

Planning and Development (Consideration of Public Interest) Decision 2015 (No.3)

Notifiable Instrument NI2015–737

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 2015 (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 201528212 applying to Blocks 42 and 45 Section 59 Lyneham made on 6 October 2015.

4 Background

Details of the relevant development application and the reasons for my decision are attached.

Mick Gentleman MLA
Minister for Planning

23 December 2015

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 1778 Folio 27 in respect of land that is Blocks 42 and 45 Section 59 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 Act places supervisory burdens on the authority in regard to concessional leases. Section 265 of the Act requires any dealings in a concessional lease (including, for example, transfers and subletting) to be scrutinised and approved or refused by the planning and land authority, and section 266 requires the authority to ensure the party receiving the interest is an eligible person (ie. one that meets criteria to be granted a concessional lease).

The existing Crown lease is ‘possibly concessional’ as indicated by the statement on the lease. However, as the rent for Block 45 is market value, the lease is only partly concessional. This application, if approved, will be finalised by surrender of the existing lease and regrant of a lease which will be identified as a market value lease. The re-granted lease will reflect the current terms and conditions of the existing lease. However, the “Restriction on Dealings” clause will not be included. The lessee currently operates three outdoor synthetic pitches with grandstands, team and spectator facilities, a multi-sport indoor hockey pitch, change rooms and catering facilities and the offices of Hockey ACT and other community sporting organisations. Removing the concessional status from the Crown lease does not change the lease purpose clause and will not impact on the use of the site for the current purposes.

The restrictions on dealings with the lease as provided in the Act are unnecessary as the limitations within the Territory Plan are adequate control for any future development/use of the site.

- b. RE: s261(2)(b) of the Act: Block 42 is in a PRZ2 Restricted Access Recreation Zone under the Territory Plan. The uses are authorised by the lease. The applicant has stated that the objectives of the proposal are to build a financial model which would ensure a sustainable future for the sport.

The application does not seek to vary the current authorised use of the Crown lease. Removal of the concessional status of the lease will not provide any additional development rights and will not include approval for further development of building(s) on the site. I have, therefore, formed the view that approval of the application would not disadvantage the community as this application does not change any of the existing development on site. The existing controls in the Territory Plan and the Act are adequate to protect community interests should any further development be proposed.

Alteration of the existing development on site or variation of the purpose clause of the Crown lease will require further development application assessment and approval. Any subsequent DA to vary the purpose clause to broaden the range of permitted uses would be subject to an assessment for Lease Variation Charge.

The positive comments received through the pre-lodgement community consultation process and the one representation received on the DA support my view that, if the DA was approved, there would be no disadvantage to the community.

- c. RE: s261(2)(c) of the Act: The DA is limited to the payout of the concession of the Crown lease. There are two other development applications over blocks 42 and 45 under assessment at this time. Each will be assessed under its own merits in accordance with the Act and the Territory Plan.

- 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, if the Territory required the land for a public purpose. If the Territory were to acquire the site, the Territory would be required to compensate the Lessee for all Lessee owned improvements on the site and then assume all maintenance responsibilities which would be a budget pressure. The Territory does not require the site for a public purpose.
- e. The lease is a privately owned lease. Under the Act, the lessee may apply to vary their Crown lease at any time. All applications are assessed on their merits against the requirements of the Act and controls in the Territory Plan.
- f. RE: s261(2)(e) of the Act: This development proposal does not change the existing permitted uses of the site. A separate additional development application would be required to change the 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 would support the continued use of the land for a hockey club and supporting uses on Blocks 42 and 45 Section 59 Lyneham.

The Territory Plan permits the use of an outdoor recreation facility and indoor recreation facility in the PRZ2 Restricted Access Recreation Zone. Following examination of the Social Impact Assessment, I consider that the concessional status should not be retained as this will adversely impact the ongoing operations of the club by limiting the ability of the lessee to raise finance against the Crown lease.

Social Impact Assessment

In assessing the matters set out in section 261(2), I have considered the Social Impact Assessment which is required under section 139(2)(1) of the Act and submitted in support of the development application.