

Slide 1

# Risk Management – the Noosa Experience Shows You Can Win

A presentation by Wayne Brogden  
Manager – Works Support  
Noosa Council

IPWEAQ 2002 CONFERENCE "Riding the Wave to Sustainability"



Slide 2

## Introduction

- We do not claim to have the solution to beating personal injury claims
- The purpose of the paper is to share our experience – it may help others, or you may already be ahead of what Noosa is doing in this area.

IPWEAQ 2002 CONFERENCE "Riding the Wave to Sustainability"



### Slide 3

## Nonfeasance

- High Court decision to abolish long standing “highway immunity” rule
- There is considered to be a breach of duty if authority fails to take reasonable steps to inspect and rectify dangers
- Recent decisions indicate Courts are willing to rule in favour of Councils where reasonable inspection and maintenance programs are in place.

IPWEAQ 2002 CONFERENCE “Riding the Wave to Sustainability”



### Slide 4

## Percy –vs- Noosa Council

- The appellant was a 54 year old male who was injured when jogging along a shared bikeway/footpath.
- The path was separated from the road by a turfed area of approx 2 metres and fencing. There was a gap in the fencing at a “school crossing”.

IPWEAQ 2002 CONFERENCE “Riding the Wave to Sustainability”



## Slide 5

- The well maintained pathway led to a pedestrian activated crossing with traffic lights was only approx 70/80 metres away.
- The appellant left the path, jogged through the gap in the fencing and proceeded across the turfed area to take a “short-cut” to cross the road at a busy intersection.
- The appellant stepped on a tree root covered by a tuft of grass and sustained injuries to their ankle and leg.
- The case was won at the first hearing and again on Appeal.



## Slide 6

### The judgement

Briefly the judgement was based on:

- Evidence that there was an inspection and maintenance program in place and it had been implemented.
- The cost of doing anything more would be considered unreasonable (e.g. to remove every exposed tree root from every nature strip in the Shire).



Slide 7

## Spencer –vs- Maryborough City Council

- This case related to a trip and fall on the footpath.
- The Court Decision on the Appeal demonstrated that a reasonable inspection system does not have to be “gold plated” – it is not necessary to commit to close and constant inspection that would involve irrational or unreasonable use of resources.

IPWEAQ 2002 CONFERENCE “Riding the Wave to Sustainability”



Slide 8

## A humble start

- 1995 – first inspection systems introduced
  - playground equipment (based on Australian Standards covering inspection, maintenance & operation)
  - Commercial Areas (Town Centres) covering footpaths/trees/signs/street furniture etc

IPWEAQ 2002 CONFERENCE “Riding the Wave to Sustainability”



## Slide 9

### Claims continued

- While we were able to defend some claims, the number of claims overall was still increasing
- Maintenance efforts tended to focus on reactive responses rather than a proactive program.
- 1998 – started work on a very basic maintenance manual (part of the defence of the Percy claim).

IPWEAQ 2002 CONFERENCE "Riding the Wave to Sustainability"



## Slide 10

### The next step in the improvement process

- A complete review of the Maintenance Manual was undertaken in 2001.
- At the same time:
  - the service level for Parks Operations was reassessed and budget allocation increased (it helped that this initiative was led by Council)
  - A 10 Year Asset Management Plan was developed leading to increased funding for some activities (rehabilitation of footpaths)

IPWEAQ 2002 CONFERENCE "Riding the Wave to Sustainability"



## Slide 11

### The steps we took

- Maintenance Manual aligned with Budget Structure
- Divided the Shire into Work Zones (previously on a electoral divisional boundary basis) and crews allocated to zones.
- Established levels of service for various activities within budget allocations

IPWEAQ 2002 CONFERENCE "Riding the Wave to Sustainability"



## Slide 12

- Safety inspection frequencies aligned with the level of service for the activity
- Identified the higher risk facilities and concentrated efforts towards improvements in inspection and maintenance of those facilities
- Procedures and inspection forms were developed for each facility
- Safety inspection for Trees & Shrubs is a sub-level of all the facility inspection reports.

IPWEAQ 2002 CONFERENCE "Riding the Wave to Sustainability"



## Slide 13

- Safety inspections for vehicle access/driveways to private property is a sub-level of the inspection procedures for Commercial Areas and Pathways/Bikeways. (Notices are served on property owners under Roads Local Law.)
- Responsibility for inspection assigned – primarily to officers with the maintenance responsibility.

IPWEAQ 2002 CONFERENCE "Riding the Wave to Sustainability"



## Slide 14

### Important principles

- The most effective and efficient system is to have the inspection and maintenance programs aligned.
- The programs must be documented and responsibilities clearly assigned.
- Do not be too ambitious – worse to have a program that you cannot meet.

