



# The Planning & Environment Court

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**JCU Law Seminar**

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# WELCOME

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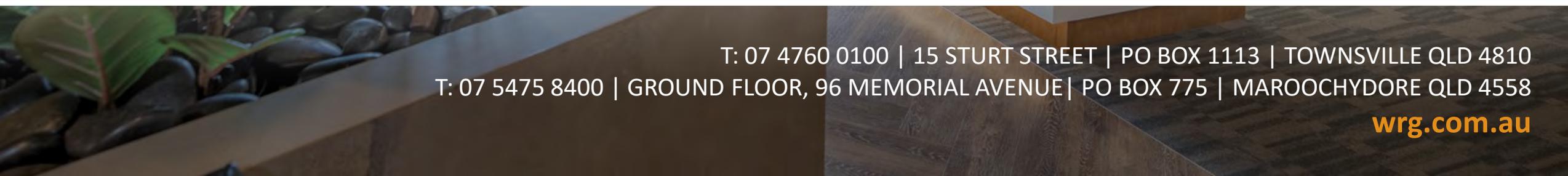
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# DISCUSSION POINTS

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- My legal journey
- wilson/ryan/grose
- Planning and Environment Court – Hearings in the Regions
- Pike v Tighe – A Case Study as a Practitioner
- Graduate Opportunities
- Question Time



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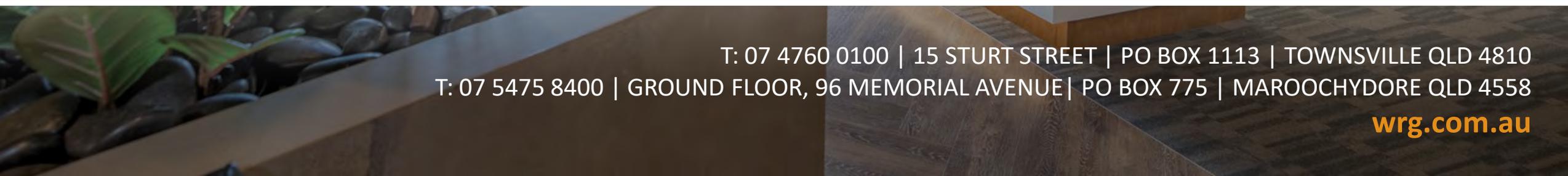
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# MY LEGAL JOURNEY

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- Commenced work as an article clerk at wilson/ryan/grose in January 1983.
- Admitted to practice as a solicitor in December 1988.
- Became a Partner at wilson/ryan/grose in July 1996.
- Partner in charge of the Planning and Environment work group.



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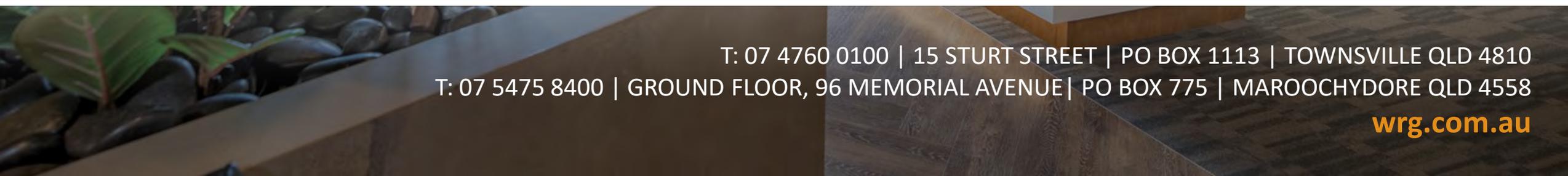
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# WILSON/RYAN/GROSE

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- Continuous operation as a legal practice in Townsville since 1895 (127 years).
- Agnes McWhinney – First female solicitor admitted in Queensland.
- Lachlan Chisolm Wilson – The ‘Wilson’ in our firm name. Distinguished soldier in World War 1 with the Australian Light Horse.
- Judge Bowrey – Recent appointment to the Federal Circuit Court.
- Offices now located in Townsville and Maroochydore.
- Full suite of legal services.



