

# Planning and Development (Consideration of Public Interest) Decision 2013 (No 5)

Notifiable instrument NI2013–313

made under the

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

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## 1. Name of Instrument

This instrument is the *Planning and Development (Consideration of Public Interest) Decision 2013 (No 5)*.

## 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 201323500 applying to Block 5 Section 30 Braddon 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  
08 July 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 1538 Folio 89 in respect of land that is Block 5 Section 30 Division of Braddon.

### 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: RE: s261(2)(a) of the Act: The concessional status of the lease has been determined and confirmed by the ACT Civil and Administrative Appeals Tribunal. The Act provides for a restriction on dealing to be imposed on the grant of certain leases. However, the lease does not currently contain a restriction on transfer that could be continued, should the concessional status be removed. To impose a restriction on transfer of the lease, where one does not already exist, is beyond power in this circumstance. The Act requires the planning and land authority to consent to dealings in a concessional lease. However, these provisions will not apply if the concessional status is removed.

b. RE: s261(2)(b) of the Act: The site will continue to be zoned CZ3 – Services Zone which facilitates a broad range of residential and commercial uses. Deconcessionalisation of the Crown lease does not impact on the purpose clause of the lease or the use of the site.

The Lessee currently operates a licensed club from the site. The proposed deconcessionalisation of the Crown lease in itself will not impact on the continued use of the site for this purpose. Deconcessionalisation does not alter the lease purpose clause and does not approve any physical changes to the site.

The proposed redevelopment of the site will not contain a licensed club premises. However, there are other such facilities in close proximity to the site which provide similar services to that of the existing Braddon Club. In addition, if approved, the proposed redevelopment will make provision for other forms of indoor entertainment.

c. RE: s261(2)(c) of the Act: The application to deconcessionalise the Crown lease forms part of a larger development, as detailed in DA 201222949.

The proposal seeks demolition of the buildings on the Block. The proposal is for a mixed-use (retail, commercial and residential) development on the site. This application is currently under assessment.

d. RE: s261(2)(d) of the Act: The site could be acquired by the Territory by negotiated purchase or under the *Land Acquisitions Act 1994* either by agreement with the Lessee or through 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.

The Lessee intends to carry out extensive redevelopment of the site in line with the Territory's intention to increase residential density in areas close to the City. Acquisition of the lease by the Territory would prevent the Lessee from carrying out this redevelopment.

A valuation certificate dated 11 December 2012 indicates that the market value of the lease for the purposes of discharging the concession is \$620,000.

e. RE: s261(2)(e) of the Act: The Territory Plan, including the Braddon Precinct Code, support

the Territory's intentions for possible redevelopment of the site. Continued use of the land for the existing authorised use under the lease would not be in accordance with the Territory's previous decisions in relation to this land. If the concessional status is retained, redevelopment of the site for a mixed use residential/commercial development could not proceed. Having regard to the provisions of the Territory Plan and the Braddon Precinct Code, the Territory does not consider that the concessional status of the lease should be retained.

Further, retaining the concessional status of the lease would adversely impact upon the Lessee's ability to raise the necessary collateral to execute its proposals.

### **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.