When asked whether the road was in any particularly dangerous or unsafe state he said 'No,

no more than – like looking at it it did not look any different than some of the others we've done' (T248).

- 4.4. Mr Robertson of Road Network Services also gave some evidence about the resealing work and its condition after the job had been completed. Mr Robertson told me that the correct aggregate to bind and mix had been achieved and was laid in accordance with the stipulated requirements for that particular job. That day he conducted an audit of the material utilised and calculated that the correct amount of aggregate had been placed on the road. The necessary number of roller passes had been conducted and he described the amount of loose aggregate left on the road as a good spread, if anything on the light side. (T332). He also drove on the resealed section of the road after the completion of the job. He drove on both sides of the resealed surface at speeds probably between 40 and 80 kilometres per hour. He said that when he drove on the resealed surface he said that the new seal was in 'pretty good condition' (T333). He did not notice anything unusual in terms of slipperiness compared to other recently resealed surfaces he had driven on. He said that he would have noticed if there had been anything out of the ordinary.
- 4.5. Mr Schutz of the Grant Council happened to be in a vehicle driven along the newly resealed section of Green Point Road on the Thursday afternoon following the completion of the job. This occurred at about 4.00pm. By then the Gambier Earth Movers workers had left the scene and gone to another job. Mr Schutz told me that in his view the newly resurfaced road presented as a nice seal. It had an even spread of aggregate from one side of the road to the other. He said it looked like a 'pretty good job' (T492). He said that his belief was that the aggregate was over the road evenly and that it wasn't thick. He said, however, that account had to be taken of the fact that he was in a vehicle that was being driven over the road only an hour or so after the resealing had been completed. He believed that the road was fine and that the vehicle was probably travelling at a speed of about 90 kilometres per hour. He conceded that he was not observing the speedometer or taking a lot of notice as to how fast the vehicle was moving. He did not experience or detect any difficulty as far as the car's adhesion to the road was concerned. In particular, he did not notice any sensation of slipping or sliding. No other person in the vehicle including the driver, a Grant Councillor Mr Peglar, made any remark suggesting any instability in the road surface.

- 4.6. It has to be borne in mind that the witnesses Stewart, Robertson and Schutz were describing the condition of the newly resealed surface. The accident occurred more than 48 hours later and at a time after the bitumen had cooled and some traffic had passed over it.
- 4.7. Mr Robertson, who has had vast experience in road resurfacing, told me that after traffic has passed over a newly resealed surface on which loose aggregate has been left, it is not uncommon for an effect known as winrowing to occur. What happens in this circumstance is that traffic creates wheel tracks in the loose aggregate. Further traffic tends to follow in those tracks. The winrow is the resulting build up of stones between and to the side of those wheel tracks. Asked as to whether winrow made a road any more slippery and unsafe Mr Robertson said ‘well it would if you drove on those winrows. But in my experience, as soon as there are wheel tracks there, all the traffic sticks to the wheel tracks. But if you drove on those winrows, you would have – you would feel some movement, yes’ (T344). He said that such movement in his experience would depend on the speed at which the vehicle was driven. He stated that if there was substantial movement of the steering wheel then a vehicle could end up ‘in dire straights’ (T344). Mr Robertson said that a road over which 1000 plus vehicles a day travelled might have very little stone left on it at all as aggregate ‘would be flying everywhere and go out on the shoulders’ (T345). On the other hand, as far as Green Point Road was concerned, which probably took 150 to 200 vehicles per day, vehicles would have tended to move within the same wheel tracks. In those circumstances there could be a build up of winrow on the surface of the road. Mr Robertson said that if a vehicle stuck to the tracks left by preceding traffic, there should not be any significant difference in the behaviour of the vehicle. However, ‘if you were driving on those loose winrows then you would have some movement’ (T348). Asked as to the speed at which such movement might be experienced, he suggested that 100 kilometres per hour would be such a speed. On the other hand, in his view a vehicle would be quite under control at 80 kilometres per hour.
- 4.8. Mr Robertson was shown the photographs that were taken before the road was swept. In Exhibit C22i, which depicts a scene on Green Point Road near the commencement of the reseal, Mr Robertson identified what he believed to be a build up of winrow of the kind he described. He said that in his view there appeared to be a build up of loose stone between the wheel tracks. Having examined the photograph I can readily

see what Mr Robertson is referring to. There appear to be established tracks, consistent with the passage of vehicles over the loose surface. There also appears to be an accumulation of stones between those tracks. This presents as a wholly different scenario to that described by the witnesses who drove over the road on the Thursday afternoon just after the job had been completed. That evidence suggested that there had been a light even spread of aggregate across the road at that time. I don't doubt that as of the Thursday afternoon this was the situation. However, it is evident to me that in the time since the job was completed the surface of the road on Mr Robertson's evidence changed for the worse.

- 4.9. Mr David Mansell, another employee of Gambier Earth Movers, gave evidence before me at the inquest. His witness statement was also adduced in evidence (Exhibit C25). Mr Mansell was employed to operate the sole mechanical sweeper possessed by Gambier Earth Movers. His duties included the pre-sweeping of roads prior to resealing and the backsweeping of roads after resealing jobs had been completed. For reasons I will discuss he did not sweep the resealed section of Green Point Road until Sunday morning 11 March 2001. Mr Mansell did not purport to observe the condition of the resealed section of Green Point Road immediately after its resealing and rolling. However, he gave evidence as to the condition of that section of road on the Sunday morning prior to his sweeping it. In his view the quantity of aggregate on the road wasn't excessive. He walked on the road. He said that there was less sweeping required than other roads that he had to sweep. He described the area of the road on which the police had painted yellow marks, representing the position of the skid marks I have referred to, as 'near enough to a spot on seal' (T268). He agreed with cross-examining counsel that it had a minimum amount of loose aggregate on that particular section. Mr Mansell was shown a photograph of the surface of the road taken in the vicinity of the painted yellow marks. This photograph had been taken by Mr Robertson on the Monday after the accident, that is, after the road had been swept. The photograph became Exhibit C26. Mr Mansell said, and Mr Robertson agreed with this, that there appeared to have been little loose aggregate swept off to the side of the road as shown in that photograph (T268, T341). Mr Robertson said that the amount of aggregate, on the side of the road as seen in the photograph, was in keeping with that from a job that was light in terms of loose aggregate. In the group of photographs taken by Mr Ferguson on the Sunday morning prior to the sweeping, there is a photograph depicting the position on the road where the white Ford sedan

had left the bitumen surface. It depicts the road looking south, the direction from which the vehicle had approached the scene (Exhibit C22c). The same winrowing effect as described by Mr Robertson is evident in the photograph. Mr Mansell was also shown a photograph which is Exhibit C22h. This photograph also shows the section of Green Point Road, this time looking north towards the bend where the accident occurred. This photograph also shows an amount of aggregate prior to sweeping. Mr Mansell described the amount of aggregate on the road as shown in Exhibit C22h as being 'as near as good as' (T273). In his view the photograph demonstrated a very good finish. I think it depicts winrow.

