

Mutual Liability Scheme & Wallmans Lawyers

Warren v DC LEP Key take aways

7th November 2025

SACCA Coastal Forum



Mutual
Liability
Scheme

Mutual Liability Scheme (MLS)

The Mutual Liability Scheme is a Local Government indemnity Scheme established by the Local Government Act 1999.

Membership of the MLS is compliance for the purposes of section 142 of the Local Government Act - membership of the Scheme complies with the duty to insure against liability.

S142 – Duty to insure against liability

... (3) Membership of the *Local Government Association Mutual Liability Scheme* constitutes insurance for the purposes of this section.

Mutual Liability Scheme isNOT insurance

The LGAMLS is a Local Government ***mutual discretionary indemnity scheme***, which indemnifies Members for civil liabilities.

Under the LGAMLS Rules “**civil liability**” means :

any liability not being criminal resulting from an obligation, function, power or duty of a Member arising under law.

Cover is for all sums which the Member shall be legally liable to pay to third parties by reason of Civil Liabilities arising from and in connection with the Local Government business.

Councils Duty to fence the coastline?

The South Australian coastline has a combined length of 4,204km, with a significant component being that of mainland coastline. Our coastline has many characteristics and can be remote and rugged and then protection.

What is the current legal position in relation to Councils duty to fence the coastline?

Warren v DC Lower Eyre Peninsula

Background

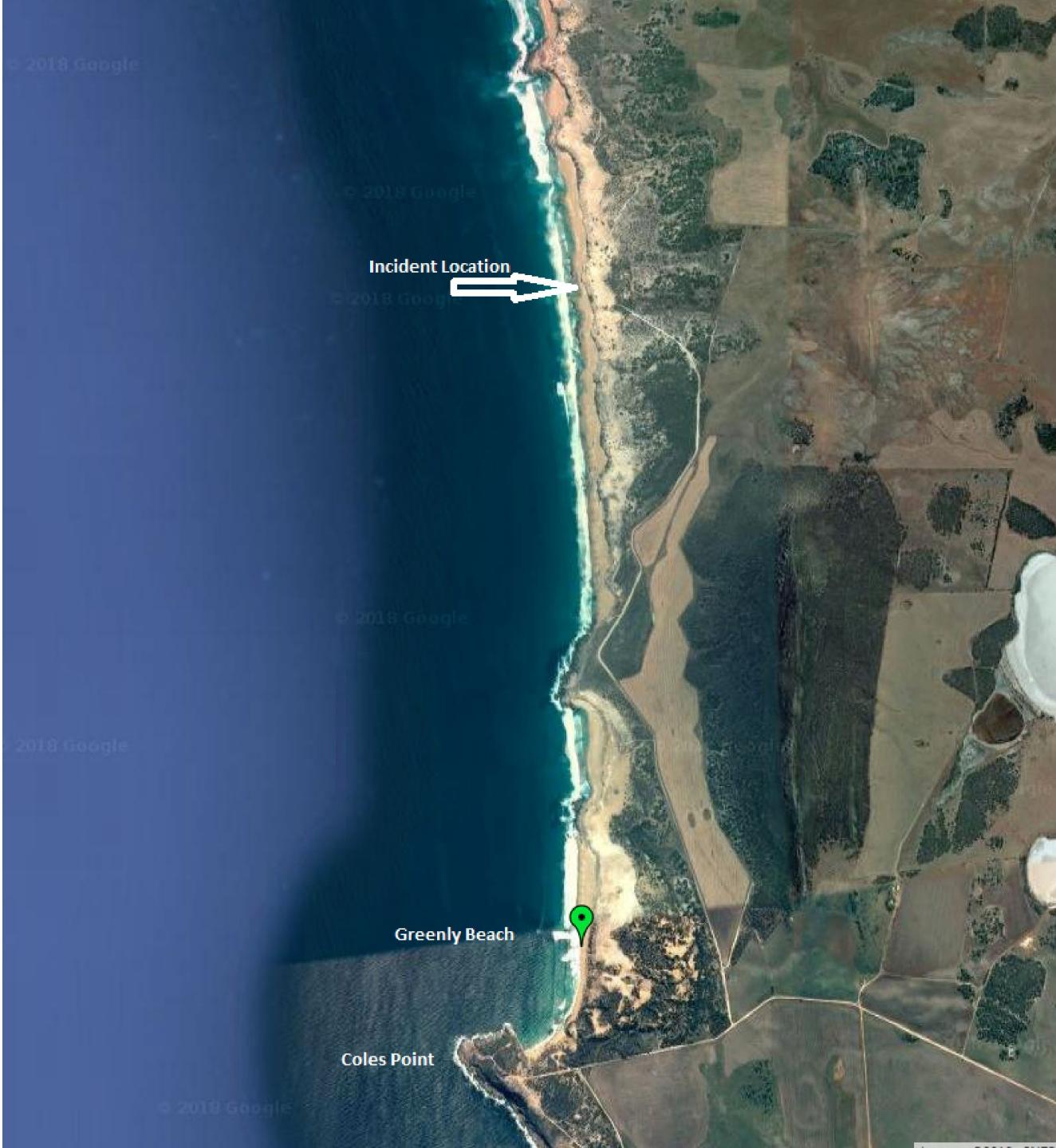
In December 2013:

