

## NOTICE OF APPEAL

### COURT DETAILS

Court Supreme Court of New South Wales, Court of Appeal  
Registry Sydney  
Case number 40279 of 08

### TITLE OF PROCEEDINGS

Appellant Hastings Point Progress Association Inc  
First respondent Tweed Shire Council  
Second respondent Aeklig Pty Limited

### PROCEEDINGS IN THE COURT BELOW

Title below Hastings Point Progress Association Inc v Tweed Shire Council and Anor [2008] NSWLEC 180  
Court below Land and Environment Court of New South Wales  
Case number below 40785 of 2007  
Date[s] of hearing 5 February 2008; 6 February 2008 & 7 February 2008  
Material date 6 June 2008  
Decision of Pain J

### FILING DETAILS

Filed for Hastings Point Progress Association Inc  
Filed in relation to The Decision in the Court Below  
Legal representative The Environmental Defender's Office  
Legal representative reference Kirsty Ruddock  
Contact name and telephone Sue Higginson, ph 6622 7381

### HEARING DETAILS

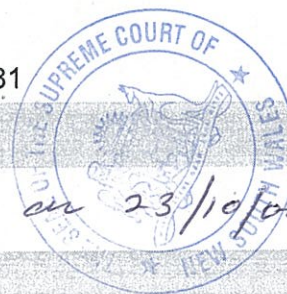
This notice of appeal is listed for directions at 10.00am on 23/10/08

### TYPE OF APPEAL

Local Environmental Plan – Building Approval – Restrictions – Use of Land

### DETAILS OF APPEAL

- 1 This appeal is brought under s58 of the *Land and Environment Court Act 1979* (NSW)
- 2 This notice of appeal is not filed pursuant to leave to appeal.
- 3 The appellant has filed and served a notice of intention to appeal, which was served on the solicitor for the first respondent on 4 July 2008 and on the registered



office of the first respondent on 9 July 2008 and the solicitor for the second respondent on 4 July 2008 and on the registered office of the second respondent on 7 July 2008.

- 4 The appellant appeals from the part of the decision below in relation to failure to consider clause 8 of the Tweed Local Environmental Plan (2000).

### **APPEAL GROUNDS**

- 1 The trial Judge erred in finding that clause 8 in Tweed Local Environmental Plan 2000 ("LEP 2000") gives rise to a potential inconsistency with State Environmental Planning Policy (Seniors Living) 2004 ("SEPP SL") and thus need not be taken into account in the determination of a development application for housing covered by SEPP SL. (Paragraph 59)
- 2 The trial Judge erred in finding that the effect of cl 17 of SEPP SL was that cl 8 of LEP 2000 cannot be used as a basis to refuse to grant development consent. (Paragraphs 59 and 63)
- 3 The trial Judge erred in finding that there is no obligation for the Council to assess the matters under cl 8 of LEP 2000 to determine whether cl 8 is satisfied. (Paragraph 62)
- 4 The trial Judge erred in finding that because the SEPP SL required a demonstration of "adequate regard" in relation to clauses 30 and 78 of its provisions as opposed to the satisfaction required under cl 8 of LEP 2000, cl 8 was inconsistent with SEPP SL. (Paragraph 64)
- 5 The trial Judge erred in finding that she did not need to consider whether cl 8 of LEP 2000 was considered in relation to the Aeklig DA. (Paragraph 65)

### **ORDERS SOUGHT**

- 1 Appeal allowed.
- 2 The Verdict and Judgment of the court below be set aside.
- 3 In lieu of the Verdict and Judgment in the Court below, Verdict and Judgment be entered for the appellant.
- 4 In the alternative to 3, remit the proceedings to the Land and Environment Court to determine whether the Council failed to consider cl 8 of LEP 2000 and for the

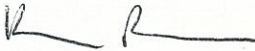
purposes of determining whether to exercise any discretion under s25B of the Land and Environment Court Act 1979.

- 5 The respondents to pay the appellant's costs.  
6 Such further or other order as the Court sees fit.

### SIGNATURE OF LEGAL REPRESENTATIVE


This notice of appeal does not require a certificate under section 347 of the Legal Profession Act 2004.

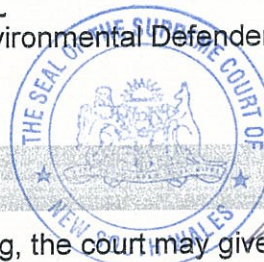
I have advised the appellant that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature   
Capacity Principal Solicitor, Environmental Defenders Office  
Date of signature 5 September 2008

### SIGNATURE OF OR ON BEHALF OF APPELLANT

I acknowledge that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature   
Capacity Principal Solicitor, Environmental Defenders Office  
Date of signature 5 September 2008



5 SEP 2008

### NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the orders sought in the notice of appeal and for the appellant's costs of bringing these proceedings.

You must enter an appearance before you can appear before the court.

### HOW TO RESPOND

Please read this notice of appeal very carefully. If you have any trouble understanding it or require assistance on how to respond to the notice of appeal you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the notice of appeal from:

- The court registry.

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).

**REGISTRY ADDRESS**

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	(02) 9230 8665

**PARTY DETAILS**

A list of parties must be filed and served with this notice of appeal.

**FURTHER DETAILS ABOUT APPELLANT****Appellant**

Name Hastings Point Progress Association Inc  
 Address PO Box 66 Hastings Point  
 NSW 2489

**Legal representative for appellant**

Name Kirsty Ruddock  
 Practising certificate number 22704  
 Firm Environmental Defender's Office  
 Contact solicitor Sue Higginson  
 Address Level 1, Suite 1, 71 Molesworth St  
 PO Box 212  
 LISMORE NSW 2480  
 Telephone 6622 7381  
 Fax 6621 3355  
 Email [sue.higginson@edo.org.au](mailto:sue.higginson@edo.org.au)

**DETAILS ABOUT RESPONDENT[S]****First respondent**

Name Tweed Shire Council  
 Address Civic & Cultural Centre, Murwillumbah, PO Box 816,  
 Murwillumbah NSW 2484

**Second respondent**

Name Aeklig Pty Ltd  
 Address Stacks/ Northern Rivers  
 12 Queen Street  
 Murwillumbah NSW 2484