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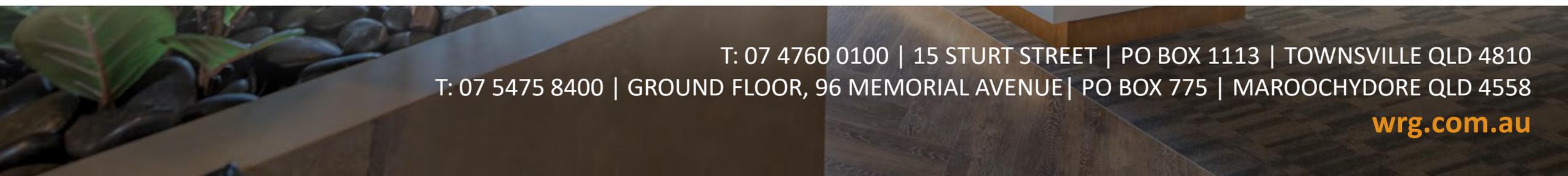
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# PLANNING & ENVIRONMENT COURT

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Types of matters I have been involved in:

- Planning and Development
- Environmental Protection
- Coastal Protection and Management
- Fisheries and Marine Parks
- Heritage
- Transport Infrastructure
- Vegetation Management



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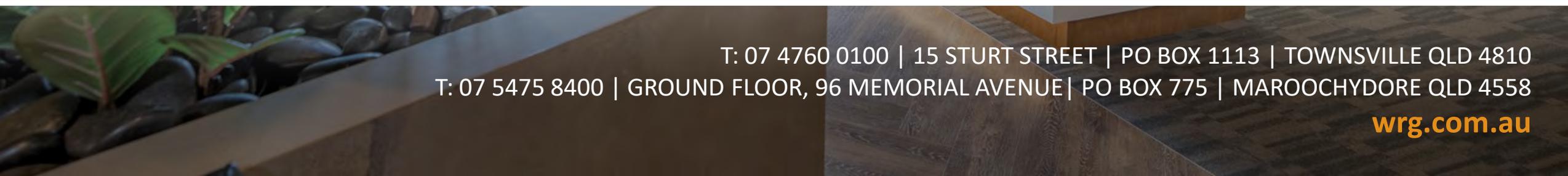
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# PLANNING & ENVIRONMENT COURT

## Regional Courts

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- Cairns – 2 Judges
- Townsville – 1 Judge
- Maroochydore – 2 Judges
- Ipswich – 1 Judge
- Southport – 1 Judge



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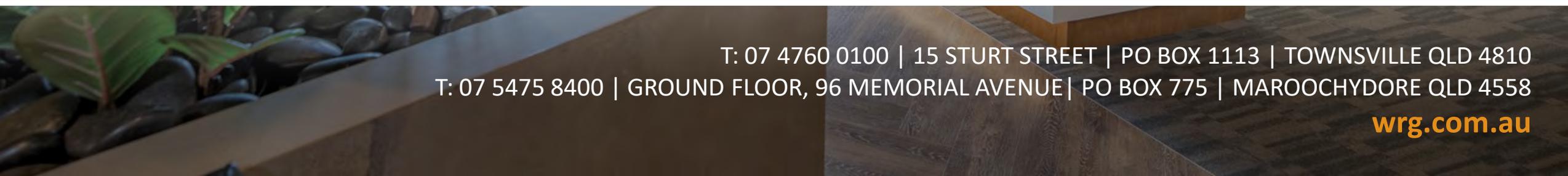
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# PLANNING & ENVIRONMENT COURT

## Legislation and Rules

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- Planning Act
- Planning and Environment Court Act
- Planning Regulations
- Environmental Protection Act
- Sustainable Planning Act
- Integrated Planning Act
- Local Government (Planning and Environment) Act
- Local Government Act
- Planning and Environment Court Rules
- Uniform Civil Procedure Rules
- Numerous other relevant Acts providing jurisdiction to the Court



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# OTHER COURT JURISDICTIONS

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- The Land Court is separate and distinct from the Planning and Environment Court. In its appeal process there is a Land Appeal Court prior to any appeal to the Court of Appeal.
- The Land Court principally deals with claims for compensation under the Acquisition of Land Act, claims for compensation under the Mineral Resources Act and determination unimproved valuations which form the basis of rentals under the Land Act, land tax assessments and Council rates.
- Prosecutions in both the District Court and Magistrates Court.
- Development Tribunals and Queensland Civil and Administrative Tribunal (QCAT).

