

Planning and Development (Consideration of Public Interest) Decision 2016 (No 2)

Notifiable instrument NI2016–346

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 2016 (No 2)*.

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 201629249 applying to Block 28 Section 34 Dickson made on 19 April 2016.

4 Background

Details of the relevant development application and the reasons for the decision are provided in the schedule.

Mick Gentleman MLA
Minister for Planning and Land Management
04 July 2016

Schedule
(see section 4)

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 1600 Folio 86 in respect of the land identified as Block 28 Section 34 Division of Dickson.

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 application does not seek to vary the Crown lease to add additional uses. If approved, a condition of the application will require the lessee to pay the "payout amount" as worked out under Section 263 of the Act. The application will be finalised by surrender of the existing Crown lease and regrant of a new market value lease. If the concession is removed the Territory will maintain adequate control of any future uses through the provisions of the Commercial CZ3 Services Zone in the Territory Plan.
- b. RE: s261(2)(b) of the Act: The lessee's stated intention is to continue to operate a licensed club and commercial accommodation on the site. Future development proposals of the site will be subject to lodgment and assessment in line with legislation including the Territory Plan and the Dickson Precinct Code.

The lessee has stated it does not intend to sell or transfer the site in the immediate future.

Future development under a market value lease will facilitate the creation of new commercial and office floor space that can be used to increase economic vitality of the whole centre, bring additional patronage to other local businesses and increase employment in Dickson. These benefits would be consistent with the aims of the Dickson Master Plan which was incorporated in the Territory Plan under Variation 311 and the ACT Planning Strategy.

- c. RE: s261(2)(c) of the Act: The DA is limited to the payout of the concession of the Crown lease. There are no additional development applications or proposals for additional works on this block at the present time. Future development on the site will be in accordance with the Territory Plan and the Dickson Precinct Code.
- d. RE: s261(2)(d) of the Act: Should the site be required for a public purpose, the Territory would need to acquire the lease by a negotiated purchase or under the *Lands Acquisition Act 1994* either by agreement with the lessee or by a compulsory process. As the Crown lease is only partially concessional, the Territory would be required to pay full market value for those development rights which are not concessional, as well as lessee owned improvements. It is not anticipated that the Territory will require the site for a public purpose.

- e. RE: s261(2)(e) of the Act: It is not considered necessary to encourage the continued use of the land for an existing lease authorised use through retention of the concessional lease status. This is because any future change of use would require a lease variation that would require an application for development approval. The application for approval would need to be assessed by the planning and land authority and would only be able to be granted if consistent with the Territory Plan.

In this case, the requirements of the Territory Plan are considered sufficient in themselves to ensure that the land continues to be used for a purpose consistent with the public interest. There is no need for any additional assurance of continued appropriate use through the retention of the concessional lease status.

In addition, retaining the concessional status may be counter-productive in this case. Section 265 of the Act requires the lessee of a concessional lease to obtain the written consent of the authority before dealing with the lease, including sub-letting. It is possible this requirement would inhibit the lessee's ability to raise additional financial resources in the event such is required for maintenance, continued operation or further development consistent with the Territory Plan.