

Planning and Development (Consideration of Public Interest) Decision 2013 (No. 1)

Notifiable instrument NI2013–101

made under the

Planning and Development Act 2007, section 261 (No decision on application unless consideration in public interest)

1. Name of Instrument

This instrument is the *Planning and Development (Consideration of Public Interest) Decision 2013 (No 1)*.

2. Commencement

This instrument commences on the day after it is notified.

3. The Decision

Pursuant to section 261 of the *Planning and Development Act 2007* I decide that it is in the public interest to consider Development Application No 201222728 applying to Block 28 Section 34 Dickson made on 15 November 2012.

4. Background

Details of the relevant development application and the reasons for the decision are attached.

Simon Corbell MLA
Minister for the Environment and Sustainable Development

27 February 2013

Background

The development application

The development application that is the subject of this instrument is an application for approval of a lease variation to remove the concessional status of the Crown lease Volume 1600 Folio 86 in respect of land that is Block 28 Section 34 Division of Dickson.

Notification of Planning and Land Authority

The Planning and Land Authority has been notified of the decision pursuant to s261(3) of the Planning and Development Act.

Public interest test

Section 261(1) of the Act applies to development applications for approval of a lease variation to remove the concessional status of a lease (ie to deconcessionalise a lease). Section 261(1) prohibits the Planning and Land Authority or the Minister from deciding such an application unless the Minister first decides whether it is in the public interest to consider the application.

In deciding whether it is in the public interest to consider such an application, the Minister must consider the matters set out in s261(2) of the Act. The factors required to be considered are:

- a. Whether the Territory wishes to continue to monitor the use and operation of the lease by requiring consent before the lease is dealt with (s261(2)(a) of the Act);*
- b. Whether approving the application would cause any disadvantage to the community taking into account potential uses of the leased land that are consistent with the territory plan, whether or not those uses are authorised by the lease (s261(2)(b));*
- c. Whether the application to vary the lease to make it a market value lease is, or is likely to be, part of a larger development and, if so, what that development will involve (s261(2)(c));*
- d. Whether the Territory should buy back, or otherwise acquire, the lease (s261(2)(d));*
- e. Whether the Territory wishes to encourage the continued use of the land for an authorised use under the lease by retaining the concessional status of the lease (s261(2)(e)).*

The Public Interest Test – matters considered in this case

- a. RE: s261(2)(a) of the Act: The application in question does not seek to vary the Crown lease to add additional uses.

If approved, a condition of the application will require the Lessee to pay the “payout amount” as worked out under Section 263 of the Act. The application will be finalised by surrender of the existing lease and regrant of a new lease. If the concession is removed the Territory will maintain adequate control of any future uses through the provisions of the Commercial CZ3 Services Zone and Draft Variation 311.

The Lessee has stated that it does not intend to sell or transfer the site in the immediate future. The Lessee intends to redevelop the site in accordance with the Dickson Group Centre Master Plan and Territory Plan, and on-sell future residential and commercial units on terms commensurate with any other market value lease holder.

- b. RE: s261(2)(b) of the Act: The lessee currently operates a licensed club and a motel catering to club members from Block 28 Section 34 Dickson. The proposed deconcessionalisation of the Crown lease will not impact on the provision of these uses on the site. Deconcessionalisation does not alter the lease purpose clause and does not approve any physical changes to the site.

The Lessee has stated that it intends to continue to operate a licensed club and commercial accommodation in Dickson. Under the lessee’s current master plan, the club and commercial accommodation currently on Block 28 Section 34 Dickson would be developed on Blocks 29, 13 and 14 Section 34 Dickson. This proposal would be subject to the lodgement and assessment of a development application for a lease variation and design and siting. The DA would be publicly notified.