- 4.10. The evidence given by Mr Robertson, an experienced man when it comes to the laying and examination of new road surfaces, is to be preferred to the evidence of Mr Mansell in terms of what can be seen in the photographs taken prior to the sweeping of the road. I appreciate that Mr Robertson did not see the road between the Thursday afternoon and the sweeping of the road on the Sunday. However, Mr Robertson said that he could see the winrowing effect in photograph Exhibit C22i. So can I, and it has to be borne in mind that it is the type of effect that, according to Mr Robertson, you could expect to see in respect of a road that carried traffic as little as 150 to 200 cars per day.
- 4.11. The fact that there was a significant amount of loose aggregate on the road on the Saturday evening is also borne out by the eye-witness observations of Mr Wilson and the police officers who attended the scene. Mr Wilson told me that he had been a passenger in a 4WD vehicle on both the Friday evening and the Saturday evening. The vehicle had been driven along the section of Green Point Road that had been resurfaced on the Thursday. Although he was not driving the vehicle on either the Friday or Saturday evenings, he made the observation that on the Friday evening there was 'lots and lots and lots of loose aggregate laying on the road' (T77). Mr Wilson again travelled over the road on the Saturday evening. He and his companion had driven over the road in a southerly direction earlier that evening. Another 4WD had thrown up a large quantity of stones onto the windscreen of his vehicle. On their return journey, Mr Wilson arrived at the scene of the accident shortly after it had occurred. He walked on the surface of the road in thongs and described it as a very loose surface to walk on. He said that there was a lot of gravel on the road and it seemed to him to be more than what was necessary to seal a perfectly good road.

While I disregard Mr Wilson's opinion as to excessiveness, I give weight to the unembellished observations as to quantity. Mr Wilson was a truck driver and told me that he had encountered loose stones on recently resealed roads in the past. He was an experienced driver and he told me that although he had not been driving the vehicle on either the Friday or Saturday night, he would not have wanted to encounter the resealed loose surface at speeds of 75 or 85 kilometres per hour. He expressed the view, based on his experience of driving vehicles on loose surfaces, that there would have been a risk of losing control at such a speed. I have to bear in mind that Mr Wilson did not actually drive the vehicle on the resealed surface either on the Friday or Saturday evening. I also bear in mind that the part of the road on which he walked may have been, as he conceded, an area where there may have been a build up of stones at the side of the road. However, his evidence confirms in my view that there was on the Saturday evening a significant amount of loose aggregate still on the road.

- 4.12. Three police officers who attended the scene of the accident gave evidence at the inquest. I heard from a Sergeant Terrence Patton who was stationed at Mount Gambier. He has been a member of the South Australia Police Force for 28 years. He has been a licensed driver for 31 years. He completed a six week advanced driving course involving both cars and motorbikes. The course involved him having to drive on slippery or loose surfaces. His course also involved training in regaining the control of vehicles that have suffered a loss of control on such surfaces. Sergeant Patton approached the scene of the accident from Bones Road which joins Green Point Road very near to the scene of the accident. During his attendance at the scene, he had occasion to drive a police vehicle from the scene of the accident south along Green Point Road. He drove at a speed of about 60 to 70 kilometres per hour He made the following observations about the state of the road surface:

'At the area of the accident I did, it was very gravelly, very pebbly and when I was actually standing at the scene of the accident I noticed that as well and did make comments to other people about it' (T432)

- 4.13. He described the amount of gravel on the road as 'average or medium coverage' (T433). When asked as to what the surface was like to drive on he said 'At a decent speed it was okay, but you could certainly feel that you were on gravelly sort of road' (T438). He gave the following passage of evidence:

'Q: Did you get any inclination of what it might have been like if you'd gone faster than the speed that you actually travelled at.

A: Yes.

Q: What was that?

A: Not one of being safe on that section of road.

Q: Did you get any inclination as to why that might be the case?

A: Because of the rubble and the pebbles that were on the road, which could be felt under the car tyres.' (T 438)

- 4.14. Sergeant Patton said that he also drove from the south of the scene back to Nelson Road along the entire resealed section of Green Point Road. His maximum speed along that section was probably no faster than 80 kilometres per hour. However, he reduced his speed to about 60 kilometres per hour at the bend where the accident had occurred. The reason for that was 'because of the safety aspect of the area where the accident was and the rubble on the road' (T439). Sergeant Patton in his witness statement (Exhibit C10) expressed the view that the resealed section of Green Point Road would have been very difficult to drive on and even worse in negotiating a corner. He was asked in cross-examination as to the basis of his opinion. He said that he formed his opinion from having walked on the road, from the fact that the traffic approaching the scene appeared to be having trouble driving over it and from the fact that he had to reduce his speed to negotiate the bend.
- 4.15. In his statement Sergeant Patton also expressed the view that the road surface was very dangerous and that it would have required a very skilful drive to negotiate the left-hand bend on the gravel and pebbles. He explained this observation in evidence by saying that anybody negotiating the bend that evening would have had to have had their 'wits about them' (T444). He said that anyone approaching that section of road would have had to reduce their speed and, if they hadn't, it would have been very difficult for a driver to negotiate the bend.
- 4.16. A Sergeant James Leane also gave evidence at the inquest. His statement was also tendered (Exhibit C13a). He attended the scene on the night in question. He approached the accident scene from the Nelson Road end of Green Point Road. In his statement he said that he slowed on the resealed surface to about 50 to 60 kilometres per hour. He described the surface as being loose and floating. In his evidence at the inquest, Sergeant Leane said that he had based that description of the road on the fact that he had to slow down to a speed of between 50 and 60 kilometres per hour and from the fact that when he encountered the loose surface, the police vehicle that he

was driving 'started to move a little bit and I had to slow down from there' (T458). He said that the sensation under him was similar to aquaplaning and he felt that if he hadn't slowed down he would not have had proper control of the vehicle. Admittedly, Sergeant Leane did not travel over the exact same section of road on which the car driven by Mrs Sneath had travelled. However, there is no reason to suppose that the section of the road over which Mrs Sneath drove her vehicle was in any way significantly different to the section driven over by Sergeant Leane.

- 4.17. Another officer, Probationary Constable Buller, whose statement I received, confirmed that Sergeant Leane had to slow down on the loose surface. When she walked on the road she said 'walking was made difficult and slippery and consequently I needed to make sure of my footing' (Exhibit C11a).
- 4.18. Constable Colbey who also attended the scene on the Saturday night described the surface of the road at the scene of the accident as a very loose surface. Constable Colbey also drove on the resealed section from the Nelson Road end. After he turned right from Nelson Road into Green Point Road he said that he immediately became aware of the fact that the surface was uncertain, to the extent that he took his time very carefully approaching the scene of the accident. He said that the steering had become very light. When he entered the resealed section he was travelling at about 40 kilometres per hour. Constable Colbey said that he could not remember if the aggregate on the road was distributed evenly. He said that the road surface felt uncertain under his feet when he walked on it.
- 4.19. I unhesitatingly accept the evidence of the police officers who attended the scene. In my view they gave an accurate description of the surface of the road and of the behaviour of the vehicles they had driven on that road. The evidence of the three officers, who were called at the inquest, carried an air of indignation. However, I am satisfied that their observations were impartially made. Their observations were corroborated by Mr Wilson who in my view was a manifestly truthful witness. Their evidence demonstrates in my view that there was a significant amount of loose aggregate on the road and that its presence on the road compromised the traction of their vehicles at moderate speeds.
- 4.20. I am mindful of the evidence given by the witnesses as to the state of the road on the Thursday afternoon, in particular Mr Stewart, Mr Robertson and Mr Schutz. The fact is that those witnesses described the condition of the road in circumstances different

from those observed by the police on the Saturday night of the accident. Messrs Stewart, Robertson and Schutz were describing the condition of the road immediately after it had been resealed and before hardening and curing of the underlying bitumen had occurred. In addition, they made their observations of the road at a time before any significant amount of traffic had an opportunity to pass over it. The evidence of Mr Robertson as to the build up of loose gravel caused by the passage of vehicles over a loose surface is of some significance, particularly when Mr Robertson himself said that such an effect was evident from the photograph Exhibit C22i.