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# PIKE v TIGHE

## The Relevant Facts

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- A development approval was issued by the Townville City Council on 29 May 2001 which required an easement to be put in place on Lot 1 for access and utilities.
- The development approval to reconfigure the land had been obtained by a previous owner who registered both the plan and the easement and then sold the respective lots. Lot 1 was purchased by Tighe and Lot 2 was purchased by Pike.
- The Pike's could not construct a house on Lot 2 without an easement which enabled them to connect to the public utilities available on Norah Road which is located to the North of Lots 1 and 2.
- The Council was not aware of any dispute between the owners until Court proceedings were commenced in the Planning and Environment Court.



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# PIKE v TIGHE

## The Condition

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### 2. Access and Utilities Easement

An easement(s) to allow pedestrian and vehicle access, on-site maneuvering and connection of services and utilities for benefited Lot (2) overburdened Lot (1) must be provided. The easement(s) must be registered in accordance with the *Land Title Act 1994*, in conjunction with the Survey Plan.

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# PIKE v TIGHE

## Section 245 of Sustainable Planning Act 2009 ('SPA')

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### **245 Development approval attaches to land**

(1) A development approval—

- (a) attaches to the land the subject of the application to which the approval relates; and
- (b) binds the owner, the owner's successors in title and any occupier of the land.

(2) To remove any doubt, it is declared that subsection (1) applies even if later development, including reconfiguring a lot, is approved for the land or the land as reconfigured.

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# PIKE v TIGHE

## Applicant's Argument

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- The Applicant contended that the development condition required the easement to address on-site manoeuvring and the connection of services and utilities, and it did not.
- That Section 245 meant that the new owners (the Tighe's) were required to provide an easement in the terms of development condition 2.
- That the Respondents were continuing to commit a development offence.

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# PIKE v TIGHE

## Respondent's Argument

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- The Respondent contended that the registration of the plan created an interest in fee simple and that title to the property was free from any encumbrance or interest that might otherwise have been recorded at registration of the plan of survey.
- The Respondent relied on the High Court decision in *Hill palm Pty Ltd v Heavens Door Pty Ltd* [2004] 220 CLR472.
- The Respondent accepted that Section 245 of SPA applied to the development conditions, however proceeded on the basis that the development condition itself was spent at the point of registration of the plan and creation of Lots 1 and 2.
- The Respondent contended that the application should be dismissed on that basis.

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# PIKE v TIGHE

## Judgement of Planning and Environment Court

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- The presiding Judge concluded that the requirement for an easement (including the purpose for the easement) which was contained in the development approval ran with the land.
- His Honour concluded that there was no inconsistency between Section 245 of SPA and the principle infeasibility of title contained in the Land Title Act.
- His Honour found that a development offence had been committed and ordered that the relief sought in the application be granted.

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# PIKE v TIGHE

## Appeal to the Court of Appeal

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- An appeal to the Court of Appeal requires leave to appeal before the matter can proceed, however as matter of practice both the application for leave to appeal and the issues the subject of the appeal are presented at the same time.
- The matter came on for hearing before the Court of Appeal in Brisbane on 29 July 2016.

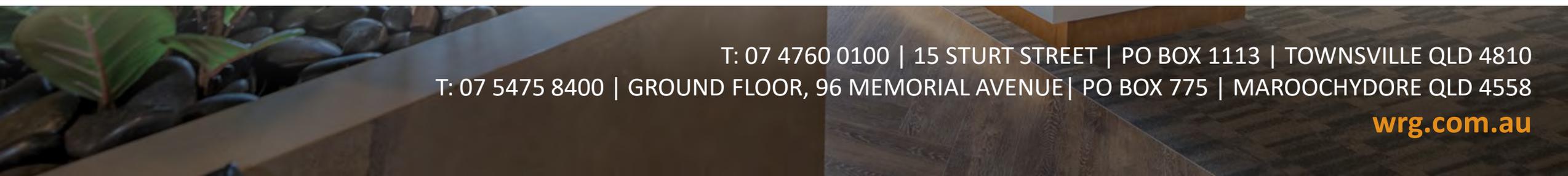
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# PIKE v TIGHE

## Tighe's Grounds of Appeal

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The Tighe's had identified 3 specific grounds of appeal:



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# PIKE v TIGHE

## Ground 1

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The learned primary Judge erred in deciding the Application on a basis neither put nor argued by any party namely that the Respondents had no indefeasible title to their land sufficient to deny the applicant claim to relief – the imposition of an easement in their favour over that land because s.185(1)(c) of the *Land Title Act 1994 (Qld)* applied in that particulars of the easement sought had been omitted from the Land Title Registry – a fact of which there was no evidence and which could not in any event have constituted a development offense [sic] giving the Court jurisdiction to the make the order sought.

