

Regulatory Impact Statement

***Lands Acquisition (Reconsideration of pre-acquisition declaration—Block 4 Section 33
Division of Dickson) Confirmation 2015***

Disallowable Instrument DI2015-248

Prepared in accordance with Chapter 5 of the *Legislation Act 2001*

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Mick Gentleman MLA
Minister for Planning**

Executive Summary

This Regulatory Impact Statement is prepared in accordance with Part 5.2 of the *Legislation Act 2001* for the *Lands Acquisition (Reconsideration of pre-acquisition declaration—Block 4 Section 33 Division of Dickson) Confirmation 2015*, a disallowable instrument made under section 25 of the *Lands Acquisition Act 1994* (the Act) for a reconsideration under section 24 of the Act of a pre-acquisition declaration (NI2015-53) for part of Block 4, Section 33, Division of Dickson.

The authorising law

The Executive, by instrument *Lands Acquisition (Chief Planning Executive) Delegation 2010 (No 1)* of 9 September 2010, has delegated the powers of the Executive under all sections of the Act, excluding sections 7, 8, 11, 21(1), 33(1), 37(2), 59, 83 and 110(2)(a), to the person performing the duties of the Chief Planning Executive.

Section 19 of the Act permits the Executive to declare that it is considering the acquisition by an acquiring authority of an interest in land (other than a mortgage interest) for a public purpose (pre-acquisition declaration).

Section 23 of the Act provides that a person affected by a pre-acquisition declaration (lessee) may apply to the Executive for a reconsideration of a declaration.

Section 24 requires the Executive, following receipt of an application for reconsideration of a pre-acquisition declaration to (a) reconsider the application having regard to the reasons specified in the application and any other relevant matters; and (b), by instrument, either confirm, revoke or vary the declaration.

Section 25 of the Act declares that an instrument made under section 24(1) that confirms or varies a pre-acquisition declaration is a disallowable instrument.

Policy objectives of the disallowable instrument and the reasons for them

The policy objectives of the disallowable instrument are to permit the Executive to reconsider a pre-acquisition declaration following application by a person affected by the pre-acquisition declaration. Section 25 deems a confirmation or variation of a pre-acquisition declaration a disallowable instrument – and therefore publicly available and subject to Assembly scrutiny.

The Explanatory Statement of the Act details that the Act was developed in accordance with the principles of:

- Open procedures in the acquisition of property
- Public accountability of decisions to acquire property
- Compensation for persons whose interest in property is acquired which recognises their interests, concerns and rights of appeal; and
- Completing the acquisition of land expeditiously.

Section 17 of the Act provides the steps in an acquisition by compulsory process as: making a pre-acquisition declaration; any reconsideration of a pre-acquisition declaration; and, making an acquisition declaration.

The subject of the pre-acquisition declaration and this disallowable instrument is Block 4, Section 33, Division of Dickson. The Executive is seeking to acquire the land for a public purpose, being the establishment of the Dickson Bus Interchange. The location of the land and the establishment of the Dickson Bus Interchange on it will provide for an effective integrated service between ACTION buses and the Capital Metro light rail project.

Achieving the policy objectives

The making, presentation, Assembly scrutiny and lodging on the Legislation Register of the disallowable instrument achieves the policy objectives of the Act to ensure the decision is publicly available and subject to Assembly scrutiny. The making of the disallowable instrument also achieves the principles of the Act.

The effect of the disallowable instrument also achieves the policy objectives of the Act, which provides a process for the acquisition of land for a public purpose, public accountability, and completing the acquisition of land expeditiously.

The establishment of the Dickson Bus Interchange on the land will provide for an effective integrated service between ACTION buses and the Capital Metro light rail project, a high priority of the Government, and thus would achieve that policy objective. In cities around the world, integrated transport networks shape the way cities grow and prosper, generating economic opportunities and jobs, and providing vibrant and attractive social environments for residents and visitors.

Consultation

Prior to the making of the pre-acquisition declaration the lessee was advised of the need to extend Cape Street Dickson across the affected land to intersect with Northbourne Avenue. The lessee and the community were also advised of the inclusion of the extension of Cape Street in the Dickson Master Planning process.

The lessee was advised of the decision to consider the acquisition by the acquiring authority of the interest in the land for a public purpose. As required by section 19(6) the Act, the lessee was given a copy of the pre-acquisition declaration. In accordance with section 20 of the Act, the pre-acquisition declaration was published in the Canberra Times and a copy given to the Registrar-General. The pre-acquisition declaration was lodged on the Legislation Register as a notifiable instrument, in accordance with section 20(2) of the Act (NI2015-53).

An application was made to the Executive on 14 January 2015 seeking reconsideration of the pre-acquisition declaration. On 6 February 2015, the Executive sought an extension of time to reconsider the pre-acquisition declaration. In accordance with section 24(4) of the Act, the applicant agreed within the required 28 day period to extend the reconsideration period to 30 June 2015. Due to continuing internal Government consultations, the Executive was unable to reconsider the pre-acquisition declaration by that time. However, section 152 of the *Legislation Act 2001* provides that if, under a provision of an Act or statutory instrument, an act is required to be done, the obligation to do the act continues until the act is done even if – “...the provision required the act to be done within a particular period or before a particular time, and the period has ended or the time has passed.”

