

Deputy Coroner for the District of Avon Coroner's Court
The Courthouse
Old Weston Road
Flax Bourton
Bristol
BS48 1UL

Client Confidential

7 March 2024

Dear Madam

Inquest Andrew James Rees

We are now in receipt of your Regulation 28 report pursuant to paragraph 7, Schedule 5, of the Coroners and Justice Act 2009 and regulations 28 and 29 of the Coroners (Investigations) Regulations 2013 and dated 9 January 2024.

We are required to respond to your report by 11 March 2024 and it is noted that our response must contain details of action taken or proposed to be taken, setting out the timetable for action. Alternatively, if no action is proposed then an explanation should be given in this regard.

This letter is the response of North Somerset Council only in respect of your report.

According to the Regulation 28 report your concern in respect of North Somerset Council is as follows:

'During the course of evidence one of the triggers to generate a review of the Port Marine, Portishead Risk Assessment by North Somerset Council was stated to be a significant change of use but no formal assessment or measure of whether a change of use (e.g. increase in amount or type of footfall/increased cyclists etc.) had taken place was apparent.'

Following the inquest on 9 January 2024 we wrote to you on 12 January 2024 seeking clarification of the brief indication you had given at the conclusion of the inquest that you would be making a regulation 28 report. We raised a number of matters within that letter which have not been responded to and unfortunately the report was made, it seems, on the day of the inquest and immediately after it.

The trigger for the duty to make a regulation 28 report is that a concern is revealed by the evidence from the whole of the investigation (not just the inquest hearing itself) that circumstances creating a risk of further deaths 'will' occur, or 'will continue' to exist in the future. There must be a concern of a risk to life by present or future circumstances and the action that the Coroner opines should be taken must be to prevent those circumstances 'happening again' or reduce the risk of death arising from those circumstances.

Your inquest heard extensive evidence from [REDACTED] from the Council. In light of this evidence and the extensive documentation supporting it, we do not believe that there was any evidence to support the contention that, *'no formal assessment or measure of whether a change of use (e.g. increase in amount or type of footfall/increased cyclists etc.) had taken place was apparent.'* Further, we do not believe

that there is any evidence that this matter constitutes circumstances creating a risk that further deaths will occur or a risk will continue to exist in the future. In our view, the evidence revealed the contrary as follows:

1. There was considerable evidence about previous risk assessments, reviews and audits of the area between at least 2008 and 2023, with copies of the same provided to the court and explained, where necessary, in lengthy statements and oral evidence. Those assessments had clearly taken into account present and proposed use of the area and demonstrated a formal measure of change of use.
2. The oral evidence given by both [REDACTED] supported the position that change of use had historically been taken into account.
3. The evidence before the court showed that in fact the locus was stable and had been for a number of years in respect of its use with a local school, leisure club, housing and use by cyclists long being the case (oral evidence of [REDACTED] in particular).
4. Furthermore, [REDACTED] explained in his oral evidence that there had been a consideration of projected population previously and no change to the area since requiring a re-assessment of risk from a population perspective. This had been well accounted for and taken into consideration.
5. Before the court there was no evidence of any significant change of use to the area since the council took over responsibility for the west side of the Marina. Questions posed on behalf of the family about the potential change were not evidenced and in any event dealt with by [REDACTED], as set out above.
6. In terms of the level of risk historically and indeed now, there has been one incident involving a child falling into the Marina in 2013 (which led to the Gallagher Basset report in 2013) and one suicide at an unknown area in around 2016 / 2017. The incident in 2013 was in specific circumstances where a child was unsupervised and no death occurred. Apart from these incidents there is absolutely no evidence before the court of any other accidents, incidents, deaths or near misses at this part of the Marina or indeed any part of it either historically or since Mr Rees' tragic death. There is no evidence before the court or identified in the evidence provided to the interested persons that there is any risk to life in the area, on-going or otherwise and despite the proximity of the school, leisure centre and residential premises.
7. Past risk assessments have been reviewed with any significant change of use or an incident being accounted for. There is no evidence that this has not been a proper way to approach the assessment of risk in the area, particularly evidenced by the lack of issues with the area.
8. The latest risk assessment which was put forward at the inquest hearing in evidence had a review date of February 2024. This date was set to allow North Somerset Council to reflect on any aspects of the inquest evidence and taking into consideration that until disclosure of the inquest bundle took place, just days before the commencement of the inquest on 9 January 2024, North Somerset Council had no indication of the actual facts surrounding this incident. In line with the written risk assessment and the evidence given at the inquest itself this risk assessment has been further reviewed and we attach a copy of it to this letter. This shows that there will be an annual risk assessment and that risk assessment review will be triggered in a number of circumstances, including any change of use of the area.

In all the circumstances, whilst we express our sincerest condolences to the family and friends of Andrew Rees, we have carefully considered the precise terms of the concern raised and on this occasion do not believe that there is either a risk that further death will occur or that North Somerset Council had not properly assessed risk in the area either historically or presently and beyond those changes already evidenced in detail at the inquest. Notwithstanding the fact that we do not accept the threshold for the making of a Regulation 28 report was reached, we have updated our risk assessment since the inquest and as indicated above in any event.

Yours faithfully

A handwritten signature in black ink that reads "Clyde & Co". The script is cursive and fluid, with the ampersand being particularly stylized.

Clyde & Co Claims LLP

Risk Assessment



Date of last Assessment: 23 February 2023	Assessed by: Seafronts, Parks and Open Spaces
Date of current assessment: 8 th February 2024	Role: Service area responsible for land
Next Assessment review due: February 2025	

What is the **task, activity, person or environment** you are assessing?

