

# Planning and Development (Consideration of Public Interest) Decision 2012 (No. 5)

Notifiable Instrument NI2012–626

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 2012 (No 5)*.

## 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 201222229 applying to Block 10 Section 64 Lyneham made on 31 July 2012.

## 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

12 December 2012

## 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 1708 Folio 83 in respect of land that is Block 10 Section 64 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: This application does not seek to vary the Crown lease to add additional uses or to change the existing use. The site will continue to be used for the purposes currently permitted under the Crown lease.

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 any provisions requiring the Territory’s consent to deal in the lease. If the concession is removed there is no justification to include a restriction on transfer in the lease.

However, given the program of Sport and Recreation Services to work with TACT to make the Lyneham Centre complex a regional facility, it is unlikely that the lease will be transferred in the short to medium term.

- b. RE: s261(2)(b) of the Act: The proposal to deconcessionalise the lease will not materially disadvantage any section of the community. As part of the public consultation process undertaken by the Lessee, extensive government and community consultation was conducted including information sessions. Two feedback forms were received during the public consultation process undertaken by the Lessee, with feedback being highly supportive of the development proposal.

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. Any additional development or change of uses will require a further development application.

- c. RE: s261(2)(c) of the Act: There are currently no other development applications for the site. The proposal is part of a larger development which is being coordinated by Sport and Recreation Services. In October 2008, the ACT Government committed to support Tennis ACT (TACT) in redeveloping the existing National Sports Clubs complex into a Regional Tennis and Sports Centre. The TACT’s intention is to redevelop the facility to include ‘new international standard tennis courts, improved player amenities and a multi-purpose sports facility. This application is the first step in the proposed redevelopment proposal.
- d. RE: s261(2)(d) of the Act: As noted above, the lessee will continue to operate the block in accordance with the uses currently permitted under the Crown lease. Further development application/s will be required to facilitate any change of use of 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. As the Territory is supporting the redevelopment proposal, the Territory does not 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. Therefore, the site will continue to be used for the purposes currently permitted under the Crown lease. Further development applications will 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 secure funding for future projects.

### **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.