



CASE SUMMARY – ORANGE CITY COUNCIL V WILLIS [2026] NSWCA 51

BACKGROUND

This case concerns a personal injury claim arising from a trip hazard on a grass verge under the control of Orange City Council.

A parking sign had been installed by the Council and, at some point, was removed or came out of the ground, leaving a hole in the verge. That hole later became obscured by grass.

Before the incident:

1. A local business owner reported to Council that the sign had come out of the ground.
2. The sign was removed shortly after that report.
3. No steps were taken to fill the hole or otherwise make the area safe.

On 9 July 2020, Mr Willis stepped into the concealed hole, fell, and was injured.

At first instance, the District Court found the Council liable in negligence and awarded damages. The Council appealed on liability only.

KEY FINDINGS

1. **Actual knowledge can be established through practical, real-world evidence** - Importantly, the Court accepted that a report that a sign had come out of the ground logically carries with it knowledge of the resulting hole, particularly where the sign was fixed in concrete. The absence of a written record did not prevent a finding of actual knowledge, especially where oral reports were not always recorded.
2. **Appellate courts will not readily disturb factual findings** - The appeal largely turned on factual challenges. The Court emphasised the high threshold for overturning findings based on witness credibility, and that findings supported by consistent evidence and reasonable inferences will stand. Once the factual findings were upheld, the Council's appeal effectively failed.
3. **Negligence was straightforward once knowledge was established - The Court confirmed the Council breached its duty under s 5B of the Civil Liability Act:**
 - a. The risk (a concealed hole in a pedestrian area) was foreseeable and not insignificant.
 - b. The likelihood of harm was real, particularly where pedestrians use the verge to access parked cars.
 - c. The steps required to address the risk (filling or marking the hole) were simple, quick and inexpensive.In those circumstances, a reasonable council would have taken precautions.
4. **Section 45 (road work immunity) did not apply** - it only protects a roads authority where it lacks actual knowledge of the particular risk.
5. **Section 43A (special statutory power) also did not apply** - The Court rejected the argument that the claim involved a failure to exercise a special statutory power. The relevant precautions (filling or marking the hole) did not require statutory authority. They were ordinary, practical steps that could be taken without invoking any special power.

KEY TAKEAWAYS

1. **Simple hazards + actual knowledge = liability**
2. Councils cannot rely on statutory protections where they are aware of a risk and fail to take basic, low-cost steps to address it.
3. "Actual knowledge" will be assessed practically, not technically — and can arise from informal or oral reports.
4. Attempts to characterise routine maintenance issues as "road work" or "statutory powers" will be scrutinised closely.