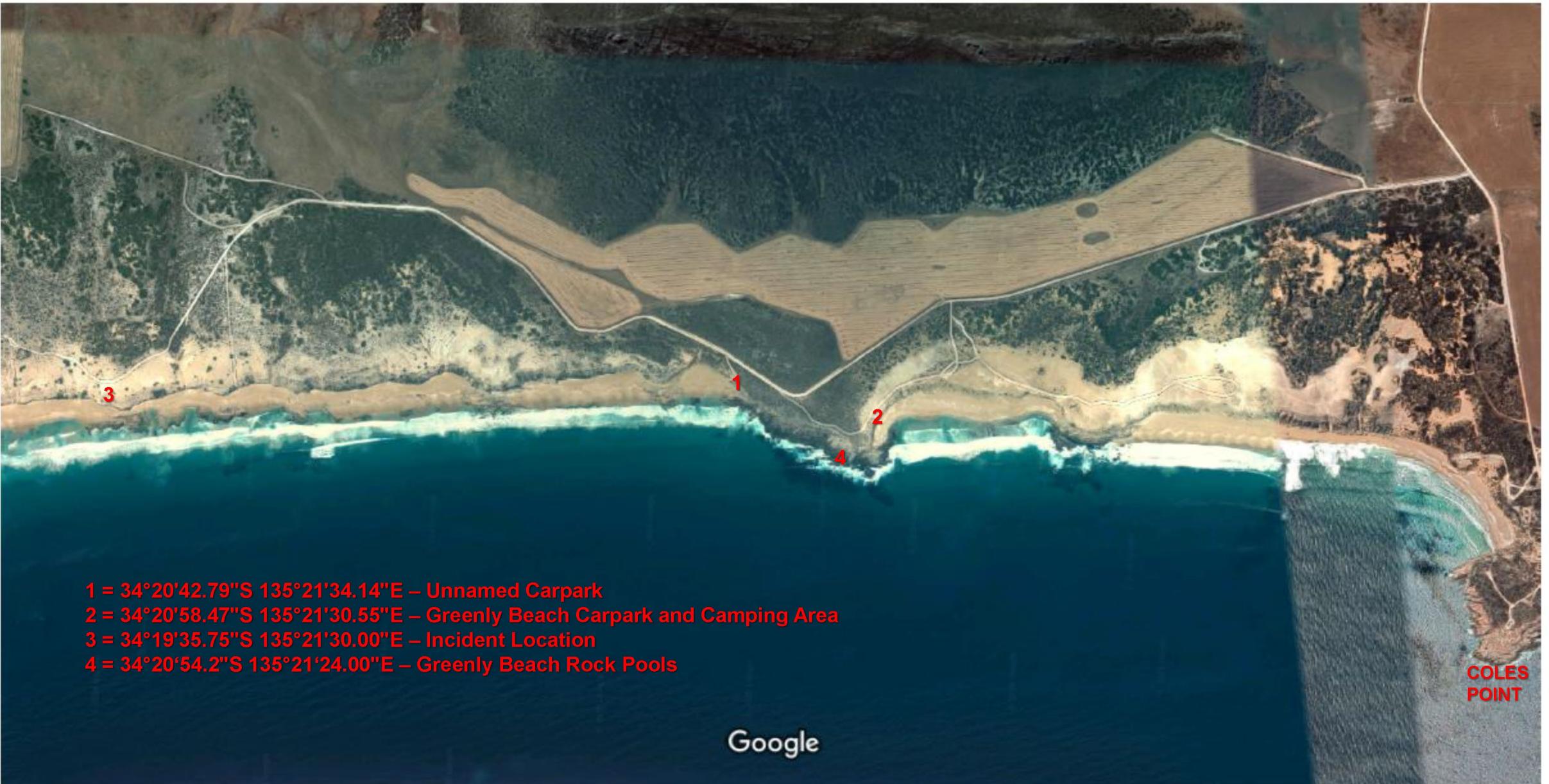
- the claimant, Gregory Warren suffered severe injuries when he fell 10 metres from a cliff onto rocks at a beach on the Eyre Peninsula.
- claim was made stating Council breached its duty of care in not providing signage and guard rails to prevent the accident occurring.
- Council was the occupier of the land where the incident occurred and the location was remote, being approximately 50 kms north of Coffin Bay and only accessible by dirt road.

