

23 January 2019

NSW Planning and Environment

GPO BOX 39
SYDNEY NSW 2001

ATTENTION: EMMA BUTCHER

Dear Emma,

Re: Concept Plan Approval and Project Approval 06_199 – Freeway North Industrial Subdivision - Beresfield

Heatherbrae Investments Pty Ltd, a Special Purpose Entity established for the Project by Hunter Land Pty Ltd (Hunter Land) has acquired Lot 124 DP 1180585 (**Lot 124**), commonly known as 27 Canavan Drive, Beresfield having an area of approximately 15 hectares. Lot 124 forms part of the land which has the benefit of the Concept Plan and Project Approval MP06_199 as amended by 75W dated 23rd February 2011. Our proposal is to seek consent to the subdivision of Lot 124 from one (1) lot having an area of 15 hectares into twenty (20) industrial sized lots including two (2) roads and associated infrastructure.

To enable the subdivision of Lot 124, we are proposing to:

- (a) amend the Concept Plan Approval pursuant to section 75W of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* to remove any reference to the number of lots in the terms of the Concept Plan Approval;
- (b) seek a declaration from the Secretary that the subject “project” is State Significant Development (**SSD**); and
- (c) amend the (former) Project Approval MP06-199 to allow for the further subdivision of Lot 124 pursuant to section 4.55 of the EP&A Act.

The purpose of this letter is to outline our proposal in order that the proposed modifications and declaration may proceed as soon as possible.

Background

Major Project 06_199 was approved by the Minister of Planning on 28th September 2008. The Concept Plan and Project Approval subject of the Minister’s approval covered the construction of a 90 Lot Industrial Business Park subdivision with associated services and infrastructure. The project site is referred to as the Freeway North Business Park.

ALDI Australia (**ALDI**) expressed an interest in utilising part of the subject site as a regional distribution warehouse. Such a warehouse requires a significant area of land. ALDI acquired 15 hectares of land in the Business Park (Lot 124) which necessitated the consolidation of 90 lots into

56 lots. On 23rd February 2011, ALDI received project approval MP10_0042 for the ALDI Warehouse Project.

Also on 23rd February 2011, the Concept Plan Approval MP06_199 was modified pursuant to section 75W of the EP&A Act, including the reduction from 90 lots to 56 lots within the industrial park subdivision which was undertaken in three (3) stages, associated services and infrastructure, and two conservation/drainage reserves.

MP10_0042 ALDI Warehouse Project was not physically commenced and that consent has now lapsed. ALDI have now sold the land to Heatherbrae Investments. Heatherbrae Investments now seek to subdivide Lot 124 to generally reflect the original layout of the subdivision approved by the Minister of Planning on 28th September 2008 prior to the approval of the ALDI Warehouse Project and the Concept Plan Approval Modification of 23rd February 2011.

Newcastle City Council (NCC) have adopted an approach where the key elements for consideration relate to the number of lots for which consent is sought. NCC have issued subdivision certificates for land within the estate as a component of the Construction Certificate assessment where the layout is generally consistent with the terms of approval of MP No. 06_0199. NCC have advised (refer to email attached dated 31 August 2018) that Council will not support any further increase/exceedance in lot number without modification to the Concept Plan and Project approvals being approved by the Department of Planning.

Modification of Concept Plan Approval

Hunter Land proposes to:

- (a) remove any reference to the number of lots in the Concept Plan Approval MP06_199; and
- (b) demonstrate that the layout generally reflects the original intended layout of the Freeway North Business Park.

To this end, Hunter Land seeks to modify the Concept Plan Approval MP06_199 pursuant to section 75W and clause 3BA(5) of Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (Saving Regulation)*.

We note that the Concept Plan Approval MP06_199 can be modified under section 75W provided that it meets the criteria below:

(5) A concept plan may continue to be modified under section 75W pursuant to a request lodged on or after the cut-off date (whether or not the project is or has ceased to be a transitional Part 3A project), but only if the Minister is satisfied that:

- (a) the proposed modification is to correct a minor error, misdescription or miscalculation, or*
- (b) the proposed modification is of minimal environmental impact, or*
- (c) the project to which the concept plan as modified relates is substantially the same as the project to which the concept plan currently relates (including any modifications previously made under section 75W).*

This application seeks to subdivide Lot 124 to generally reflect the Project Approval MP06_199 for which the Concept Plan Approval MP06_199 was originally granted. Lot 124 is contained within the original Freeway North Business Park approved under MP06_199. The land is zoned IN2 Light Industrial and the proposed lot sizes comply with the Lot Size plan pursuant to *Newcastle Local Environmental Plan 2012*. The subdivision will enable smaller industrial land uses to be developed on the additional lots to be created.