- 4.21. However, there is no evidence to suggest that more aggregate was used in the resealing works as was necessary. The evidence is that the task was performed with the correct materials in the correct quantities. The road was rolled the usual number of times. However, I have no doubt that by the Saturday evening in question, whatever the condition of the road may have been on the Thursday afternoon, it presented as a serious hazard to users of that road.
- 4.22. There can be no doubt that the aggregate on the road was a substantial cause of Mrs Sneath's loss of control of her vehicle. No-one has suggested that her speed was such that even in the best of conditions the bend could not be safely negotiated. The skid marks commenced during the bend and on the loose surface, not on the verge. There was nothing wrong with the vehicle. It all makes sense that Mrs Sneath lost control as a result of the presence of loose aggregate.

5. The failure to sweep Green Point Road before the fatal accident.

- 5.1. The contractual arrangements between the Council and Gambier Earth Movers called for the Green Point Road to have been swept at a time no later than about 3.15 pm on Saturday 10 March 2001. I derive this time from Mr Robertson's evidence that he noted that the job was completed on the Thursday afternoon by about 3.15 pm.
- 5.2. It was essentially the responsibility of Gambier Earth Movers to sweep Green Point Road within the time stipulated in the contract, that is to say within 48 hours. That obligation was one that was to be overseen by Mr Robertson of Road Network Services Pty Ltd. Exhibit C35 sets out the duties of Road Network Services. The document is a proposal dated 7 January 2001 for the supervision and surveillance work of the whole of the resealing project. The proposal effectively stipulated that Road Network Services were to be responsible for supervising the carrying out of the

contractor's obligations concerning sweeping and removal of excess aggregate. Mr Stewart was aware of the contractual obligations that Gambier Earth Movers bore in relation to back sweeping. Mr Robertson was aware of these obligations.

- 5.3. The resealing works to be undertaken by Gambier Earth Movers were commenced on Monday 5 March 2001. A number of resealing jobs had been completed between Monday 5 March and Friday 9 March, including the resealing of the 1.3 kilometre section of Green Point Road. I was told that Gambier Earth Movers were behind in back sweeping as of the Friday afternoon. The one sweeper that Gambier Earth Movers possessed was not only required in back sweeping but was also required for the pre-sweeping of the resurfacing projects. Mr Stewart said:

'The only reason that I can give is that we'd ceased been doing sealing from, we started on the Monday which is the 5th and we did various other jobs in the district. Because we had to use the broom to sweep in front to keep sealing we didn't catch up with the sealing previous to that so we had to do that, catch up with it on the Saturday. When he finished on Saturday he hadn't done Green Point Road so that was left.' (T150)

- 5.4. On Friday 9 March at approximately 10.00 am Mr Schutz of the Council received a phone call from Mr Ferguson to the effect that a complaint had been received in relation to the existence of loose gravel on Mingbool Road which was one of the roads that had been resurfaced by Gambier Earth Movers earlier in the week. Mr Schutz then informed Mr Robertson of Road Network Services of the complaint and asked Mr Robertson to ensure that Gambier Earth Movers had their sweeping up-to-date 'according to the specis' (T496). By that, he meant to convey to Mr Robertson that Mr Robertson should see to it that the roads were swept within 48 hours of the resealing jobs. Mr Schutz told me that Mr Robertson said that he would speak to Gambier Earth Movers and get them to do the sweeping. Mr Schutz did not purport to issue Mr Robertson with any specific instruction that Green Point Road be swept, but said in effect that he had made it plain to Mr Robertson that all outstanding back sweeping jobs had to be completed within the contractual timeframes. Mr Schutz had no further communication about the sweeping of the roads until the Sunday morning when he was told of the overnight accident and of the fact that Green Point Road had not been swept.
- 5.5. Mr Robertson confirmed that he had a conversation with Mr Schutz on Friday 9 March. He said it had taken place at about 4.00 pm in the afternoon. Mr Robertson told me that Mr Schutz was concerned about the sweeping. Mr Robertson said that he

thought he had already spoken with Mr Schutz about the same issue the day before. Mr Robertson said that before the conversation of about 4.00pm on the Friday afternoon, he had spoken to Mr Stewart about sweeping and had noted in his diary that Mr Stewart had indicated that Gambier Earth Movers would sweep all weekend and catch up. There was some dispute between Mr Robertson and Mr Schutz about precisely what Mr Schutz had been told as to what would be done by way of sweeping over the imminent weekend. Mr Robertson disputed that he had suggested, explicitly or otherwise, that work that had been completed on the Thursday would be backswept by the Saturday afternoon. Mr Schutz said that Mr Robertson had said that all the jobs would be completed over the weekend. There were also differences between their accounts as far as any reference to contractual obligations was concerned. I do not think I need to resolve any of these disputes. I think it is plain from the evidence that Mr Schutz was given to understand that all outstanding sweeping would be undertaken over the weekend (T386). There is no suggestion that Mr Schutz knew or believed it to be unlikely that Green Point Road would not be swept within the necessary time period.

- 5.6. Mr Stewart of Gambier Earth Movers agreed that on the Friday Mr Robertson had mentioned to him that the sweeping was behind schedule. He said that he remembered telling Mr Robertson that they would 'go back and patch what we have done' (T155). He acknowledged that he could have said that all outstanding jobs would be swept over the weekend of 10 and 11 March. His best recollection of what he told Mr Robertson was that he probably would have said to him that he would try and sweep the outstanding jobs. He said that he told Mr Robertson that they would start the back sweeping on the Saturday morning and work the day. None of these three witnesses claimed to have spoken specifically about Green Point Road in any of these conversations.
- 5.7. The impression left by Mr Stewart's evidence was that in his view he did not give any firm assurance to Mr Robertson that all outstanding back sweeping jobs would be completed on the weekend. He said on two occasions in his evidence that he told Mr Robertson that they would 'try' and back sweep the roads (T207, T214). Mr Robertson said that he made a note in his diary about the conversation that he had with Mr Stewart about back sweeping. The note reads:

'Finished for the week. Spoke to Alistair Stewart regarding sweeping and he is going to sweep all weekend and catch up.' (T339)

In the light of that note I find that there was no equivocality about Mr Stewart's indication to Mr Robertson that the outstanding backsweeping jobs would be performed over the weekend.