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# PIKE v TIGHE

## Ground 2

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The primary judge erred in finding that the Court had jurisdiction to make the Order made by reason of the commission of an 'offense' when there was no such offence and no proper basis to find as a fact that there was.

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# PIKE v TIGHE

## Ground 3

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That the primary judge erred in finding that a development approval which ‘runs with the land’ is an exception to the indefeasibility of title afforded by the *Land Title Act 1994* such as to require the First Respondent to both recognize an unregistered interest in land and take unidentifiable steps to register such an interest.

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# PIKE v TIGHE

## Judgment of the Court

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- All 3 members of the Court of Appeal allowed the appeal on the basis that the power of the lower Court to make the relevant enforcement order arose only upon the Court being satisfied that the Tighe's had committed the alleged development offence.
- As the Tighe's were not parties to the reconfiguration of the original lot it did not impose any obligations on them.
- The primary Judge erred in law holding that the Tighe's committed a development offence and for that reason there was no power to make the enforcement order.
- Leave to appeal was granted and the appeal was allowed.
- The Court of Appeal judgment in this appeal was handed down on the last Court sitting day of the calendar year.

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# PIKE v TIGHE

## Special Leave

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- Pursuant to Section 35A of the Judiciary Act in considering whether to grant an application for special leave to appeal the High Court may have regard to any of the matters it considers relevant but shall have regard to:
  - (a) whether the proceedings in which the judgment to which the application relates was pronounced involve a question of law:
    - (i) that is of public importance, whether because of its general application or otherwise; or
    - (ii) In respect of which a decision of the High Court, as the final appellate court, is required to resolve differences of opinion between different courts, or within the one court, as to the state of the law; and
  - (b) Whether the interests of the administration of justice, either generally or in the particular case, require consideration by the High Court of the judgment to which the application relates.

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# PIKE & TIGHE

## Special Leave Application

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- Notification was received that the special leave application would proceed by way of hearing and not be determined on the papers.
- The special leave application was listed in Sydney before 3 members of the High Court to determine the special leave application.
- The High Court ordered that:
  1. Special leave to be granted to the applicants to appeal to this Court from the whole of the judgment and order of the Court of Appeal of the Supreme Court of Queensland given and made on 23 December 2016.

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# PIKE v TIGHE

## Appeal Hearing

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- As the Appellant the issues which were put before the High Court were framed in the following manner:
  - First, did the power of the Planning and Environment Court to make an enforcement order under s.604 of SPA only arise upon that Court being satisfied that the First Respondents had committed the development offence of contravening a condition of a development approval (as held by the Court of Appeal)?
  - Secondly, was s.245 of SPA inapplicable to the First Respondents for either or both of the following reasons (as held by the Court of Appeal):
    - (a) because the First Respondents were not parties to the reconfiguration of the original lot approved by the development approval;
    - (b) because the obligation in the relevant condition only had to be complied with at the time of registration of the survey plan, prior to the First Respondents' purchase of their lot?

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# PIKE v TIGHE

## Judgment of the High Court

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- In a unanimous Judgment all High Court Justices concurred Section 245(1) of SPA was not expressed to operate in relation to the carrying out of an approved development: it expressly gave 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 authorises.
- They distinguished it from the previous High Court Decision of *Hill palm Pty Ltd v Heavens Door Pty Ltd* [2004] 220 CLR472.
- They decided the Court of Appeal erred in regarding the Section as applicable only to successors in title of the unsubdivided original lot.
- They accepted that a successor in title would need to be given an opportunity to comply with or to rectify any outstanding conditions.

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# PIKE v TIGHE

## Judgment of the High Court (continued)

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- They were satisfied that the owners of Lot 1 had ample opportunity to provide an easement as required by the development conditions and they failed to do so.
- They therefore ordered that both the questions posed should be answered in the affirmative.
- The appeal was allowed, the orders of the Court of Appeal set aside and the Respondent was ordered to pay costs of the proceeding and in the proceedings of the Court below.

