

31 August 2021

**Mills Oakley**  
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Our ref: AXGS/ARKS/3194015All correspondence to:  
PO Box H316  
AUSTRALIA SQUARE NSW 1215Mr Paul Mitchell  
Chair, Northern Region Planning Panel  
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and Environment  
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ane gla.jones@richmondvalley.nsw.gov.au**Attention:** Lisa Foley, Angela Jones

Dear Mr Mitchell

**2014NTH020 – DA 2015/0096, Lot 163 DP 831052 and Lots 276 & 277 in DP 755624 (240 Iron Gates Drive, Evans Head)**

We refer to the above application. We act for the development applicant, Goldcoral Pty Ltd (**the applicant**).

We understand that the panel is currently scheduled to have a briefing session at 12pm-1pm on 6 September 2021 via videoconference. We are informed that the purpose of this session is to consider the report prepared by the Department of Planning, Industry and Environment dated 24 August 2021.

In the light of the report — and the similarly negative letter from Ms Jones of Richmond Valley Council (also dated 24 August 2021) — the applicant has determined that it will commence a Land and Environment Court appeal. The applicant proposes to use this process to progress the development application through to determination. The applicant's hope is that this matter will be able to be resolved by a 'section 34' agreement in the early stages of the proceedings.

Upon commencing the proceedings, the applicant intends to promptly ask the Court to agree to the variation of the development application (by the giving of 'leave'). The Court is able to do this **as if it were the consent authority** (under section 8.14(1) of the *Environmental Planning and Assessment Act 1979 (the EP&A Act)*).

Even though the final decision on this will now rest with the Court, the views of the panel, as the consent authority, will need to be considered by the Court. This means that the panel will need to have a position on the proposed variation.

However, in asking the Court's leave to allow variations sought, the applicant will be required to prepare an affidavit (and an accompanying notice of motion). This document has not yet been prepared (as we have only just now become aware of the position of the Department and the Council).

We submit to the panel that it should **not** determine its position on the proposed variation until:

- the Court proceedings have been commenced (likely within the next week); and
- the notice of motion and accompanying affidavit have been filed and served (likely within the next three weeks).

We suggest that the panel's position should only be decided in the light of:

- the affidavit that the applicant files and serves; and
- the legal advice that the panel will receive from the lawyers representing the Council in the proceedings.

(In terms of the latter point, we note that the Court customarily allows variations to applications if they will remove or narrow an issue in dispute. The matters that have been raised by the Department in report to the panel would not normally be a point of consideration for the Court.)

If the panel decides to proceed with its meeting on 6 September 2021 we would still be willing to attend and address the panel. However, given what we outlined above, the panel may now consider this meeting to be premature.

We will also ask that the Council refrain from preparing any statement of facts and contentions in the imminent proceedings until **after** the applicant's motion seeking leave to vary the application has been determined by the Court. This will avoid incurring unnecessary expenses.

Please contact Alex Kingsbury on (02) 9121 9042 if you would like to discuss this matter.

Yours sincerely



Aaron Gadiel  
**Partner**

Accredited Specialist — Local Government and Planning