The lessee has indicated their intention to demolish the club under the first redevelopment proposal. The Dickson community would not have access to a club during the time between this development and the Lessee’s proposed development of a new club/hotel in Section 34. However, the SIA identified an overall positive net community and economic benefit from the deconcessionalisation. The benefits identified include a contribution to affordable housing options, meeting the urban infill target, providing opportunities for a range of uses, and reduced demand for greenfield expansion. It is concluded that the SIA provides an adequate assessment of the social, cultural and economic impacts of the proposed lease variation as required under section 139(2)(l).

Block 28 Section 34 Dickson will continue to be zoned CZ3 Services which facilitates a broad range of residential and commercial uses. The Authority continues to maintain full control over the approval of any other uses in the Crown lease.

- c. RE: s261(2)(c) of the Act: The application to deconcessionalise the Crown lease forms part of a larger development proposal. The development application has been submitted but not yet accepted for lodgement. If lodged, DA 201222725 will be

publicly notified in accordance with the Act.

The Lessee's current master plan involves the redevelopment of its land holdings in Dickson, namely Blocks 13, 14, 28 and 29 in a staged redevelopment. The first stage of that redevelopment, if approved, would involve the subdivision of Blocks 28 and 29 to create four new sites (A, B, C and D), the demolition of the existing club building and the construction of a 6 storey mixed use building on site A. This building would include a two level basement, commercial units on the ground floor and residential apartments on five above ground levels. Site A would front Badham Street and adjoin Block 20 Section 34 Dickson, an existing car park located to the north of Block 28.

Site B would provide a private road linking Cape Street and Dickson Place.

Site C would sit between the proposed private road and the public access reserve which runs along the creek. The lessee's master plan reveals an intention to maintain its existing commercial accommodation use in the short term, with a development application for demolition and the construction of another 6 story mixed commercial and residential development to be submitted in the future.

Site D would be consolidated with Blocks 13 and 14 Section 34 Dickson to facilitate construction of a new licensed club and a hotel to 6 storeys.

- d. RE:s261(2)(d) of the Act: Should the site be required for a public purpose, the Territory would need to acquire the lease by negotiated purchase or under *the Land Acquisitions Act 1994* either by agreement with the lessee or by a compulsory process. The Territory would be required to compensate the lessee for all lessee owned improvements on the site. As the Crown lease is only partially concessional (see part 3 of Attachment 6), the Territory would also be required to pay full market value for that portion of the site which is not concessional. It is not anticipated that the Territory would require the site for a public purpose.

As noted above, the Lessee intends to carry out extensive redevelopment in line with the outcomes sought by the Dickson Group Centre Master Plan. Acquisition of the lease by the Territory would prevent the lessee from carrying out these works and, potentially, could frustrate the Master Planning process for Dickson.

Valuation advice submitted with the application indicates that the market value of the lease is \$2,750,000. If approved, the application will be referred to the government's contract valuer for assessment of the current market value of the lease. The amount paid by the lessee would be calculated in accordance with the formula in the Act, noting that the lease is partially concessional.

- e. RE: s261(2)(e) of the Act: The Territory's intentions for development/redevelopment of the site have been conveyed through the Dickson Centre Master Plan and Draft Territory Plan Variation 311.

The Dickson centre master plan presents a framework to guide development and redevelopment of the centre and permits a maximum height of six storeys.

The preparation of Master Plans to identify opportunities for mixed use developments to incorporate community facilities is a key action associated with Strategy Four (4) of the *ACT Planning Strategy* to:

Ensure everyone has convenient access to a range of facilities, services and opportunities for social interaction by reinforcing the role of group and local centres as community hubs.

The Lessee has stated that it will continue to operate a licensed club and commercial accommodation in Dickson, though it is likely this will be relocated as part of a staged redevelopment of the Lessee's landholdings.

If the concessional status of the lease is retained, the Authority would be required to approve any dealings with the lease. Furthermore, retaining the concessional status of the lease would adversely impact upon the Lessee's ability to raise the collateral required to execute any redevelopment and, potentially, delay implementation of the Dickson Master Plan.

Social Impact Assessment

In assessing the matters set out in section 261(2), I considered the Social Impact Assessment required under section 139(2)(1) of the Act and submitted in support of the development application.