



## Evans Shire Council -v- Richardson [2005] NSW CA 416

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This is a decision of the New South Wales Court of Appeal which was handed down on 30 November 2005.

### Main Facts

- On Anzac Day 1999 an elderly war veteran tripped over a mound on a road at 8:30am in the morning, after attending an Anzac Day ceremony. He sustained two fractured ribs.
- The road and a park next to the road were non dedicated Crown land in respect of which the Council had neither statutory powers nor duties.
- The park was under the trusteeship of the Evans Shire Council which had erected signs in the park warning against certain activities like drinking the water, horse riding or consuming alcohol.
- Since 1990 the park had been cared for, occupied and maintained by a local Lions Club and within the park was a war memorial. The club had erected various facilities including seats, barbeques, shrubs and gardens.
- Prior to the service the Lions Club had maintained the grass to around a metre from the mound even though the mound was outside the park area.
- The road was in its natural state and not maintained by the Council. It did however appear on Council maps of the area.
- The Anzac Day service was organised by the Lions Club and approved by the Council. Some Council officials including the Mayor attended the service.
- A power pole had been erected about 1 metre from the mound by Advanced Energy and with the consent of the Crown but without any involvement of the Council.
- The mound was 2 feet 6 inches in length and about 12 – 18 inches in height and was partially covered in weeds and grass. As such it was difficult to distinguish from the surrounding landscape.

The Plaintiff sued the Council for damages.

Acting Judge Murray in the District Court held that the council was exercising de facto control and therefore owed a duty to the Plaintiff. This duty was breached by failing to remove the mound. It was an “unacceptable hazard having regard to its location and the surrounding circumstances of the case.”



### **Issue on appeal**

The question before the Court of Appeal was whether the Council was exercising at least de facto control over the area where the mound was located.

### **The Decision**

The Court of Appeal unanimously found there was no evidentiary basis upon which the primary judge could have found that the Council was under any duty of care to the Plaintiff and he therefore erred in law in imposing a duty of care on the Council.

There was no evidence that the Council had maintained de facto control over the park let alone the street in which the Plaintiff tripped. The erection of signs within the park was an insufficient basis upon which to find de facto control. In any event, there was no evidence that the signs were erected by the Council. The map was no support for the proposition that vast areas of Crown road fell within the Council's responsibilities. Although the Anzac day ceremony at the park was conducted with the knowledge of the Council that did not mean the Council accepted responsibility for the safety of those attending the ceremony which was in fact organised and conducted by the Club.

The mere fact that an inspection of the area prior to the ceremony would have revealed the mound to be an unacceptable hazard does not in itself create a duty. In any event there was no evidence that any Council employee was actually aware of the mound.

The Court of Appeal did not need to resolve the argument raised by the Council on appeal "that the presence of the mound was obvious to a person who looked where he was going".

### **Implications**

Even though the authority is persuasive rather than binding, this decision provides reassurance to defendants and expands our understanding of duty of care in negligence.

- This decision should reassure Councils that the principle still stands that the mere presence of a road within their boundaries and/or near facilities which they have responsibility for will not impose a duty of care. The result may have been different if Council had maintained the road assumed some level of responsibility for the maintenance of the road.
- Similarly a duty will not necessarily be imposed in situations where mere approval for an event is given by a statutory body. The situation may be different if the Council had taken a more active role in organising the event.



- Even if a hazard is identified by a body approving an event, the mere fact of that knowledge, does not necessarily result in the imposition of a duty of care.
- Care needs to be taken to identify correct Defendants when bringing proceedings arising out of accidents in public places.