

Planning and Development (Consideration of Public Interest) Decision 2013 (No. 2)

Notifiable Instrument NI2013–269

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 2)*.

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 201323179 applying to Block 12 Section 64 Lyneham made on 27 February 2013.

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

07 June 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 1976 Folio 20 in respect of land that is Block 12 Section 64 Division of Lyneham.

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 does not seek to vary the Crown lease to add additional uses or to change the existing use. The site will continue to be used for the purposes currently permitted under the Crown lease.

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 which will not include any provisions requiring the Territory’s consent to deal in the lease. If the concession is removed there is no justification to include a restriction on transfer in the lease.

It is unlikely that the lease will be transferred in the short to medium term, given the program of Sport and Recreation Services to work with Tennis ACT to make the Lyneham Centre complex a regional facility.

The community benefits sought by the grant of the concessional lease will continue to accrue as part of an improved modern tennis sporting precinct.

- b. RE: s261(2)(b) of the Act: The proposal to deconcessionalise the lease will not materially disadvantage any section of the community. The site will continue to operate and therefore, the community benefit will remain. Tennis ACT will continue to operate the site and its members will retain access to the facilities on the adjoining block.

The removal of the concessional status does not in itself provide additional development rights for the site and approval to remove the concessional status will not alter the physical form, character or use of the site. The application does not seek to vary the current authorised use of the Crown lease. The deconcessionalisation of the lease will not give approval for further development of building(s) on the site. Any additional development or change of use(s) will require a further development application and may attract Lease Variation Charge.

- c. RE: s261(2)(c) of the Act: The proposal is part of a larger development which is being facilitated by Sport and Recreation Services. In October 2008, the Economic Development Directorate committed to support Tennis ACT in redeveloping the existing National Sports Clubs complex into a Regional Tennis and Sports Centre. TACT’s intention is to redevelop the facility on the adjoining site to include ‘new international standard tennis courts, improved player amenities and a multi-purpose sports facility’.

A proposal to redevelop the site for a state of the art tennis facility has been submitted with the planning and land authority but was withdrawn. It is anticipated that the application will be relogged in the near future.

- d. RE: s261(2)(d) of the Act: As noted above, the lessee will continue to operate the site in accordance with the uses currently permitted under the Crown lease. The site could be acquired by negotiated purchase or under the *Land Acquisitions Act 1994* either by agreement with the lessee or by a compulsory process. Acquisition of the site can only be for a public purpose. The Territory would be required to compensate the lessee for all lessee owned improvements on the site. As the Territory is supporting the redevelopment proposal, the Territory does not require the site for a public purpose. Acquisition of the lease by the Territory would compromise the desired outcome.

- e. RE: s261(2)(e) of the Act: This development proposal does not change the existing use of the site. Therefore, the site will continue to be used for the purposes currently permitted under the Crown lease. The removal of the concessional status of the lease will provide the lessee greater security of tenure and the ability to progress the community facility proposal being considered for the site and deliver additional benefits to the community.

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.