

**Request for Reconsideration of a Coronial Inquest
into the Death of Karl Langheinrich, Uki, 6 February 2016**

By Wendy Sarkissian

29 November 2016

1. Introduction

I am Karl Langheinrich's widow. I was a passenger in the crash that killed my husband on 6 February 2016. I escaped with minor injuries. We were living in Nimbin, NSW at the time. I have moved to Brisbane.

I am requesting that the NSW Coroner reconsider their decision not to hold an inquest into the death of my husband, Karl Langheinrich, on the Kyogle Road near Braeside Drive, Uki, on 6 February 2016. One of my major reasons is the recent spike in road fatalities in NSW and Australia. I believe that weaknesses in the investigation of and response to the previous double fatality in the exact spot where Karl died indicate that appropriate consideration is not being given to road infrastructure in road planning in the Tweed Shire. Further, the NSW Coroner, in investigating Karl's death, did not fully take into account the circumstances of the earlier crash and fatalities. I believe that there were weaknesses and inconsistencies in the approach taken by Tweed Shire Council, the NSW Police and the NSW Coroner's office, which, taken together, support my request that an inquest be held into Karl Langheinrich's death.

I am writing my request without having taken legal advice, even though I am involved in a compensation claim against GIO insurance (represented by Shine Lawyers).

2. Details of the Bevelander crash on 22 January 2015

That 2015 crash occurred eight metres from where our vehicle left the road and fell into the Tweed River. I now believe (from an eyewitness account of the 2015 crash I heard firsthand on 17 November 2016), that if the second vehicle in the Bevelander head-on crash had not hit a tree (and stopped there on impact), it would have probably fallen into the river as well, potentially killing several children who were passengers in the van. Further, the Bevelander vehicle was stopped from going over the cliff only by the fact that it hit that van (a much larger vehicle); that impact brought the Bevelander vehicle to a standstill.

This information, in my view, supports my contention that the Bevelander crash and the Langheinrich crash share many common characteristics and were both strongly influenced by the identical physical circumstances of the crash site.

3. The crash site is a known dangerous location

Local residents (see: <http://www.goldcoastbulletin.com.au/news/gold-coast/male-driver-67-dies-after-vw-golf-slides-of-kyogle-road-and-into-tweed-river/news-story/25960ef59a5673df4888edb9927bfb53>), local, attending police and other police I spoke

to after the crash, reiterated that the crash site is a known dangerous location, where many other vehicles crashes have occurred (not resulting in fatalities).

Taking my formal witness statement on 19 February in Nimbin, Constable Brian Rogers noted that, “The location is known for fatal accidents.” (Constable Brian Rogers to Wendy Sarkissian, Nimbin Police Station, 19 February 2016). That view was expressed to me by all the police I spoke to following the crash.

4. The tight curve and poor road quality were contributors to the Langheinrich crash

There is considerable disagreement about the role of the actual road infrastructure in contributing to the Langheinrich crash. The Council formally contends that the tight curve was not a factor in the Langheinrich crash. However, one Council officer I spoke with told me that she believed that the tight curve *was* the root cause of the crash. Other (more senior) officers advised that Council’s position was that the root causes of both crashes at this location were driver error and speed. Nevertheless, shortly after the crash, I was advised by the police that, “Police are of the opinion that the roadway was a factor” (Brian Rogers to Wendy Sarkissian, Nimbin Police Station, 19 February 2016).

It has been accepted that the Bevelander fatal crash on 22 January 2015 was a loss-of-control crash on a tight curve (resulting in two fatalities, including one child). It is now widely accepted that unprotected roadsides on slippery roads with tight curves are antithetical to the safe system approach adopted as policy by all Australian Transport Ministers in 2004.

A close photographic inspection of the site by Kevin Cracknell (an experienced emergency services worker) three days after the crash and a detailed subsequent photographic and site inspection by me and Kevin Cracknell three weeks after the crash revealed serious deficiencies in the roadway. We noted water pooling and a deteriorated roadway surface, as well as significant wheel rutting on the fog line (which would certainly be the entry point into the corner if water was present in these indentations, as that would also create a potential hazard). Additionally, we observed the presence of debris from previous crashes at the site. At that time, it appeared that the box culvert had recently been blocked. Had the box culvert been blocked or full at the time of the 2016 Langheinrich crash, that would have created a water hazard on the road surface.

