



## HIGH COURT OF AUSTRALIA

14 March 2018

JOSHUA JAMES PIKE & ANOR v KYM LOUISE TIGHE AND MICHAEL JAMES TIGHE  
& ANOR  
[2018] HCA 9

Today the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of Queensland. The Court held that s 245 of the *Sustainable Planning Act 2009 (Q)* ("the Act") obliges a successor in title to ownership of a parcel of land created by the reconfiguration of a larger parcel to comply with a condition of the approval for the reconfiguration that should have been, but was not, satisfied by the original owner prior to completion of the reconfiguration.

The Townsville City Council ("the Council") approved an application by the then registered proprietors of land for development by way of reconfiguration of an existing lot into two lots. The approval was subject to certain conditions, including a condition ("condition 2") that required that an easement be provided over lot 1 for the benefit of lot 2. The schedule to the approval provided that, unless explicitly stated elsewhere in the approval, all conditions had to be satisfied prior to the Council signing the survey plan. The registered proprietors of the original lot executed an easement in terms which did not reflect condition 2. Despite this omission, the Council approved the relevant survey plan to give effect to the reconfiguration. The registered proprietors later executed a second easement that was relevantly identical to the first easement. Subsequently, the titles for lots 1 and 2 were created and the second easement was registered in relation to each title. The first respondents, the Tighes, were later registered as the owners of lot 1 and the appellants, the Pikes, were registered as the owners of lot 2.

In the Planning and Environment Court of Queensland, the Pikes sought a declaration that condition 2 of the development approval had been contravened and an enforcement order directing the Tighes to comply with that condition. The primary judge granted the Pikes' application, holding that s 245 of the Act had the effect that the conditions stipulated in the development approval ran with the land. His Honour held that the Tighes had committed a development offence which warranted the making of an enforcement order to provide the Pikes with an easement conforming to condition 2. The Court of Appeal allowed the Tighes' appeal, holding that s 245 binds only the person permitted by the approval to carry out the subdivision of the original lot.

By grant of special leave, the Pikes appealed to the High Court. The Court held that s 245(1) of the Act expressly gives the conditions of a development approval the character of personal obligations capable of enduring in their effect beyond the completion of the development which the development approval authorised. It was held that the land to which the development approval attaches is all the land the subject of the development application. The Court held that, by failing to provide the easement required by condition 2 after being requested to do so, the Tighes contravened s 580 of the Act. Consequently, the Planning and Environment Court could make an enforcement order under ss 601, 604 and 605 requiring the Tighes to fulfil the condition. The High Court therefore allowed the appeal and remitted the matter to the primary judge for the making of final orders.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*