The proposed modification of Concept Plan Approval MP06_199 is:

- of minimal environmental impact as it is a minor change to which reflects the original Concept Plan and Project Approval MP06_199 prior to its modification in 2011. Further, the storm water and infrastructure capacity of the Freeway North Business Park was designed for 90 Lots, the proposed number of lots under the proposal will result in 75 lots, well below the original proposal of 90 lots;
- in effect, correcting a mis-description of the Concept Plan Approval, in that the referral to the number of lots in the description of the Concept Plan Approval MP06_199 is currently creating confusion as to whether any further subdivision of the Freeway North Business Park can be approved. Noting the purpose and effect of a concept plan approval, as well as reviewing the instrument as a whole, it is clear that Concept Plan Approval MP06_199 was not intended to operate so as to prohibit further subdivision. Removing the reference to the number of lots in the description of the Concept Plan Approval MP06_199, will clarify how the instrument is intended to operate and will provide for future certainty and clarity for any development applications for the further subdivision of land within the Freeway North Business Park;
- substantially the same as the project to which the concept plan originally relates, involving largely the reinstatement of Project Approval MP06_199 for which the Concept Plan Approval MP06_199 was originally granted.

Accordingly, while we are only required to satisfy one of the elements of clause 3BA(5)(a)-(c) of Schedule 2 of the Savings Regulation, we are of the opinion that the Minister can be satisfied that the proposal meets all three elements of that clause.

We therefore formally seek to modify Concept Plan Approval MP06_199 in the following way:

1. Replace Condition A 1 of Schedule 2 as follows:

"Concept approval is granted only to the carrying out of this development solely within the Freeway North Concept Plan Area shown edged heavy black on the Proposed Subdivision Plan prepared by Delfs Lascelles Plan No. 17010 Drawing No.1 Revision 2.

1. *An industrial park subdivision as identified in the Proposed Subdivision Plan prepared by Delfs Lascelles Plan No. 17010;*
2. *Associated services and infrastructure; and*
3. *Two conservation/drainage reserves".*

Please confirm if you require any additional information in order to progress the application to modify Concept Plan Approval MP06_199.

Modification of the Project Approval

In order to modify the Project Approval MP06_199, we seek to have the Project declared as an SSD by order in the NSW Government Gazette (**Gazette**).

We therefore request that the Minister declare the Project as SSD as soon as possible. Once the order has been published in the Gazette we seek to modify the Project Approval MP06_199 under section 4.55(2) of the EP&A Act by lodging a modification application with the Department of Planning and Environment.

Please advise if you require any further information to progress this declaration.

Section 4.55(2) modification application

Given the nature of the modification sought, once the Minister has declared the Project to be SSD, a modification application will be lodged with the Department under section 4.55(2) of the EP&A Act.

Section 4.55(2) states:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

The modification sought to allow the subdivision of Lot 124 into 20 lots is considered to be substantially the same as the Project Approval MP06_199 as originally granted in 2008. This is because:

- The land has been cleared and serviced and will require minimal earthworks.
- The proposed subdivision will be wholly contained within the boundaries of the original Business Park approved under MP06_199 albeit with slightly different layout. Also, the proposal involves only a minor change to the original approval in 2008.
- The land is zoned IN2 Light Industrial and the proposed lot sizes comply with the Lot Size plan pursuant to *Newcastle Local Environmental Plan 2012*.
- The land uses proposed in the future will remain unchanged and will be industrial in nature.
- The boundaries and original intent of the Freeway North Business Park into industrial sized lots will remain unchanged, and reflect the reversal of the previous consolidation of a number of smaller lots to create Lot 124.

Please find **enclosed** an aerial map of the site as taken from SIX Maps and a draft DP showing the proposed subdivision of Lot 124.

We would be grateful if you could confirm if the Department requires any further information in order to proceed with the above proposal.

If you have any further questions, please do not hesitate to contact the undersigned.

Regards,
Hunter Land Pty Ltd

Brad Everett
Land Use Director