5. Questioning whether speed and driver error were the main contributing causes of the Langheinrich crash

I am the only witness to this crash and I can confirm that Karl was not speeding. I estimate our speed at 50 to 60 kmh (I could not see the speedometer from the passenger seat). However, I accept that Karl, being familiar with the road, might have been driving faster than was safe for the prevailing conditions. In my recollection, the windscreen wipers were not on as we entered the corner before aquaplaning across the road and ultimately tumbling into the Tweed River. (I was unconscious when the car fell into the river and regained consciousness in the water.)

The police believed that the Langheinrich crash speed was between 50 and 60 kmh – well below the then signposted speed. (I can only assume that estimate came as a result of inspection of the vehicle following the crash. From the news photographs, it did not appear to be greatly damaged.)

When two colleagues and I met with the Council on 12 September, 2016, Council officers advised that, in their view, speed was the *root cause* of the crash, not aquaplaning as advised by police attending the crash site. This is not the view held by police I spoke with.

6. Inadequate Council assessment of the crash scene

Council officers told me that no officer visited the crash site immediately after the crash. (The site is located 12 kilometres from their office.) This shocking admission shows a procedural weakness and lack of an ethic of caring for road crash victims and for all drivers and passengers. The specific information that could have been gleaned for an immediate inspection (or even on the Monday when officers returned to work – two days after the crash) would have been invaluable.

I am also concerned that Council undertook no accurate analysis of weather conditions at the exact site crash after the Langheinrich crash. Rather, by their officers' admission, Council relied on generic rainfall data for Murwillumbah. Council officers could have spoken to local landowners about rain dumps and flooding around the time of the crash that could have led to water pooling on the side of the road and in wheel ruts. No investigations were made of any blockage to drainage and/or a blocked culvert that could have affected water pooling. Due diligence was not undertaken by Council with respect to analysing weather conditions and rainfall at the site.

The Council has no photographs of the crash site taken immediately after the crash that could have influenced their decision-making processes or provided helpful information to the NSW Coroner or the Council's Traffic Committee. I gave them my two sets of photographs, which they admitted were most valuable to them.

7. Inadequate Council data analysis and data management

Related to the lack of an appropriate and immediate response by Council to investigating the site and its conditions is a clear weakness in Council's data collection and analysis policies and processes for road safety. In our discussions with Council officers, blank stares greeted Dr Lori Mooren's explanation of the *safe system* approach, which they clearly did not know about.

In their data analysis of road crashes, Council reviewed only *fatalities*, not all crashes, incidents, or near-misses at or near that site. Further, and most alarmingly, Council officers did not appear to understand how to access other crash data from published government sources.

This is a clear indication of a lack of professionalism in the road safety area within the Tweed Shire Council.

In addition, Council has refused to release any data related to the crash to my lawyers (for six months), making my investigation more difficult and increasing my distress.

8. Inadequate responses by the NSW Police to the 2016 Langheinrich crash

While the local police have been caring and supportive to me, the actions of the NSW Police Crash Investigation Unit do not reflect a consideration of the seriousness of this issue or an understanding of the clear relationship between the Langheinrich crash and the Bevelander crash.

Most importantly, the lack of attendance by the Crash Investigation Unit at the Langheinrich crash indicates that they did not connect the Langheinrich crash with the previous fatalities at the time and consider that it might be valuable to investigate why there had been three fatalities in exactly the same spot.

I was advised by Senior Constable Mick Kelly that, “Murwillumbah police have been trying to get the Accident Investigation Unit to take action on that road for the last twelve months.” (Senior Constable Mick Kelly to Wendy Sarkissian, 14 February 2016).

Other police reported to me following our crash that repeated police requests for action from the Crash Investigation Unit since the first double fatality in 2015 have been ignored.

