

# Planning and Development (Consideration of Public Interest) Decision 2015 (No 1)\*

Notifiable Instrument NI2015-51

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 2015 (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 201425627 applying to Block 16 Section 36 Deakin made on 13 June 2014.

## **4 Background**

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

Mick Gentleman MLA  
Minister for Planning

21 January 2015

\*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 1586 Folio 97 and to vary the purposes clause in respect of land that is Block 16 Section 36 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: The Act requires the planning and land authority to scrutinise and approve or refuse dealings in a concessional lease (Sections 265 and 266). These provisions will not apply if the concessional status is removed. The Territory does not wish to continue to monitor the use and operation of the lease prior to dealing as the provisions of the Territory Plan, particularly as the Public Land Overlay, will provide for public consultation and consideration of any future proposal to change the existing primary use of the land as a soccer field. The application, if approved, 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.
- b. RE: s261(2)(b) of the Act: The application does not seek to vary the current authorised use of the Crown lease other than to include the use of communications facility limited to 60 square metres. The removal of the concessional status of the lease does not provide any additional development rights and will not give approval for further development of building(s) on the site.

The Lessee currently operates a soccer field on the site. The proposed deconcessionalisation of the Crown lease will not impact on the continued use of the site for this purpose. Deconcessionalisation does not, in itself, alter the lease purpose clause and does not approve any physical changes to the site.

- c. RE: s261(2)(c) of the Act: The DA to deconcessionalise the Crown lease includes a lease variation to permit the use of communications facility of up to 60 square metres. The applicant has stated this use is for telecommunications equipment attached to light poles. There are development applications or proposals for additional works on Block 16 at the present time.
- d. RE: s261(2)(d) of the Act: 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 through 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. 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 beyond the variation to permit the use of communications facility of up to 60 square metres. A separate, new, development application would be required to further change the authorised use. If the concessional status of the lease is retained, the authority will be required to scrutinise any dealings involving the lease. I consider that the proposed variation to remove the concessional lease status would support the continued use of the land as a soccer field on Block 16.

The Territory Plan permits the use of outdoor recreational facility and playing field in the PRZ2 zone. Following examination of the Social Impact Assessment, I consider that the concessional status should not be retained as this will adversely impact upon the ability of the lessee to raise funds to ensure the upkeep of the soccer field.

## 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.