- 5.8. Although Mr Robertson knew that Gambier Earth Movers only possessed the one sweeping machine, I find that there was an expectation in the mind of Mr Robertson that the back sweeping work would be completed on the weekend of 10 and 11 March. However, I did not understand Mr Robertson to say that he had an expectation that Green Point Road in particular would be backswept within the 48 hours. In reality Mr Robertson had no reason to distinguish for these purposes one job from the other as far as the time by which an individual job would be backswept was concerned. Mr Robertson did not purport to direct Mr Stewart to ensure that all jobs were backswept within the necessary 48 hours.
- 5.9. In the event, Mr Mansell, whose task it was to perform the back sweeping for the outstanding jobs, did not backsweep the Green Point Road on the Saturday. He swept other roads, and as far as the order in which they were swept was concerned, no account was taken of whether some roads were more dangerous than others (T209). The 48 hour time limit for Green Point Road expired during the afternoon of the Saturday. By the time he had finished another job late in the afternoon of the Saturday, Mr Mansell felt that he did not have enough daylight to enable him to travel to Green Point Road, unload the sweeping machine from the semi-trailer and complete the task. I have no reason to doubt that Mr Mansell was being truthful with me on that issue. He demonstrated from his records that he had worked nine and a half hours performing back sweeping jobs on the Saturday.
- 5.10. It was argued before me that the obligation to backsweep within 48 hours was in essence 'a rule of thumb', and not necessarily based on safety concerns. It was pointed out to me that in the 'Field Guide for Traffic Control At Works On Roads, Part 6: Bituminous Surfacing Works' (Exhibit C33) it is stipulated that loose material should be removed from roads after sealing 'within the next week' if the traffic volume on the road is less than 1000 vehicles per day. It is plain that the presence of loose aggregate on the surface of a road has the potential to act as a significant hazard. The evidence of Mr Robertson concerning the winrow effect confirms this in my view. Mr Robertson frankly acknowledged that loose aggregate on the surface of the road after resealing can present as a hazard. Mr Schutz said that the Council

contractual requirement that the road be swept within 48 hours existed because 'loose gravel is always a concern and the sooner you get it off the road sometimes the better within reason' (T532-533). He acknowledged that there were safety issues connected with the removal of gravel from roads after roadworks had been completed and said:

'It's a concern because cars slip off the road. Most people panic, when they hit the gravel they hit the brakes, and I am not conceding anything here that – you know, what happened here.....but people hit the gravel, and you know yourself how many times you drive along and you hit a loose patch of gravel and you hit the brakes and you skid and you're brakes lock up, slide over the gravel and you slide off the road.' (T558)

- 5.11. Mr Schutz was asked if he had any understanding as to whether between 24 and 48 hours of a reseal the surface of a road might become progressively more hazardous. He said this was his understanding. He said traffic tends to flick the stones to one side and winrow develops. This is precisely the same issue raised by Mr Robertson. Mr Schutz agreed that once the minimum period of 24 hours had expired the aim was to get the aggregate off the road as quickly as possible thereafter with safety concerns in mind (T552).
- 5.12. In a situation where it was understood that Green Point Road bore as little as 150 to 200 cars per day, and that a build up of loose stones could occur in those circumstances, in my view the contractual requirement that the road be swept within 48 hours was an important one. Moreover, it seems to me that it was a requirement that was based not on any rule of thumb notion but upon a correctly perceived necessity to provide a safe road surface for motorists travelling along a newly resealed road. In my view, the failure to sweep Green Point Road within 48 hours resulted in an unusually hazardous state of affairs existing at the time Mrs Sneath drove along that particular section of Green Point Road.
- 5.13. In the final analysis, it seems from the evidence that the reason why the road was not swept within the stipulated period was primarily due to priority being accorded to pre-sweeping so that fresh resealing works could be commenced, when priority should have been accorded to the backsweeping of completed works within the stipulated 48 hour period. Secondly, a lack of proper sweeping resources within Gambier Earth Movers also existed. They only had the one machine. In my view, Gambier Earth Movers should have ensured that they had the necessary means at their disposal to carry out their contractual obligations.

- 5.14. As it transpired, the Grant Council itself had two sweeping machines lying idle over the weekend of 10 and 11 March 2001. They could have been assigned to assist with the backlog of sweeping (T555). Mr Schutz told me that he did not think to offer one of his sweepers at the time he was told that Gambier Earth Movers were behind with their sweeping. His explanation was as follows:

'No I didn't because I believe, according to the – if they had trouble keeping up with their sweeping and I had no indication – when they say they're behind in their sweeping I don't know if they were three days behind or if they were a week behind or if they were two hours behind and no-one give me any indication that they wanted to hire a sweeper off the council or hire council resources as such to go out and sweep the roads off. If that was made, well I would have made that decision at the particular time.' (T521)

Mr Schutz said later in his evidence that if Gambier Earth Movers had told him that they were not going to be able to rectify the backlog of sweeping within the 48 hours, he would have made a decision to do something about it. However, he had no indication that they would not be able to complete the works with their own resources (T555).

- 5.15. Mr Schutz did not lay claim to having sought clarification as to how far behind the sweeping had become. I have a sense of disquiet as to whether there was adequate communication between those involved in the attempt to back sweep the outstanding jobs on the weekend of 10 and 11 March. Neither Mr Schutz, Mr Robertson nor Mr Stewart purported to have embarked on any detailed discussion with each other as to whether it was feasible for all outstanding backsweeping to have been completed on the weekend, let alone within 48 hours. I was given to understand that there would not have been any work carried out on the Sunday in any event. Mr Mansell had no intention of sweeping Green Point Road on the Sunday and was only told to do so in response to the accident. Mr Stewart told me that on the Friday neither he nor Mr Mansell could determine whether Green Point Road could be done on the Saturday. Mr Stewart could not remember whether he asked Mr Mansell if he could get that particular job done (T213). If proper consideration had been given to whether or not it was likely that the necessary outstanding sweeping would be completed on the Saturday, it possibly would have been established that resources beyond the one sweeper possessed by Gambier Earth Movers would have been required. In that event, the Council sweepers should have been utilised to complete the outstanding backsweeping work on the Saturday, including Green Point Road.

6. Signage

- 6.1. I have already described the signage that was placed on the side of the road for traffic approaching the scene from the south.
- 6.2. I accept the evidence of Sergeant Patton that on the Saturday night the closest sign to the scene of the accident was not visible to oncoming traffic. However, I accept the evidence of Gambier Earth Movers employees that the sign was originally standing up and was visible to traffic at a time immediately after the roadworks were completed. The evidence was that the three signs had been tied to guideposts on the side of the road. I find that in between the Thursday afternoon and the Saturday evening the sign fell, very possibly because of insecure tying. As observed earlier, that particular sign was said to be 110 metres south of the commencement of the resealed section of Green Point Road. The fact that it was not visible to oncoming traffic meant that on the Saturday evening there were only two visible signs, namely the loose surface sign 410 metres prior to the commencement of the new roadworks and the sliding car sign 260 metres prior to the commencement of the new roadworks.
- 6.3. I conducted a view of the scene in the course of the inquest. Counsel were present at the view. The view was conducted on the evening of Tuesday 24 September 2002. Constable Colbey told me in evidence that for the purposes of the view he placed signs of an identical nature in exactly the same positions they had occupied on the night of the accident. The sign that was face down on the night of the accident was upright in the view. The lighting conditions on the view were very dark. I drove south of the accident scene for some distance and invited counsel to do the same. I then approached the accident scene from the same direction as Mrs Sneath. The loose surface sign and the sliding vehicle sign were both plainly visible to oncoming vehicles. They are luminescent and of an appropriate size. Sergeant Patton told me that the signs were plainly visible on the night of the accident.
- 6.4. I have already referred to the issue as to whether or not the deceased Mrs Sneath noticed the signs, or if she did, made any adequate response to them. I make the observation that there was no reason in terms of visibility as to why Mrs Sneath would not have seen them. The two surviving occupants of the vehicle, Mr Sneath and Mrs Howard, did not purport to observe the signs themselves. If they did observe them, they have no recollection of having done so. However, this is not surprising as

