

Planning and Development (Consideration of Public Interest) Decision 2013 (No 3)

Notifiable Instrument NI2013 – 271

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 3)*.

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 201323197 applying to Block 68 Section 35 Deakin made on 20 March 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
12 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 1151 Folio 86 in respect of land that is Block 68 Section 35 Division of Deakin.

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 Territory does not monitor the use and operation of the site under the existing Crown lease. However, the lessee would be required to seek the planning and land authority's consent to transfer the Crown lease. Approval of the DA will enable the Association to sell the building on the market without obtaining the planning and land authority's approval. If the concession is removed, the Territory will maintain adequate control of any future uses through the provisions of the Commercial CZ2 Business Zone of the Territory Plan.

The existing uses are consistent with the lease purpose clause and other relevant clauses. The proposed use (medical consulting limited to ground floor only and 300m² GFA) is consistent with the Territory Plan and the Variation would be registered only after the concession is paid out.

- b. RE: s261(2)(b) of the Act: The lessee currently occupies part of the site and the Australian Rural Leadership Foundation occupies the remainder of the site. The proposed deconcessionalisation of the Crown lease in itself will not impact on the operation of these uses on the site. Deconcessionalisation does not alter the lease purpose clause and does not approve any physical changes to the site. Approval of the DA will not have any adverse impact on or cause disadvantage to the community.

The proposed lease variation evidences the Lessee's intent to use the site for further uses including medical consulting rooms. The proposed lease variation will provide opportunities for further diversification of commercial activity in West Deakin and is consistent with the CZ2 business zone.

The block will continue to be zoned CZ2 Business which facilitates a broad range of office and business uses. The planning and land authority continues to maintain control over uses on the site through the Territory Plan.

- c. RE: s261(2)(c) of the Act: The application to deconcessionalise the Crown lease includes a lease variation to remove the 50% exclusive use by the Australian Forest Products Association and expand the range of non-retail commercial uses. It does not form part of a larger development. The change to the lease will provide opportunities for extended land uses within the existing development. If the DA is approved, the AVO will also be requested to provide an assessment of the added value of the lease created by the variation for the purpose of a Lease Variation Charge.
- d. RE: s261(2)(d) of the Act: If the Territory required the site for a public purpose, the Territory would be required to acquire the site 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. Acquisition of the site can only be for a public purpose. It is not anticipated that the Territory would require the site for a public purpose.

Valuation advice submitted with the application indicates that the market value of the lease is \$600,000. If approved, the application will be referred to the contract valuer for assessment of the current market value of the lease. The amount which will be paid by the lessee will be calculated in accordance with the formula in the Act.

- e. RE: s261(2)(e) of the Act: The Association no longer requires the amount of space they are required to occupy under the existing Crown lease. Removing the concession would enable more efficient use of the site. The removal of the concessional status will create better management of the Association's assets.

Allowing for extended land uses will also provide a greater economic benefit to the Association. Extended uses have the potential to create greater revenue from the development and will increase the diversity of users in the surrounding area.

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.