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# GRADUATE POSITIONS

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- We are a firm that has a number of specialised practice groups.
- We regularly employ graduates to work in those groups e.g. Workplace Relations, Planning and Environment, Commercial Litigation, Family Law.
- We run two paid internships for 2 weeks a year. If you are interested in applying for those positions then you can go to our website.
- We have recently agreed to accept student placements as part of the James Cook University Work Integrated Learning (WIL) program and we have taken on 1 student for the period 20 February – 16 June. We are looking forward to continued involvement in this program.
- When we advertise for graduate positions we advertise on Prosple: <https://prospole.com/>
- We welcome any applications to do work experience and if we are able to accommodate the request we will endeavour to do so.
- We support JCU graduates with a large number of our lawyers and Partners having completed their degree at JCU and we look forward to continuing to employ graduates who are passionate, driven, ethical and engaged in the communities we work and live.

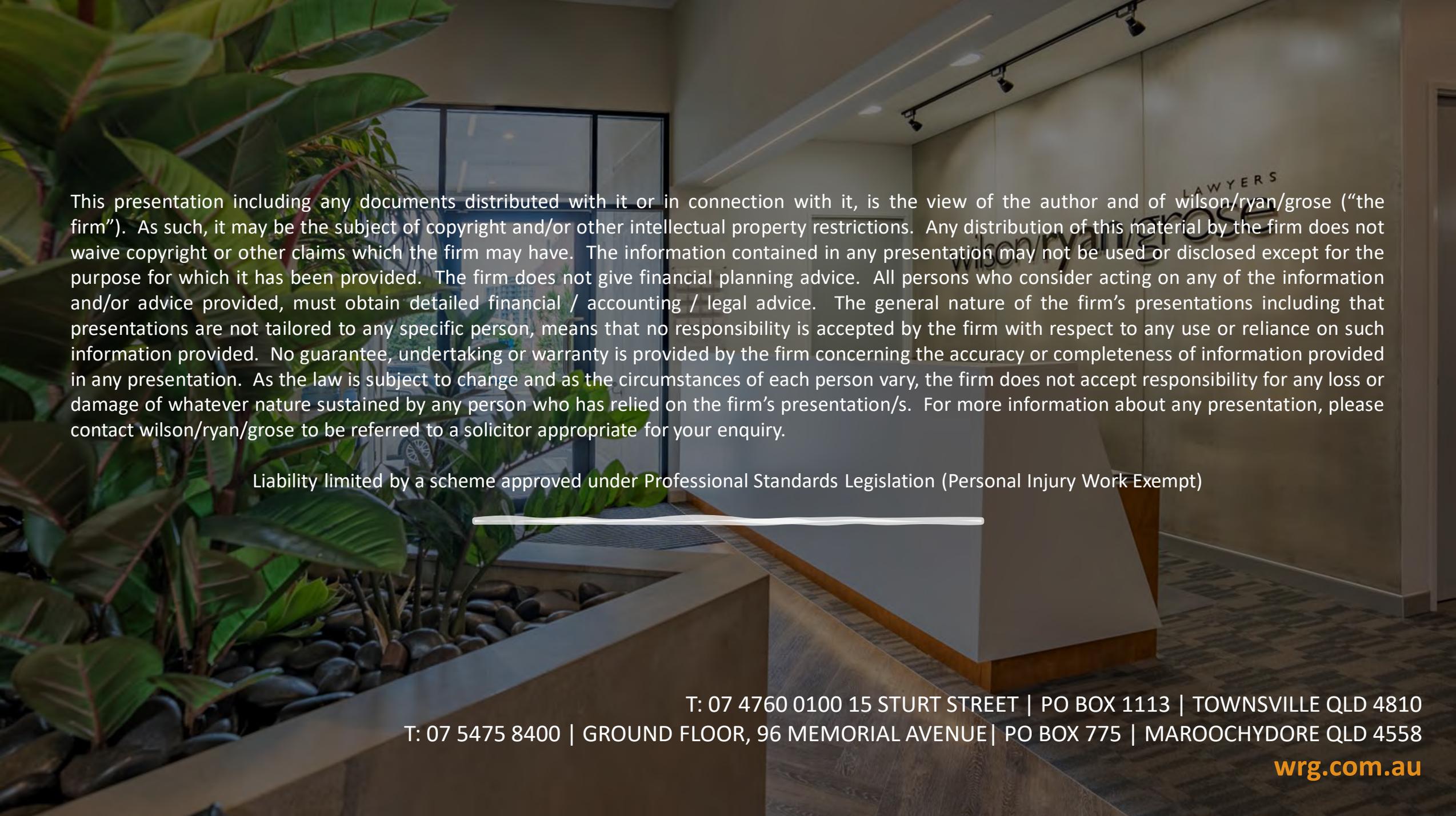
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# QUESTION TIME

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