they were not driving the vehicle. I agree with counsel and with the evidence given by a number of witnesses, all of whom were experienced drivers on country roads, that the appropriate response to the signage on display on the night of the accident would have been to have exercised due caution. However, whether the two signs that were visible on the night in question were such as to alert a motorist as to the extent of the oncoming hazard is another question. The signs did not give any warning as to the position where the loose surface commenced. This is of particular significance at night. Mrs Sneath's only known reaction to encountering the loose surface was an exclamation 'oh shit'. At the time she encountered the loose surface she may have been taken by surprise either by the position where the loose surface commenced or by the extent of the hazard it presented to her. The roadworks themselves were not lit in any way. In addition, the signage actually on display did not in itself suggest the need for a vehicle to reduce speed below the limit of 110 kilometres per hour. Nor did it suggest what might be regarded as a safe speed in the circumstances. As earlier observed, there were no advisory speed signs relating to the left-hand bend, a bend that had to be negotiated almost immediately after the commencement of the loose surface. The evidence suggested, and in my opinion this was confirmed by the view, that the bend was not such as to require a reduction in speed below the limit of 110 kilometres per hour in normal circumstances. It has to be borne in mind that the skill and temperament of motorists varies considerably. What might be an easy manoeuvre for one motorist might present difficulty for another. The signage on display may have caused most motorists to slow down, but I am by no means convinced that they would have necessarily caused all reasonable and competent motorists to do so.

- 6.5. It was regrettable that the sign closest to the scene of the accident, illustrating the risk of windscreen damage, was not visible. However, it is a matter for debate as to whether or not, had the sign been displayed and visible, it would have made any appreciable difference in terms of the expected response of a motorist approaching the hazard. I tend to the view that it probably would not have made a difference because the first two signs were probably sufficient to alert a motorist to the potential for a loss of control due to skidding.
- 6.6. The question remains as to whether or not the signage that was originally displayed was in compliance with the contractual arrangements, legislation and prevailing standards.

- 6.7. The contractual arrangements between the Council and Gambier Earth Movers called for the erection and maintenance of signs in accordance with the 'Worksite Traffic Management Code of Practice' and the 'Transport SA Field Guide for Speed Limits at Works on Roads.' (Exhibit C9f contract specific clauses, clause 2). The clause specifically refers to the erection and maintenance of signs so as to 'warn motorists of the dangers created by loose aggregate and the lack of line marking after sealing'.
- 6.8. Reference in the contract specific clauses to the Worksite Traffic Management Code of Practice was taken by those who had responsibility in relation to this contract as a reference to the Australian Standard for traffic signage promulgated by Standards Australia (Standards Association of Australia). The manual is entitled 'Manual of Uniform Traffic Control Devices – Part 3; Traffic Control Devices for Works on Roads', hereinafter referred to as the Australian Standard. I received a copy in evidence (Exhibit C32). I received in evidence another publication of Standards Australia entitled 'Field Guide for Traffic Control at Works on Roads – Part 6, Bituminous Surfacing Works', hereinafter referred to as the Australian Standard Field Guide (Exhibit C33). This publication appears to have been promulgated in 1998. I also received in evidence the 'Field Guide for Speedlimits at Works on Roads' published by Transport SA (Exhibit C34).
- 6.9. The Australian Standard suggests that a sign stating No Lines – Do Not Overtake Unless Safe 'shall always be used at worksites which includes locations where barrier lines would normally be installed'. There is no evidence that double barrier lines preventing overtaking had at any time been painted on the road at any material location, including the bend where the accident occurred. Certainly, there were no such barrier lines when the scene was examined at the view. I am prepared to infer that before the resealing there were no such lines. The Australian Standard Field Guide suggests that the sign should 'also be used at all fresh seals or other surfacing until centre and lane lines have been restored', page 19 – clause 3h(ii). Notwithstanding the fact that there were normally no double barrier lines restricting overtaking on the relevant section of road, in my view the Australian Standard and the Australian Standard Field Guide make it plain that this sign should have been erected after the road was resealed on the Thursday afternoon. From the photographs that I have seen in this case it appears that the only relevant road markings would have been the broken white centre line. However, it is also evident from the photographs that

flexible flaps were placed in the centre of the road at regular intervals along the new roadworks. In any event, the existence or otherwise of road markings at this particular bend at Green Point Road appears to me to not be a relevant factor in the causation of this accident. The deceased Mrs Sneath was not attempting to overtake another vehicle. She was not avoiding an oncoming vehicle. Additionally, there is no suggestion that a failure to keep to the left of the centre of the carriageway was a contributing factor in the accident. There is no evidence to suggest that Mrs Sneath became disoriented as to her position on the carriageway. The erection of a sign stating that no lines had been marked in my view would not have added to the warning provided by the loose surface sign and the sliding vehicle sign.

6.10. The Australian Standard also suggests that a Roadwork Ahead sign should also have been erected. Clause 4.2.2 suggests that such a sign was mandatory where roadworks involving a ‘changed condition road users would not necessarily expect eg loose stones or the absence of line marking’ were in existence. A situation involving loose stones and the absence of line marking prevailed here. It would seem therefore that such a sign should have been erected in advance of the work area. No such sign was erected in this case. As to whether the erection of such a sign in this case would have made any material difference to Mrs Sneath’s driving behaviour is debatable. As seen earlier, Mrs Sneath was familiar with this section of the road and doubtless would have understood that in the normal course of events the road in its entirety consisted of a firm surface. The loose surface and sliding vehicle signs would have naturally alerted Mrs Sneath to the fact that the normal condition of the road was to change. A Roadwork Ahead sign would have done no more than provide Mrs Sneath with an explanation as to why on the night of 10 March 2001 she was going to encounter a loose surface. It is difficult to judge whether, even with such an explanation, it would have made any material difference to her driving behaviour or to that of a competent, reasonable motorist.

6.11. There was debate in the course of the inquest as to whether in the circumstances a speed limit should have been imposed in relation to the entirety of the new roadworks. Section 20 of the Road Traffic Act 1961 is set out as follows:

- 1) In this section—
‘**hazardous work area**’ means a work area—

(a) where—

- (i) workers may be working on a part of a carriageway for vehicles proceeding in a particular direction and there is no adjoining marked lane outside the work area for vehicles proceeding in the same direction; or
- (ii) workers may be working less than 1.5 metres from vehicles proceeding on a carriageway, and the work is carried out on foot and not exclusively through the use of vehicles; or

(b) where an unusually high level of hazard for workers or persons using the road is created as a consequence of the existence of the work area;

‘**public authority**’ means—

(a) a Minister of the Crown; and

(b) the Commissioner of Highways; and

(c) a council; and

(d) any other authority or company authorised by statute to carry out works on roads; and

(e) a member of the police force making investigations on a road at a place where an accident has occurred;

‘**work area**’ means a portion of road on which workers are, or may be, engaged;

‘**work site**’ means a portion of road affected by works in progress, together with any additional portion of road used to regulate traffic in relation to those works or for associated purposes.

(2) A public authority must, with the approval of the Minister and in accordance with this Part, place signs on a road for the purpose of indicating a maximum speed to be observed by drivers while driving on, by or towards a work area or work site where workers are engaged, or works are in progress, at the direction of that authority.

