

# Planning and Development (Consideration of Public Interest) Decision 2017 (No 2)\*

## Notifiable Instrument NI2017–35

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 2017 (No 2)*.

### **2 Commencement**

This instrument commences on the day after its notification day.

### **3 The Decision**

I decide that it is in the public interest to consider Development Application No 201630173 applying to Block 5 Section 57 Mawson, as lodged on 13 September 2016.

### **4 Background**

Details of the relevant development application and the reasons for the decision are provided in the schedule.

Mick Gentleman MLA  
Minister for Planning and Land Management  
19 January 2017

\*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 769 Folio 25 in respect of land that is Block 5 Section 57 Division of Mawson.

### Notification of planning and land authority

The planning and land authority has been notified of the decision pursuant to section 261(3) of the *Planning and Development Act 2007*.

### 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 (i.e. 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 section 261(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).*

The requirements of the Territory Plan are considered sufficient to ensure that the land continues to be used for purposes consistent with the public interest. There is no need for any additional assurance of continued use by the retention of the concessional lease status of the Crown lease.

I am of the view that the Territory does not wish to continue to monitor the use and operation of the lease by requiring consent before the lease is dealt with.

- 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)).*

The removal of the concessional status will not alter the existing purpose clause or permitted uses for the site in accordance with the Territory Plan. Any additional uses will require a development approval to permit a lease variation which will be subject to lodgement and assessment in line with the *Planning and Development Act 2007*, including the Territory Plan and the Mawson Precinct Code.

## Schedule

(see section 4)

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I have considered whether approving the application would cause any disadvantage to the community taking into account potential uses of the land in accordance with section 261(2)(b). I am of the view that approving the application is likely to result in benefits to the Community as a whole.

- 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)).*

This development application is limited to the removal of the concessional status of the Crown lease. At the present time there are no additional development applications or proposals for additional works on this site submitted to the planning and land authority.

The lessee has stated their intention to redevelop the site which may include mixed-use, commercial, residential and childcare. This is in line with the Mawson Group Centre Master Plan and the ACT Planning Strategy (2012). Any future proposals will require development approval in accordance with the *Planning and Development Act 2007*, the Territory Plan and Mawson Precinct Code and will require a lease variation to permit any extra uses on the site.

I have considered the likely future development intentions for the site in making my decision.

- d. Whether the Territory should buy back, or otherwise acquire, the lease (s261(2)(d)).*

Acquisition of the site can only be for a public purpose, it is not anticipated that the Territory will require the site for a public purpose.

In making my decision I have considered whether the Territory should buy back or otherwise acquire the lease. I am of the view that the Territory should not buy back or otherwise acquire the lease.

- 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 Territory's intentions for redevelopment of the site have been conveyed through the Mawson Group Centre Master Plan. Retention of the concessional status will limit the lessee's financial opportunities and is likely to negatively impact on business and investment opportunities surrounding the Community Club and Group Centre.

I have considered whether retaining the concessional status of the lease is beneficial to the Territory, and consider the Territory will maintain adequate control of planning on the site through the provisions in the Territory Plan and the *Planning and Development Act 2007*.

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