In the application for reconsideration of the pre-acquisition declaration the lessee requested that consideration be given to deferring the acquisition and sought to negotiate

an outcome. The lessee sought an integrated design outcome for the Dickson Bus Interchange and a development proposal of the lessee at 470 Northbourne Avenue. Roads ACT (TAMS), the acquiring authority, considered the possibility of such an approach, it was identified that it would be difficult to manage the time risks associated with an integrated development approach. For example, if the market conditions shifted significantly, the lessee's development may be delayed until market conditions were more conducive to undertaking the development. While lease conditions could be employed to try and manage this risk, the acquiring authority considered that there would still be considerable residual timing risks. As the acquiring authority had committed to the delivery of the bus interchange prior to the commencement of light rail operations, it was clear that the project would need to be delivered independent of the adjacent development in order to manage timing risks.

The acquiring authority also considered the possibility of the ACT Government identifying an alternative parcel of land for development. The acquiring authority consulted within Government, however alternative land could not be identified. A negotiated settlement has not been reached between the two parties.

The lessee will be given a copy of this disallowable instrument confirming the pre-acquisition declaration.

Consistency of the disallowable instrument with the authorising law

The disallowable instrument is consistent with the authorising law, subject to the timing issue for reconsideration, which is permitted by section 152 of the Legislation Act. The requirements of Part 4 of the Act leading up to the confirmation of the pre-acquisition declaration have been complied with.

The authorising law provides a process and ability for land to be acquired. The instrument and the process are consistent with the Act.

The disallowable instrument is not inconsistent with the policy objectives of another Territory law

The proposed law is not inconsistent with the policy objectives of another territory law. The lessee would be offered just terms for the acquisition of the interest in the land, in accordance with section 78 of the Act. Section 23(1)(a) of the *Australian Capital Territory (Self-Government) Act 1988* (Cwth) prohibits the ACT Legislative Assembly from making laws with respect to the acquisition of property otherwise than on just terms.

Reasonable alternatives to the disallowable instrument

There are no reasonable alternatives under the Act other than making a disallowable instrument under section 25(1) for a confirmation of a pre-acquisition declaration under section 24(1) of the Act.

The location of the Dickson Bus Interchange could be placed at a different location. But it would be likely that such a location would also be subject to an acquisition declaration. The Dickson Master Plan identifies the extension of Cape Street Dickson including the land that is the subject of the disallowable instrument.

The acquisition of the land could have been achieved by agreement and negotiation. However, in this case a negotiated settlement has not been reached between the two parties.

A further option may have been for an integrated design outcome for the Dickson Bus Interchange and adjacent development on the lessee's land. The acquiring authority considered the possibility of such an approach. However, it identified that it would be difficult to manage the time risks associated with an integrated development approach. For example, if the market conditions shifted significantly, the adjacent mixed use development may have been delayed until market conditions were more conducive to undertaking the development.

One of the principles of the Act, as noted in its explanatory statement, is to complete the acquisition of land expeditiously. Utilising the Act's procedures for the acquisition of land, as has occurred in this case, permits the acquisition to be done publicly and with compensation on just terms for the lessee.

Assessment of benefits and costs of the disallowable instrument

The disallowable instrument is limited to the acquisition of a single site. Therefore any costs are specific to this site. There are no specific costs to be incurred by the wider community in respect of the disallowable instrument.

There would be costs to the lessee for having the land acquired for a public purpose. However, under the Act compensation on just terms must be paid, and if the lessee does not agree that the compensation is on just terms, the Supreme Court, or the High Court exercising jurisdiction under section 75 of the Constitution, may determine such compensation or make such order as, in its opinion, is necessary to ensure that the acquisition is on just terms.

There would be a benefit to the Government and the community in the economic generation from the establishment of the Dickson Bus Interchange and its integrated service with the Capital Metro light rail project. The promotion and development of these sustainable public transport options will help ensure that Canberra's transport infrastructure continues to meet the changing needs of the community, particularly in areas of high population growth. Increased public transport use would provide an alternative to car travel in the Territory and help to reduce greenhouse gas emissions.

Assessment of the consistency of the proposed law with Scrutiny of Bills Committee principles

The Committee's terms of reference require it to consider whether (among other things):

- (a) any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):
 - i. is in accord with the general objects of the Act under which it is made;
 - ii. unduly trespasses on rights previously established by law;
 - iii. makes rights, liberties and/or obligations unduly dependent upon non reviewable decisions; or
 - iv. contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;

As noted above, the disallowable instrument is in accordance with the general objects of the Act.

The disallowable instrument does not unduly trespass on rights previously established under law. In fact, the disallowable instrument and the process to acquire land is a power given by the Act.

Schedule 1 of the Act provides a list of reviewable decisions. A decision to make a pre-acquisition declaration or to reconsider and confirm such a declaration is not included in Schedule 1 of the Act and therefore the ACT Civil and Administrative Tribunal does not have jurisdiction to undertake merit review of such decisions. Judicial review would be available for the lessee under the *Administrative Decision (Judicial Review) Act 1989*.

Compensation would be paid to the lessee following acquisition of land under section 33. Decisions under section 63(1)(c) or (3) of the Act as to final offers of compensation are included in Schedule 1 of the Act and are therefore reviewable decisions subject to ACAT merit review. Section 63 details the process for reconsidering and making a final offer in relation to compulsory acquisition of land.

Conclusion

This regulatory impact statement complies with the requirements for a disallowable instrument as set out in Part 5.2 of the Legislation Act. An Explanatory Statement for the disallowable instrument has been prepared for tabling.