IPWEAQ 2002 CONFERENCE "Riding the Wave to Sustainability"



## Slide 15

- Where practical, maintenance work should be based on the outcomes of the safety inspection.
- In most cases experienced field maintenance staff can readily identify problems.

IPWEAQ 2002 CONFERENCE "Riding the Wave to Sustainability"



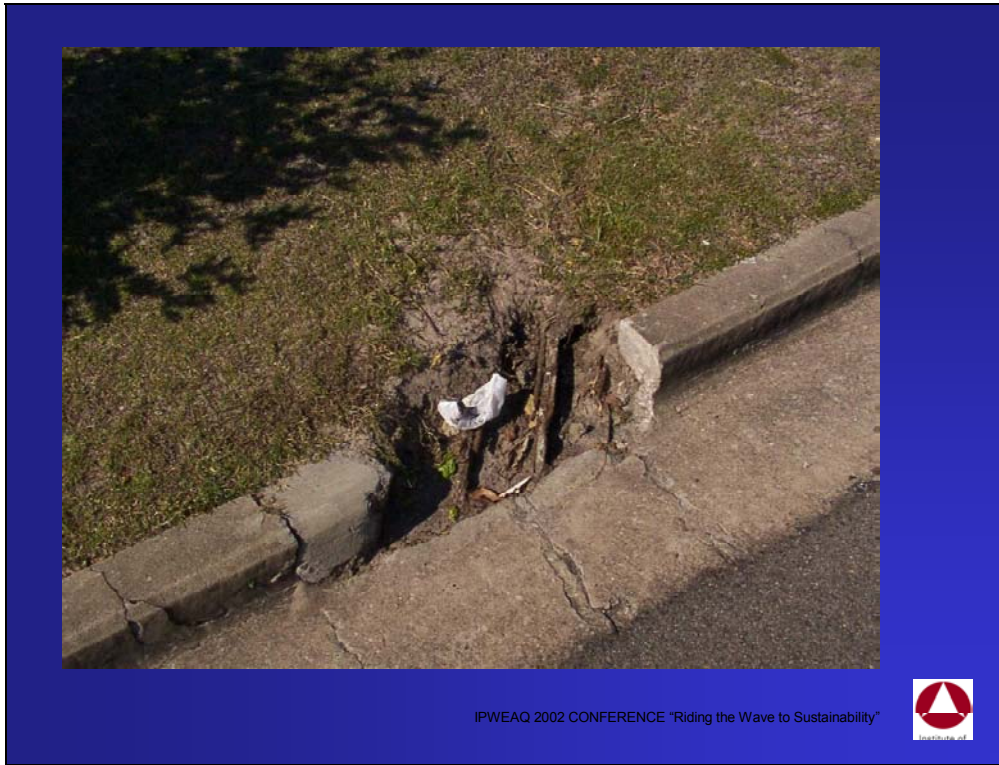
## Slide 16



IPWEAQ 2002 CONFERENCE "Riding the Wave to Sustainability"



Slide 17



Slide 18



## Slide 19

- It is essential that appropriate records are kept:
  - To confirm that inspection & maintenance programs have been met
  - The outcomes of the inspection & maintenance programs
  - Action taken as a result of the inspection & maintenance programs
- Care is required in “language” used – don’t use the word “*dangerous*” unless you are prepared to do something immediately.

IPWEAQ 2002 CONFERENCE “Riding the Wave to Sustainability”



## Slide 20

### Work done by Contractors

- Contracting work to the private sector does not provide protection to local government from claims for compensation
- Part of the argument in the Percy case was that the tree root was obscured by a tuft of grass – Council could prove it had been mown by its contractors 8 days prior to the incident.

IPWEAQ 2002 CONFERENCE “Riding the Wave to Sustainability”



## Slide 21

- Ensure Public Liability Insurance cover is adequate and maintained
- The level of service is appropriately documented in the contract
- Service dates are captured on claims for payment
- An inspection system is in place to ensure Contractor performance and appropriate records are kept
- Non-performance must be quickly rectified

IPWEAQ 2002 CONFERENCE "Riding the Wave to Sustainability"



## Slide 22

### Conclusions

- Our simple approach is based on an inspection system aligned with existing resources and budget
- Our day labour workforce has ownership of the system and they are more proactive in identifying risks

IPWEAQ 2002 CONFERENCE "Riding the Wave to Sustainability"



## Slide 23

- Customer requests for reactive maintenance have stabilised in spite of growing population and infrastructure
- Our first attempt at the system provided a successful defence in the Percy case.
- Since the further refinement in 2001 - we are finally seeing some cases where the where Council's insurers are prepared to deny liability.

IPWEAQ 2002 CONFERENCE "Riding the Wave to Sustainability"



## Slide 24

### It never ends

- The process is one of continual improvement and review to keep pace with changes in the legal system and community expectations for levels of service.

IPWEAQ 2002 CONFERENCE "Riding the Wave to Sustainability"