Warren v DC Lower Eyre Peninsula

Background continued...

- The incident location was described as “**wilderness coastline**” at the time of the incident, notwithstanding increased publicity relating to the Greenly Beach rock pools in the years that followed.
- The Scheme heavily defending the claim, in order to protect our Member, but also all coastal Councils – not just South Australia, but also nationally.





1 = $34^{\circ}20'42.79"S$ $135^{\circ}21'34.14"E$ – Unnamed Carpark

2 = $34^{\circ}20'58.47"S$ $135^{\circ}21'30.55"E$ – Greenly Beach Carpark and Camping Area

3 = $34^{\circ}19'35.75"S$ $135^{\circ}21'30.00"E$ – Incident Location

4 = $34^{\circ}20'54.2"S$ $135^{\circ}21'24.00"E$ – Greenly Beach Rock Pools

COLES
POINT

Google























Trial: Warren v DC Lower Eyre Peninsula

- The trial took place in the District Court of South Australia in 2022.
- Application to the Court was made by the Litigation Guardian for Mr Warren seeking damages from the Council on the grounds that the Council had breached its duty of care to members of the public, by:
 1. failing to place signs and barriers to warn members of the public of the presence of the cliff and directed them to prevent the accident occurring.
 2. failing to erect signs and barriers directing visitors to a safe route to the beach
 3. failing to conduct a risk assessment in respect of the car park area – a fundamental component of the Appellant's case was that the Council had created and maintained the area where the vehicles had been parked prior to the Incident; thereby, attracting visitors to the area.

Implications

- This case had significant implications for coastal councils.
- How many other similar locations?
- Financial and logistical burden – Significant

Trial Judgment: Warren v DC Lower Eyre Peninsula

- In 2024, the judge delivered his findings in favour of Council.

“A reasonable person, in the shoes of the claimant, should never have made the decision to run down the face of an unknown cliff, and there could have been no expectation by Council that the Claimant would have made the decision to do so. Having made his poor decision, the claimant is responsible for the outcome of his actions”

By way of summary, the judge determined:

- that the Council as the occupier of the land in question, owed a duty of care to visitors to protect them from physical injury; however, found that the Council did not breach that duty by failing to erect a warning sign or barrier; and
- even if Council did breach its duty, in the absence of the Council’s duty extending to placing a sign or barrier at the point where the Appellant attempted to descend the escarpment, that breach would not have been causative of the Incident.

Appeal: Warren v DC Lower Eyre Peninsula

On 4 and 5 November 2024, the claimant appealed the trial judge's decision.

The appeal was heard by 3 judges in the Court of Appeal, in the Supreme Court.

Appeal Judgment: Warren v DC Lower Eyre Peninsula

On 21 August 2025, the Court of Appeal unanimously dismissed the appeal by the claimant against the Council.

It upheld the trial judge's finding that the Council, as the occupier of land, owed a duty of care to visitors to protect them from physical injury and that **the Council did not breach its duty** by failing to erect a warning sign or barrier.

In particular, the Court noted:

- the remote location of the incident,
- low visitor numbers; and
- the absence of facilities such as bins, signage, formed car parks and public toilets.

Appeal Judgment: Warren v DC Lower Eyre Peninsula

The Court recognised the challenges facing regional Councils, in particular, *with limited and finite resources, which are allocated in such a way as to provide the most benefit to the community.*

Affording priority to areas of highest patronage is consistent with such an approach and, in appropriate cases (of which this was one) this can mean that a *reasonable response to a foreseeable risk may be that no action need be taken* due to those competing priorities.

4 Key Take Aways

1. A sign will only be effective if ***it informs a person of something of which they were not already aware.***
2. A warning sign will only be effective if it is ***located where it will be seen and act as a deterrence.***
3. The ***finite resources of councils*** are recognised as being a relevant factor in determining what response (if any) is required in response to a foreseeable risk.
4. It is appropriate to direct resource allocation to areas of highest patronage.

Does the Coastline need to be fenced?

- Yes?
- No?
- Sometimes?

Application for Special Leave to Appeal to the High Court:

Warren v DC Lower Eyre Peninsula

On **18 September 2025**, Mr Warren filed an application for Special Leave to Appeal to the High Court.

We await the outcome of the application.

Helping local government build stronger communities.



**Mutual
Liability
Scheme**

Contact and further information:

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