(2a) The maximum speed to be indicated by signs placed on a road in pursuance of this section is—

(a) in relation to a work area—a maximum speed not exceeding 40 kilometres an hour; or

(b) in relation to a hazardous work area—a maximum speed not exceeding 25 kilometres an hour; or

(c) in relation to a work site—a maximum speed not exceeding 80 kilometres an hour.

(3) If a public authority has engaged a contractor to carry out works on a road on behalf of the authority, this section applies to the contractor in relation to those works in the same way as it applies to the authority.

This provision was in force at the material time.

6.12. The provision plainly overrode any less stringent signage requirement in the Australian Standard or the Australian Standard Field Guide. Exhibit C34, which is the Transport SA Field Guide, purports in its preface to ‘provide information on section 20 of the South Australian Road Traffic Act 1961 regarding speed limits to be

applied at roadworks in South Australia'. This document does provide such information, but as we will see, does so erroneously in important respects.

- 6.13. It was submitted to me by Mr James on behalf of the Motor Accident Commission that the resealed section of Green Point Road prior to its sweeping was a 'hazardous work area' and that therefore there should have been in existence a speed limit of 25 kilometres per hour imposed along the entire resealed section, and the erection of signage to that effect. Mr James' argument was that the newly resealed unswept section of road qualified as a hazardous work area by virtue of Section 20 (1)(b) of the Road Traffic Act because there was 'an unusually high level of hazard ... for persons using the road.....as a consequence of the existence of the work area'.
- 6.14. The expression 'work area' is defined in Section 20 as 'a portion of road on which workers are, or maybe, engaged'. There is also a definition of a 'work site' which is defined as 'a portion of road affected by works in progress, together with any additional portion of road used to regulate traffic in relation to works or for associated purposes'.
- 6.15. A 'hazardous work area' must involve a 'work area'. A 'work area' has to be distinguished from a 'work site'. It seems to me that the expression 'work area' is intended to refer to a situation where work is being carried out at the material time. Its definition in Section 20 involves the presence or possible presence of workers working on the road. In my view it refers to a situation where workers are either present on the road itself or, due to the nature of the work being carried out, may encroach onto the road. I do not think that the expression 'work area' is intended to refer to a situation, as prevailed here, where workers are not actually present at the site. The expression 'work area' is defined in the Transport SA Field Guide as follows:

'The portion of the work site where: (a) workers, pedestrians or cyclists within a work area are separated a minimum of 1.5 metres from moving traffic; or (b) workers are not present but there is an unusually high level of hazard to road users within the work areas.' (Exhibit C33)

This definition would tend to suggest that a work area does not require the presence of workers to be so characterised. If this is what the definition of work area in the Transport SA Field Guide is meant to convey, then in my view it conflicts with the definition of 'work area' in Section 20 of the Road Traffic Act 1961. Section 20 of

the Road Traffic Act must prevail. I do not think that the area along Green Point Road was on the Saturday evening a 'hazardous work area' or a 'work area' that required speed limits as low as 40 kilometres per hour or 25 kilometres per hour.

- 6.16. On the other hand, 'work site' is a broader concept under the Act. In my view a 'work site' does not require the presence or possible presence of workers on the road or even at the site. This view is reinforced by the wording of Section 20(2), the provision which places the obligation to erect speed signs on various entities. The provision appears to differentiate between on the one hand a work area and on the other a work site where workers are engaged or works are in progress. It seems to me that the definition of work site in the Road Traffic Act envisages an area where workers are engaged or maybe engaged or if not, where works are in progress. There is no definition of the expression 'works in progress', but in my view the concept envisages a situation where although there may not necessarily be workers present at a work site, nevertheless works are still being carried out in the sense that the works have yet to be completed.
- 6.17. In my opinion the newly resealed section of Green Point Road was on the night of Saturday 10 March 2001 a work site. Works in progress were still in existence at that time because the job had not been completed. It had yet to be swept and relined. The sweeping of the road and the restoration of line markings was an intrinsic part of the renovation of that section of Green Point Road. It was thus still a work site. Although the Transport SA Field Guide does not hold the force of law, it seems to me that it also envisages that a work site would not necessarily require the presence or possible presence of workers on the road. I say this because the Transport SA Field Guide requires approval for the imposition of speed limits required 'at work sites after hours due to hazardous conditions to road users'. Workers are less likely to be present or even possibly present, after hours. In addition, the emphasis appears to be placed on hazards to road users as opposed to workers.
- 6.18. Mr Schutz told me that it was sometimes impractical for speed limits to be imposed on stretches of road more than 500 metres long because drivers were not in those circumstances inclined to comply. He pointed out that the Transport SA Field Guide stated that speed limit zones no should be more than 500 metres long (see page 2, Length of Zone). The stipulation in the Field Guide would appear to apply to all speed zones, be they for work areas, hazardous work areas or work sites. This

stipulation is not consistent with section 20 of the Road Traffic Act insofar as the Act is silent as to the maximum lengths of speed zones. It seems to me that if a work area, hazardous work area or work site exceeds 500 metres in length, section 20 of the Act would require the imposition of a speed limit for the entire length of the site, notwithstanding that it exceeded 500 metres. The Act would prevail over the Field Guide in that instance. In any event, the reduction of a speed limit from say 110 kilometres per hour to 80 kilometres per hour is not an onerous imposition to place upon the motoring public and I do not accept that compliance would be compromised for distances as little as 500 metres. As well, the suggestion that the speed limit area should not be greater than 500 metres seems to be inconsistent with the Australian Standard Clause 4.4.2 where it is suggested that speed limits may be used, where interalia, 'sprayed seal works exceed 500 metres in length on roads with heavy traffic' (see Clause 4.4.2(b)). Notwithstanding the stipulation in the Field Guide to the contrary, in my view the Act required a speed limit of 80 kilometres per hour for the entire section of the resealed surface of Green Point Road until such time as the road was swept and relined. The appropriate signage to that effect should have been in existence at the time Mrs Sneath drove her vehicle through that section of road.

- 6.19. The Australian Standard at table 4.2, page 58, suggests that where traffic is subjected to a reduced standard alignment due to roadworks, or the pavement surface has been degraded or a fresh bituminous seal has just been laid a speed limit as little as 60 kilometres per hour might be imposed in rural areas. Clause 4.4.2 of the Australian Standards manual suggests that roadwork speed limits 'may be used' where certain conditions apply. The word 'may' is defined in the manual in the following terms 'Indicates the existence of an option' (Clause 1.4.3). The Clause 4.4.1 states 'Speed limit zones are appropriate where the consequences of excessive speed are not apparent and motorists are unlikely to reduce speed voluntarily. A speed limit zone should not be introduced unless it is either self-enforcing or likely to be enforced.' The manual thus gives the impression to the reader that the imposition of speed limits at work sites, be it a limit of 80 kilometres per hour or 60 kilometres per hour, is optional whereas Section 20 of the Road Traffic Act renders it mandatory for a speed limit of 80 kilometres per hour to be imposed at a work site.
- 6.20. Although the Road Traffic Act does not render a speed limit of 60 kilometres per hour as mandatory, and the Australian Standard states that speed limits generally 'may be

used', there was a case here in my opinion, for the imposition of a speed limit as low as 60 kilometres per hour on the basis that the road surface had been degraded and that the standard of the pavement surface of the newly resealed section of Green Point Road had been reduced to below that of the adjacent sections of the road, namely the original sealed surface (see Australian Standard clause 4.4.2{d}). Certainly what happened in this case was that Mrs Sneath progressed from a bitumen surface that was stable to a floating, unstable and uncertain surface. In those circumstances, it is arguable in my view that the road surface was degraded and that its standard had been reduced below that of the adjacent original bitumen surface.

