

Planning and Development (Consideration of Public Interest) Decision 2013 (No.6)

Notifiable instrument NI2013–462

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 2013 (No.6)*.

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 201323168 applying to Block 49 Section 37 Deakin made on 28 April 2013.

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

07 October 2013

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 995 Folio 41 in respect of land that is Block 49 Section 37 Division of Deakin.

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: RE: s261(2)(a) of the Act: The Territory does not monitor the use and operation of the site under the existing Crown lease. If the concession is removed, the Territory will maintain adequate control of any future uses through the provisions of the Commercial CZ2: Business Zone of the Territory Plan.

The existing use is consistent with the lease purpose clause and other relevant clauses. No development is currently proposed for the site. However, any proposed changes to the use of the site in the future will necessitate a lease variation application which would be assessed against the relevant provisions of the Territory Plan. Any future lease variation may also attract a Lease Variation Charge.

- b. RE: s261(2)(b) of the Act: The Lessee currently occupies 28% of the site in accordance with the Crown lease provisions, and subleases the remainder of the site for commercial office use. The proposed deconcessionalisation of the Crown lease in itself will not impact on the operation of the current uses. Deconcessionalisation does not alter the lease purpose clause and does not approve any physical changes to the site. Approval of the DA will not have any adverse impact on or cause disadvantage to the community.

The block will continue to be zoned CZ2 Business which facilitates a broad range of office and business uses. The planning and land authority continues to maintain control over uses on the site through the Territory Plan.

- c. RE: s261(2)(c) of the Act: The objective of deconcessionalising the lease is to strengthen the lessee's tenure over the block and provide greater flexibility and security in the future. The application includes a lease variation to remove the 28% exclusive use by the Australian Institute of International Affairs. It does not form part of a larger development.
- d. RE: s261(2)(d) of the Act: If the Territory required the site for a public purpose, the Territory would be required to acquire the site by negotiated purchase or under the Land Acquisitions Act 1994 either by agreement with the Lessee or by a compulsory process. The Territory would be required to compensate the Lessee for all Lessee owned improvements on the site. Acquisition of the site can only be for a public purpose. It is not anticipated that the Territory would require the site for a public purpose.

Valuation advice submitted with the application indicates that the market value of the lease is \$500,000. If approved, the Notice of Decision will be referred to the contract valuer for assessment of the current market value of the lease. The amount which will be paid by the lessee will be calculated in accordance with the formula in the Act.

- e. RE: s261(2)(e) of the Act: The removal of the concessional status will remove the land rent commitment from the lease, which will provide the Association with the best possible financial position to ensure their on-going operation.

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.