

Waterlogged by the Past?

With so many infrastructure services and facilities being planned and implemented in a bid to boost jobs and the economy, if projects are being pushed through to satisfy our immediate and short term needs, could a lack of long term vision create liability issues for the future?

Case Study

The High Court has found that a statutory authority was not liable for the death of an occupant of a vehicle when a tree, whose root system had been compromised by altered subsoil drainage by the installation of a water main, fell across the vehicle. In Sydney Water Corporation v Turano (2009) HCA 42 (13th October 2009), the Court reversed the NSW Court of Appeal's findings of negligence against Sydney Water Corporation (SWC).

Some 20 years prior to the accident, SWC had installed a water main near a tree, this is said to have altered the course of water flow and caused periodic water logging of surrounding soil over an extended period of time. This environment created conditions in which a pathogen could enter the root system of vegetation and flourish. There had been no complaint relating to the water main, or its effect on the drainage in surrounding areas in the intervening years.

The Result

The Court found that the laying of the water main some 20 years earlier, with the consequential alteration of drainage flows from the culvert and any foreseeable risk to the health of the tree, did not impose on the SWC a legal duty of care for the benefit of Turano. It concluded that injury to road users as a result of the tree's ultimate collapse was not a reasonably foreseeable consequence of laying the water main.

However, this case does raise issues of the need for statutory and local authorities to consider the long term impact on installation of services and facilities in a far broader context than immediate or short term amenity and benefit. The result in this case might have been different, had the tree in question been in a well trafficked and used area, i.e. a public park, where the likelihood of harm was higher.

Practical Tips for Local Government and Other Landlords and Occupiers

- Consider the impact of installing services and facilities in the short, intermediate and long term;
- Investigate possible external factors that could effect the integrity of facilities over time; and
- Consider the use of the surrounding environment that the services and facilities are being installed in.



Head of our local government, environment and planning department, Karen van den Brand, Director, has provided advice to numerous councils, developers, companies and individuals. She has particular expertise in the regulatory framework surrounding water resources and wastewater, as well as conducting litigation on behalf of local government and other government agencies. Supported by a strong team of experienced professional staff, **msl** can help you get the results you need, when you need them.

For assistance with all your local government, planning & environment needs, email us at info@msslawyers.com.au or visit our website www.msslawyers.com.au. Alternatively, contact our professional team at our Gold Coast or Brisbane office.

Gold Coast Office

9 Ouyan Street
Bundall QLD 4217
PO Box 9073 GCMC QLD 9726
T +61 7 5597 8888
F +61 7 5597 8899

Brisbane Office

Level 10, 410 Queen Street
Brisbane QLD 4000
PO Box 3246 Brisbane QLD 4001
T +61 7 3229 6099
F +61 7 3226 9001