7. The responsibility for appropriate signage.

- 7.1. Section 20(2) of the Road Traffic Act imposes on a public authority, with the approval of the Minister, the obligation to place relevant signs on the road for the purposes of Section 20 of the Act. A public authority includes a Council (see the definition of public authority in Section 20). Where Council has engaged a contractor to carry out roadworks on its behalf, then the obligation applies to that contractor.
- 7.2. The obligation to place speed limit signs created by Section 20 of the Road Traffic Act was borne by Gambier Earth Movers, the contractors engaged to carry out the works on the Council's behalf. Road Network Services also bore some responsibility in relation to this by virtue of their contractual arrangement with the Council involving, as it did, responsibility for overseeing signs and traffic controls (Exhibit C35).
- 7.3. Aside from speed limits imposed by operation of law under Section 20 of the Road Traffic Act there was also a contractual obligation imposed on Gambier Earth Movers and Road Network Services to ensure that other appropriate signage was erected and maintained.
- 7.4. I accept that those responsible for the erection and maintenance of signs held the genuine belief that the signage placed at the resealed section of Green Point Road was all that was required and that it was sufficient to warn motorists as to the existence of a loose surface.
- 7.5. However, in my view the law in force at the time was that a speed limit of 80 kilometres per hour should have been imposed and signage erected to signify the

same. In addition, for the reasons I have given, consideration should have been given to the imposition of a 60 kilometres per hour speed limit due to the particular conditions. The fact that the road was to become a hazard was not entirely unforeseeable. The 60 kilometres per hour speed limit would have involved an 80 kilometres per hour buffer zone. A 60 kilometre per hour speed limit was not mandatory as a matter of law nor by virtue of the operation of the Australian Standard. However, it still behoved those who had responsibility for signage to at least consider whether a 60 kilometre per hour limit ought to have been imposed due to the particular circumstances that prevailed or might conceivably have prevailed before the road was swept.

- 7.6. There can be no doubt that the contractual obligations were known or should have been known to those responsible persons and in particular Specification 12 which imposed a duty to control traffic speed by traffic control signing **and/or speed limits** to match the conditions until loose aggregate was removed from the sealed surface. The Transport SA Field Guide was not available to Mr Stewart, nor I assume, to Mr Robertson. It was referred to in the contract and it should have been read by them. Whether it would have alerted either Mr Stewart or Mr Robertson to the obligation to impose an 80 kilometres per hour speed limit is another issue. The mandatory speed limit of 80 kilometres per hour at a work site imposed by Section 20 (2a)(c) is couched in the Transport SA Field Guide in these terms:

' a work site speed limit of 80 kilometres per hour may be used' (my underlining)

This is wholly incorrect. The speed limit **must** be used at a work site under the Act. This document is inconsistent with the Act and needs to be amended to reflect the requirements of the Act. I have already referred to the stipulation in the Field Guide, again inconsistent with the Act, that speed zones should be limited to 500 metres in length. In these circumstances, it is difficult to be critical of the fact that a mandatory speed limit of 80 kilometres per hour was not imposed.

- 7.7. Mr Schutz mentioned two difficulties with the imposition of speed limits on roads under the jurisdiction of the council. Firstly, he maintained that the Council required permission from Transport SA to erect speed signs during the hours of darkness. It seems that what Mr Schutz had in mind was the stipulation on page 2 of the Transport SA Field Guide that approval must be obtained from Transport SA when a speed limit

is required at work sites after hours due to hazardous conditions to road users. Mr Schutz told me of the impracticality of obtaining approval at very short notice. He referred to the need to complete individual traffic impact statements in relation to the imposition of speed limits at different roads and indeed at any different stretches of the same road affected by roadworks. He also referred to the fact that in his experience applications for approval are not given immediate consideration by Transport SA and that there is sometimes a delay of days before approval is granted. I detected an air of genuine frustration on Mr Schutz's part that this was the case. Mr Schutz told me that Transport SA had been lobbied to provide a delegation of powers to district councils to enable them to impose speed limits during the hours of darkness. He specifically had in mind the imposition of speed limits at resealing works owing to the presence of loose aggregate on the road and the danger it presented. Mr Schutz's second concern was the one I have already referred to, namely the perceived likelihood or otherwise of compliance with speed limits at sites exceeding 500 metres in length.

- 7.8. As to the first of Mr Schutz's concerns, he told me that Transport SA were, at the time of the inquest, considering delegating speed zone powers, no doubt under Section 20 of the Road Traffic Act, to the Grant Council. This would obviate the necessity for Council to seek and obtain approval each time it wished to impose a speed limit that would operate overnight. This delegation is to be encouraged in my view. I make the observation that the obligation to impose an 80 kilometres per hour limit at a work site is not suspended when the sun goes down.
- 7.9. As to the second of Mr Schutz's concerns, any suggestion that a speed limit should not be imposed merely on the basis of the unlikelihood of it being complied with is manifestly unsupportable. This curious reasoning seems to be enshrined in both the Transport SA Field Guide and the Australian Standard which, as seen earlier, states that a speed limit zone should not be introduced unless it is either self-enforcing or likely to be enforced. This notion in my view is absurd. Taking the notion to its logical conclusion, there ought to be no speed limits at all in remote areas where police resources do not extend to speed detection. Naturally, there will always be a section of the motoring public that ignores speed limits either in the belief that they are not necessary or in the knowledge that detection is not likely. However, that does not mean to say that every motorist on the road adopts such an attitude. Not only does

a speed limit impose an obligation on a motorist to keep to that limit, it also serves to highlight the danger of proceeding into hazardous road conditions at a speed approaching the rural limit, be it 100 kilometres per hour or 110 kilometres per hour. I do not think it naive to believe that the majority of motorists would comply with a speed limit, or respond to a speed limit by reducing their speed to a speed they are capable of managing. In any event, such considerations are irrelevant when it is considered that Section 20 of the Road Traffic Act imposes mandatory speed limit obligations. There is no suggestion in that legislation that these obligations ought to be relaxed in circumstances where they cannot be enforced.

8. Conclusions

- 8.1. Mrs Lois Sneath was driving a white Ford sedan north along Green Point Road. She was awake and entirely sober. A blood sample taken from her post-mortem demonstrated that there was no alcohol in her blood stream at the time she met her death in the accident. She died of multiple traumatic injuries sustained in that accident.
- 8.2. The deceased Mr Brendon Howard was a passenger sitting in the rear right seat of the Ford sedan. He was ejected from the vehicle in the course it overturning. He also died as a result of sustaining multiple traumatic injuries in the accident.
- 8.3. Mrs Sneath was wearing a fastened seatbelt at the time of the accident.
- 8.4. Mr Howard was not wearing a seatbelt at the time of the accident.
- 8.5. A loose surface sign was present at a distance of 410 metres south of the commencement of the resealed surface. The sign was luminescent and it was of such a size so as to have been plainly visible to Mrs Sneath. Another luminescent sign depicting a sliding vehicle was situated 260 metres south of the commencement of the resealed surface. It was of such a nature and size as to be plainly visible to Mrs Sneath. A third sign depicting the possibility of windscreen damage had been erected a distance of 110 metres south of the commencement of the resealed surface of the road. I find that it was erected so as to be visible to oncoming traffic as of Thursday afternoon 8 March 2001. However, I find that between that time and the time of the accident it had fallen and it was not visible to Mrs Sneath.