As the Police Crash Investigation Unit did not attend the second crash in 2016, I can only conclude that they did not connect the circumstances and context of this crash with the previous 2015 double fatality (a year earlier). Police told me that the Crash Investigation Unit determined that the fact that it was a single vehicle crash meant that driver error was the reason for the Langheinrich crash. That was their reason for not attending the crash. They did not pay attention to the similar characteristics of the two crashes.

A serious question arises for me: what specialist *local* resources were available to compensate for the fact that the Sydney-based Crash Investigation Unit did not attend?

Who else could have been brought in to investigate the February 2016 crash in a professional manner?

9. Poor management of the Tweed Shire Council’s Traffic Committee Meeting following the Langheinrich crash

Also alarming is my discovery that local police (and those attending the Langheinrich crash) did *not* attend the Council’s Traffic Committee meeting held a week after the second crash (mid-February 2015). No subsequent Traffic Committee meeting was ever convened to hear the views of the attending police about the February 2016 crash.

The consequences of this neglect are that the views of the attending police that the roadway was a factor in the second crash in 2016 (expressed to me by several officers after the crash) were ignored by the Council, partly because the Traffic Committee meeting convened a week after the crash had no police in attendance. It is a huge failure of due diligence, in my view, that the Traffic Committee was not reconvened immediately with attending police present so that the Council could learn their views about the reasons for the Langheinrich crash (and their recommendations).

I have requested to speak to the Tweed Shire Council Traffic Committee directly but have been strongly advised against it by the local police. I now beginning to understand why, as there is a serious process problem here which I imagine the Council and the local police would prefer not to be opened up.

10. Inadequate implementation of the coroner's recommendations

Council officers advised me that, following the Bevelander crash, the NSW Coroner recommended that the speed limit be reduced (and appropriate signage provided) and that the road surface be improved. While the NSW Coroner's report recommended both installation of speed advisory signs and road surface upgrades, Tweed Shire Council only erected the signs and did *not* ultimately improve the roadway surface.

There were long delays by Council in erecting speed change signage (18 months after the first crash – as far as I can tell – in late July or early August 2016), despite the Council advising the Coroner that the additional advisory signage was implemented “soon after” the 25 May 2015 Coroner's report. In fact, more than six months after *our* crash on 6 February 2016, Tweed Shire Council finally reduced the speed limit from 80kmh to 60kmh (that is, over eighteen months after the Bevelander crash).

Attending police estimated that we were travelling no faster than 60kmh. The advisory speed sign now suggests 45kmh around the curve. With support from the RMS “Fatality Response Program”, the Council also purchased the interactive electronic speed measurement sign. As far as I can tell (Council refuses to confirm or deny this), no *physical* improvements have been made to the roadway, unless the proposed repairs (resealing a segment of Kyogle Road with argillite) scheduled for October 2016 (and brought forward probably because of my lobbying) have now occurred.

(Federal funding has been requested for this wider road repair and guardrail purpose. See below.)

11. Guardrails have not been erected on this dangerous stretch of road

It is now widely accepted that guardrails save lives, a view shared by the police and road safety specialists. Roadside and median barriers were tested some years ago at the Crashlab (Transport for NSW) and wire rope barriers, in particular, were found to be very effective in preventing serious injury crashes.

Police advised me directly immediately after the crash, that had there been a guardrail in that location, Karl probably would not have died.

Since the Bevelander crash (and probably before that, according to conversations with local police), Tweed Shire Council ignored police recommendations that guardrails should be installed for a considerable length of road (I was told by them that the ideal length should be one kilometre). This is a view also expressed several times by attending police to me after the crash. Repeated police requests for installation of a guardrail in that location following the double fatality were simply ignored by Council.

However, Council's view is that guardrails are not the answer for this specific crash site because they do not address their assessment of the factors leading to loss of control on the corner. Council considers those factors to be mainly speed-related. Sadly, their concerns appear to have more to do the maintenance issues than with saving lives. They have advised me and my colleagues that they were reluctant to install guardrails, as Council would potentially face maintenance costs from vehicles damaging them. They also argued that guardrails might actually pose or create new hazards (if speeds were not reduced).