Port Marine, Portishead

This document is a review and update of previous assessments made to determine the risk of visitors to falling into the dock and the associated mitigation measures.

Port Marine is a large residential area constructed alongside a historic dock in Portishead. The area also operates as a Marina which is managed externally. The planning history dates from 1984 with significant development progressing from 1996 onwards.



The area of Port Marine referred to in this document runs along the North West side of the dock from the lock gate to the fishing platform behind Portishead Primary School; Shown in red on the adjacent map. The areas highlighted red on the map (Appendix A) are owned and managed by North Somerset Council.

NSC own the land up to and including the capping stones to the top of the marina/harbour wall, as indicated in red on the picture but are not responsible for the maintenance of the harbour walls below this level and the associated infrastructure. Boatfolk Marinas Ltd, Deacons House, Bridge Road, Bursledon, Southampton, Hampshire SO31 8AZ are responsible for the maintenance of the associated infrastructure including safety chains and ladders. This has been confirmed during on site meetings with Boatfolk Marinas Ltd.

Railings are fixed at key points along the dock where there are corridors of open space, corners and intersections running perpendicular to the dock edge.

What hazards are present or may be generated?	Who might be harmed by the hazards and how?	What control measures/ precautions are in place to eliminate or reduce the risk?	Is the residual risk acceptable?		If no to the previous question, what additional control measures/ precautions are needed to manage the risk?	Additional control measures implemented:		
			Yes	No		Action by whom?	Action by when?	Date complete
Falling into the Marina	Visitors to the area could fall into the open water. Drowning or Secondary Drowning or be affected by immersion in cold water	<ul style="list-style-type: none"> Railings are located at key points along the harbour/marina edge where corridors of open space, paths or corners run perpendicular to the edge to prevent falling in to the water Signs to warn of danger are inspected as part of the established monthly inspection regime Lighting is sufficient at night to illuminate the area for people to be aware of the water edge any ad hoc reports of defaults/ hazards received by Members of Public/ boat owners/ Marina Management etc to be investigated/ actioned accordingly 	X					
Drowning after falling into the water	Visitors to the area who have fallen into the water may not	<ul style="list-style-type: none"> Public Rescue Equipment (in the North Somerset Council owned areas highlighted in Appendix A), which is inspected 	X		This risk assessment relates to North Somerset Council own land. However, the chains and escape ladders are managed			

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	<p>be able to swim to safety.</p> <p>Boat owners and their visitors who have fallen into the water and may not be able to swim to safety.</p>	<p>weekly to ensure they are present and functional.</p> <ul style="list-style-type: none"> • Safety chains and escape ladders on the Marina wall to help people to float; and to help those that are able, to climb out of the Marina • any ad hoc reports of defaults/ hazards received by Members of Public/ boat owners/ Marina Management etc to be investigated/ actioned accordingly <p>The Boatfolk Marinas organisation carried out repairs and replaced some of the chains in July 2023 – picture on file (SP)</p>	X		<p>by Boatfolk Marinas Ltd, Deacons House, Bridge Road, Bursledon, Southampton, Hampshire SO31 8AZ on land so North Somerset Council does not control their management or maintenance. It is unsafe for North Somerset Council staff to inspect the condition of the ladders and chains because that requires leaning over the edge of the Marina with no means of support.</p> <p>In order to ensure the chains and escape ladders are functional North Somerset Council staff will check that Boatfolk Marinas Ltd's monitoring and inspection programme is being delivered. This will be done by email every 6 months.</p>	Principal Parks and Opens Spaces Officer		
Falling/Tripping	Raised pavers and trip hazards on walkways and paths	<p>There are two levels of inspections;</p> <ol style="list-style-type: none"> 1. During weekly inspections of Public Rescue Equipment, the inspector will undertake a general visual inspection of the condition of the paving and railings and report on anything of concern. 	X					

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			Yes	No		Action by whom?	Action by when?	Date complete
		<p>2. Monthly inspections undertaken by Seafronts and Park officers using the same intervention levels as the Council's Highways team for surfaced paths, with remedial action taken as required</p> <ul style="list-style-type: none"> Any ad hoc reports of defaults/ hazards received by Members of Public/ boat owners/ Marina Management etc to be investigated/ actioned accordingly 						
Railings may be damaged meaning they no longer ac as an adequate barrier	Visitors to the Marina may fall into the water if railings are damaged, missing or unsecure	<ul style="list-style-type: none"> Formal monthly inspections of the railings undertaken by Seafronts and Park officers with remedial action taken as required Any ad hoc reports of defaults/ hazards received by Members of Public/ boat owners/ Marina Management etc to be investigated/ actioned accordingly During weekly inspections of Public Rescue Equipment the inspector will undertake a general visual inspection of the condition of the paving and 	X					

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		railings and report on anything of concern.						
Risk Assessment Review		<ul style="list-style-type: none"> • Due to the relative stability of the site risk assessment reviews will be undertaken annually • If Planning applications are granted which result in significant change in use of the area or surrounding, then this will trigger a review of the risk assessment • Any incidents or serious reported near misses will prompt a review of the risk assessment • Any transfer of land or infrastructure to the council will prompt a Risk Assessment review • Any independent or external review recommendations will prompt a Risk Assessment review 	X					
Formal Events and Activities	Event attendees falling into water	<ul style="list-style-type: none"> • Any formal event or activity application made to North Somerset Council that incorporates use of this area will be required to prepare satisfactory assessments of 	X					

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			Yes	No		Action by whom?	Action by when?	Date complete
		risk and implement suitable control measures. This will be undertaken via the formal event application process.						