- 8.6. I am unable to conclude positively whether Mrs Sneath saw either of the two signs that were visible to her. If she did see them I am unable to conclude positively whether or not she modified her driving behaviour in any way. However, I find that the signage that was still erect at the time of the accident was sufficient to alert motorists to the dangers of a loose surface. I am unable to conclude whether the signage was sufficient to alert a driver of ordinary skill and temperament to the full extent of the hazard the surface of the road presented.
- 8.7. An amount of loose aggregate was present on the resealed surface of Green Point Road. It commenced just before Mrs Sneath was required to negotiate a left-hand bend in Green Point Road. I find that the left-hand bend was such that in normal conditions on a sealed and stable road surface no reduction of speed below the limit of 110 kilometres per hour would necessarily have been required. However, I conclude that by Saturday evening the 10 March 2001 the aggregate on the surface of the resealed section of Green Point Road presented a serious hazard to motorists.
- 8.8. I find that at a point about 200 metres into the resealed section of Green Point Road Mrs Sneath lost control of her motor vehicle. I find that the unstable surface of the road was a substantial cause in her losing control of the vehicle. It is highly likely that the existence of a left-hand bend that she was negotiating was another factor in the cause of her loss of control. I find that but for the presence of loose aggregate on the road, Mrs Sneath would probably have safely negotiated the left-hand bend.
- 8.9. I find that Mrs Sneath was probably driving the vehicle at a speed of no less than 90 kilometres per hour when she encountered the recently resealed section of Green Point Road. It is possible that she was travelling in excess of that speed but there is insufficient evidence for me to make such a conclusion. There is no evidence to suggest that she was exceeding the speed limit of 110 kilometres per hour. However, another substantial cause of Mrs Sneath's loss of control of the vehicle was her speed. Although it cannot be quantified precisely, she probably entered the loose surface at a speed beyond her skill and temperament as far as her ability to negotiate a sweeping left-hand bend with a loose surface was concerned. However, she may not have fully appreciated the full extent of the danger that the loose surface presented.
- 8.10. I find that the contractual arrangements between the Council and Gambier Earth Movers were such that the loose aggregate on the surface of the resealed section of

Green Point Road where the accident occurred should have been swept no later than 3.15 pm on Saturday 10 March 2001, that is to say, at a time prior to the accident occurring. I also find that the inherent danger that the loose surface presented called for its sweeping prior to the time of the accident irrespective of the contractual arrangements.

- 8.11. I find that the resealed section of Green Point Road was not swept on Saturday 10 March 2001 because the road sweeper employed by Gambier Earth Movers, Mr Mansell, genuinely concluded that he did not have enough daylight to travel to that location, prepare his equipment and complete his sweeping. Gambier Earth Movers possessed the one sweeping machine. However, there were two sweeping machines at the disposal of the Grant Council that afternoon. They could have been utilised to assist with clearing up the backlog of sweeping, including Green Point Road. They were not so utilised.
- 8.12. I find for the reasons I have already explained that at the time of the accident a speed limit of 80 kilometres per hour should have been in existence in respect of the entire length of the resealed section of Green Point Road. Appropriate signage to indicate that speed limit should have been erected and maintained.
- 8.13. It follows from my findings as to Mrs Sneath's speed that when she entered the loose surface Mrs Sneath was probably travelling at a speed that exceeded what should have been the temporary speed limit of 80 kilometres per hour for the section of road. It is impossible to conclude, however, whether the imposition of a speed limit of 80 kilometres per hour and the placement of speed limit signage would necessarily have made any material difference to Mrs Sneath's speed and driving behaviour in negotiating the resealed section of road, or whether if Mrs Sneath had kept her speed at or below 80 kilometres per hour she would necessarily have maintained effective control over the motor vehicle.

9. Recommendations

- 9.1. Pursuant to Section 25(2) of the Coroners Act 1975 I am empowered to make recommendations that might, in my opinion, prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the inquest.

- 9.2. The effect of the evidence of Mr Stewart of Road Network Services was that on roads that bear relatively little traffic, as was the case here, a build up of loose stones between the tyre tracks made by traffic can in time often create a hazard to vehicles straying into the build up of stones. In the light of that evidence, those responsible for the resurfacing of rural roads, particularly roads that have speed limits of 100 or 110 kilometres per hour, and where the little traffic that does exist only succeeds in creating a hazard, may well need to revise their thinking as to whether it is necessary or desirable to leave loose aggregate on recently resealed surfaces. It may well be that additional rolling ought to be required in those circumstances. It is difficult from where I sit to make any sensible recommendation about this because I simply do not know whether in terms of feasibility or expense some other method of road construction that does not involve the leaving of loose aggregate can be employed. However, it has to be recognised that in certain conditions, loose aggregate presents as a danger to a motorist with ordinary skill and temperament. This should now be understood.
- 9.3. The various Standards and Field Guides, particularly the Australian Standard and the Field Guide to it (Exhibits C32 and C33 respectively), contain an almost impenetrable forest of vague and imprecise stipulations and requirements. They need to be simplified and brought into line with each other. Those responsible for the carrying out of roadworks, be they Council workers or private contractors, should endeavour to familiarise themselves with the requirements contained within the various publications to which I have referred in the course of these findings. In particular, for obvious reasons, the requirements of the Road Traffic Act, which are paramount in South Australia to all other requirements, have to be completely and fully understood. I would recommend that when District Councils engage contractors to perform and/or supervise roadwork construction that contractors be provided with copies of the relevant Manuals and Field Guides, and in particular their attention should be drawn to the mandatory requirements of Section 20 of the Road Traffic Act as far as the imposition of speed restrictions at work sites are concerned.
- 9.4. The inconsistencies between the Road Traffic Act and the Transport SA Field Guide that I have identified should be rectified.
- 9.5. I have already commented on what in my view is the fallacious notion that holds that motorists will be unlikely to comply with speed limits unless they are self-enforcing or likely to be enforced. Reference to this notion in the Australian Standard should be

deleted. The Australian Standard is also misleading in so far as it may create in the mind of the person reading it that there is no mandatory requirement to impose a speed limit in any circumstance. The Australian Standard should include a clause that directs the attention of the reader to the mandatory speed limit requirements imposed by State legislation.

- 9.6. Mr Schutz of the Grant Council spoke of a reluctance to apply for permission to impose and maintain speed limits at work sites after hours because of the red tape involved. If the Grant Council has not already been delegated the authority to impose and maintain speed limits at work sites after hours my recommendation would be that such a delegation be granted to the Grant Council as soon as possible. It may well be that the same delegation ought to be given to other rural Councils responsible for the construction and maintenance of rural roads. Consideration should be given to the same.

Key Words: Country Road; Motor Vehicle Accident; Road Maintenance.

In witness whereof the said Coroner has hereunto set and subscribed his hand and

Seal the 17th day of January, 2003.

Coroner