

Planning and Development (Consideration of Public Interest) Decision 2012 (No 1)*

Notifiable instrument NI2012 –22

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 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 201120448 applying to Block 15 Section 42 Griffith made on 12 September 2011.

4. Background

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

Andrew Barr MLA

A/g Minister for the Environment and Sustainable Development

6 January 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 1552 Folio 84 in respect of land that is Block 15 Section 42 Division of Griffith.

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 does not seek to vary the Crown lease to add additional uses or to change the existing use.

If approved, a condition of the application 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 which will not include rental provisions or any provisions requiring the Territory’s consent to deal in the lease. If the concession is removed, the Territory’s interest in the land can be addressed through the provisions of the Territory Plan and, therefore, there is no justification to include a restriction on transfer in the lease.

- b. The application does not seek to vary the current authorised use of the Crown lease. The deconcessionalisation of the lease does not in itself provide any additional development rights and will not give approval for further development of building(s) on the site.

If an application to vary the Crown lease to add additional uses consistent with the interim effect provisions of draft variation 307 is submitted, it will be publicly notified as required by the Act. Persons who believe they may be affected by the variation will have appeal rights against that application.

If an application for design and siting is submitted concurrently with, or subsequent to, an application to vary the lease consistent with the interim effect provisions of draft variation 307, pre-DA community consultation would be required once the provisions of new Section 20A of the *Planning and Development Act 2007* have commenced.

- c. Draft variation 307 to the Territory Plan has interim effect until 19 August 2012. The application is part of a larger development proposal which has not received support at this time. A recent development application to vary the Crown lease to add commercial accommodation use limited to hotel was refused on 23 August 2011. Hotel is a use permitted in the CZ6 Leisure and Accommodation Zone but prohibited in the RZ4 Medium Density Residential Zone.
- d. It is intended that the site would be redeveloped in the future, particularly noting that draft variation 307 to the territory plan has interim effect. 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 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.

As the site is only partially concessional, as explained above, the Territory would also be required to pay full market value for that portion of the site which is not concessional.

- e. This development proposal does not change the existing use of the site. However, it is anticipated that a proposal to redevelop the site would be forthcoming. Therefore, the site will continue to be used as a club and 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 approve any dealings with the lease. Retaining the concessional status of the lease would also adversely impact upon the lessee's ability to raise collateral.

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.