Nevertheless, following strong lobbying, Council has finally made a request for Federal Blackspot funding for a guardrail. That application (following preliminary investigations) was submitted at the end of July, 2016, approximately 18 months after the first fatal crash and six months after the Langheinrich crash. I could cynically imagine that Council officers probably believed that they would have a better chance of receiving Blackspot funding after *three* fatalities on their local road, rather than after *two* fatalities, considering the weighting of the Blackspot funding eligibility criteria.

12. Weaknesses in Council's SCRIM testing

As a means of determining whether they should implement the NSW Coroner's 2015 recommendation of improving the road surface at the crash location, Council rented a SCRIM testing machine from Victoria. What is distressing is that it appears that funds were allocated to establishing that road resurfacing was *not* needed rather than simply repairing the road. For slightly more than double what appears (from Council budget papers) to have been the cost of renting the SCRIM testing machine, a guardrail could have been erected (approx. \$45,000 vs. approx. \$100,000).

There was also a very long delay in undertaking SCRIM testing and the machine was also probably used on other road jobs, while the safety of one part of the Kyogle Road remained compromised.

In essence, the Council had already sought assistance to do a SCRIM test of the road surface before the Langheinrich crash and rather than spending their resources to upgrade the road, they continued to pursue the test (which took 12 months to complete). They claim they have now brought forward some limited remediation work to October 2016 but I have not seen it.

Even then, that is 21 months after the Bevelander crash and nine months after the Langheinrich crash.

13. Questions about Council's financial priorities regarding road safety

An examination of Council's budget papers for the past financial year indicates that they spent \$13 million on recreational facilities. Erecting a life-saving guardrail would have cost around \$100,000. Council management and officers seem to believe that unless they receive additional funds from the State and Federal Governments, they cannot allocate funds to make their roads survivable.

Council has dedicated very few resources to this safety of this road in the last 18 months.

14. Final comments

What we have here is a situation where the recommendations of the NSW Coroner were not acted upon, the local road authority (Tweed Shire Council) did not do its job properly, ignored the advice of local, and attending police, and nobody took responsibility for connecting the 2015 Bevelander double fatality to the 2016 crash a year later that killed Karl Langheinrich. Had the Council, in particular, taken action immediately following the Bevelander crash to erect a guardrail and/or repair the road surface, Karl Langheinrich would probably be alive today.

These are systemic weaknesses that must be addressed by a comprehensive analysis of how the road remained in a dangerous state while so many voices (particularly from local police) were raised in support of repairing that road and installing guardrails.

A man has died needlessly this year. I love that man very much and deeply mourn his loss. A mother and child died needlessly a year before. They are deeply mourned by their family and friends. Innocent people from three generations have been killed on a dangerous rural road.

The core cause of their deaths was not driver speed and error. That would oversimplify a very complex situation. And simplifying complex situations is part of the problem I have identified in examining the evidence. Complex systems typically exhibit many interacting variables, many of which may have causal relationships. The evidence I have reviewed reveals that a strong contributing factor was the condition of the road at the time of *both* fatal crashes. Current leading-practice road safety planning demands a systemic *safe systems* approach to ensure that people do not die needlessly on Australian rural roads. Our roads need to be more 'forgiving' of simple human error.

A death sentence should not be the consequence of a driver's momentary inattention.

Importantly, all relevant NSW government agencies and the local road authority need to work together more closely. People need to listen to each other. Leading-practice approaches to data collection and management must be strictly adhered to.

I firmly believe that the NSW Coroner has a responsibility to hold an inquest into Karl Langheinrich's death, as I believe that the Coroner is also partly responsible for the lack of coordination among agencies and for the significant oversights and neglect that have occurred, contributing to Karl Langheinrich's death on the Kyogle Road.

A handwritten signature in black ink that reads "Wendy Sarkissian". The signature is written in a cursive style with a long, sweeping tail on the letter 'n'.

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