

Planning and Development (Consideration of Public Interest) Decision 2013 (No 4)*

Notifiable Instrument NI2013–288

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 4)*.

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 201323545 applying to Block 7 Section 23 City made on 11 April 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

20 June 2013

*Name amended under Legislation Act, s 60

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 893 Folio 62 in respect of land that is Block 7 Section 23 Division of City.

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. If the concession is removed, the Territory will maintain adequate control of any future uses through the provisions of the Commercial CZ1 Core Zone of the Territory Plan.

The existing use is consistent with the lease purpose clause and other relevant clauses. No development is currently proposed for the site. However, any proposed changes to the use of the site in the future will necessitate a lease variation application which would be assessed against the relevant provisions of the Territory Plan. Any future lease variation may also attract a Lease Variation Charge.

- b) RE: s261(2)(b) of the Act: The proposed deconcessionalisation of the Crown lease in itself will not impact on the provisions of the lease or the use of the site. The lessee currently operates a licenced club from the site. Deconcessionalisation will not alter the lease purpose clause and will not approve any physical changes to the site.

The Lessee has an ongoing commitment to continue to operate a licenced club from the site. This commitment is evidenced by the recent refurbishment undertaken by the Lessee at a cost of circa \$2 million. Therefore, the application to remove the concessional status will not have any adverse impact on or disadvantage the socio-economic and health of the community as the proposal involves no change in the use of the site for a club.

The block will continue to be zoned CZ1 Core which facilitates a mix of commercial and residential uses. The planning and land 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 does not form part of a larger development. The objective of deconcessionalising the lease is to strengthen the lessee's tenure over the block and provide greater flexibility and security in the future.

If, in the future, further development is proposed it will be subject to development approval, ensuring that it is consistent with statutory requirements and specifically the requirements of the CZ1 Core Zone Development Code.

- 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 \$525,000 (GST exclusive).

- 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 with greater security of tenure.

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.