

Planning and Development (Consideration of Public Interest) Decision 2012 (No 3)*

Notifiable instrument NI2012–102

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 2012 (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 201120044 applying to Block 13 Section 3 Phillip made on 1 June 2011.

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
28 February 2012

*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 1621 Folio 94 in respect of land that is Block 13 Section 3 Division of Phillip.

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. This application seeks to pay out the concession relating to Block 13. It also seeks to remove the restriction on transfer. However, this restriction on transfer relates to the lessee obtaining a public liability risk insurance

policy, not the concessional status of the lease.

The ESDD is concurrently assessing DA No 201120244. This application seeks to consolidate Block 13 with Block 15 Section 3 Phillip. Block 13 is fully developed for club purposes. As Block 15 is a market value lease, it is not desirable for the leases to be consolidated and redeveloped until the concession on Block 13 has been removed as the resultant lease would be concessional.

If the application to deconcessionalise the lease is approved, a condition of the DA will require the lessee to pay the “payout amount” as worked out under S263 of the Act. The application will be finalised by surrender of the existing lease and regrant of a new lease. There would be no useful purpose to the Territory imposing a restriction on transfer.

- b. The proposal to deconcessionalise the lease will not materially disadvantage any section of the community. The club would continue to operate and therefore, the community benefit sought through the original grant of the concessional lease, being the establishment of a significant community recreational resource, would remain. The lease has been substantially developed for club purposes and further investment in club use is expected to continue. The deconcessionalisation of the lease does not in itself provide additional development rights and will not give approval for further development of the building/s on the site.
- c. In September 2005 the proponent submitted an application for the direct sale of Block 15 Section 3 Phillip (comprising an adjoining car park, formerly part of Block 14) to enable the expansion of the Club and Hotel and to provide a health facility and a shop. The project delivery agreement required the proponent to obtain development approval as a prerequisite to the grant of the Holding Lease which will provide for the development of the land.

A development application (DA 201018177) was submitted to the Authority in June 2010 proposing the amalgamation of Block 13 and 15 Section 3 Phillip, an extension to the existing Club and hotel, a new health facility, shop, car parking and associated public works, and a lease variation to allow for the proposed additional uses. The application was approved subject to conditions on 20 April 2011.

- d. The lessee intends to continue to operate a club from the site. The site could be acquired by negotiated purchase or under the *Land Acquisitions Act 1994* either by agreement with the lessee or by a compulsory process. Acquisition of the site can only be for a public purpose. The Territory would be required to compensate the lessee for all lessee owned improvements on the site. It is not anticipated that the Territory would require the site for a public purpose.

- e. This development proposal does not change the existing use of the site. Therefore, the site will continue to be used as a club. A further development application would be required to change this authorised use and has been submitted. The application is under assessment. (as noted above). If the concessional status of the lease is retained, the Authority will be required to approve any dealings with the lease.

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.