

Planning and Development (Consideration of Public Interest) Decision 2014 (No. 1)

Notifiable Instrument NI2014–252

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 2014 (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 201324537 applying to Block 9 Section 19 Forrest made on 4 December 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
30 May 2014

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 245 Folio 63 in respect of land that is Block 9 Section 19 Division of Forrest.

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 Act requires the planning and land authority to scrutinise and approve or refuse dealings in a concessional lease (Sections 265 and 266). 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. These provisions will not apply if the concessional status is removed.
- b. RE: s261(2)(b) of the Act: The application does not seek to vary the current authorised use of the Crown lease. The removal of the concessional status of the lease does not provide any additional development rights and will not give approval for further development of building(s) on 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.

- c. RE: s261(2)(c) of the Act: There are currently no other development applications for the site.
- 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.
- e. RE: s261(2)(e) of the Act: This development proposal does not change the existing use of the site. A further development application would be required to change this authorised use. If the concessional status of the lease is retained, the Authority will be required to scrutinise any dealings involving the lease. I consider that the proposed variation to remove the concessional lease status is consistent with and would support the continued use of the land for club purposes on Block 9.

The Territory Plan permits the use of club in the CZ6 zone. Following examination of the Social Impact Assessment, I consider that the concessional status should not be retained as this will adversely impact upon the ability of the lessee to raise finance to further develop the block.

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.