



# Disclosure of Political Donations and Gifts

**Local Government and Planning Legislation Amendment (Political Donations) Act 2008 was passed by the NSW Parliament on 30 June 2008 and will become effective from 15 September 2008. This guideline provides advice on implications of the amendments to the Local Government Act 1993 and Environmental Planning and Assessment Act 1979 in relation to political donations and gifts which will be made when the Act commences. It outlines obligations on applicants, those making submissions and decision makers in relation to the disclosure of information relating to political donations and gifts during the planning making or development assessment process.**

## 1. Introduction

The object of the amendments introduced into the *Environmental Planning and Assessment (EP&A) Act 1979* is to require the disclosure of relevant political donations or gifts when planning instrument proposals or development applications are made to minimise any perception of undue influence by:

- (a) requiring public disclosure of the political donations or gifts at the time development applications (or public submissions relating to them) are made, and
- (b) providing the opportunity for appropriate decisions to be made about the persons who will determine or advise on the determination of the development applications.

Political donations or gifts are not relevant to the determination of any planning instrument or development application, and the making of political donations or gifts does not provide grounds for challenging the determination of any planning instrument or development application.

The amendments to be made to the EP&A Act and Local Government Act includes requirements that are to be observed by council officers, elected councillors, applicants for development and development related matters. These include Environmental Plans, Development Control Plans, Concept Plans and applications for declaration as State significant development or Part 3A projects and modifications.

The amendments also impose disclosure obligations on persons who make written submissions on a development application or planning proposal either in support or opposing the application.

The Act includes disclosure obligations on matters that are to be determined either by the Director-General or the Minister for Planning under the EP&A Act.

The new requirements for disclosure of political donations or gifts do not apply to applications for a complying development certificate (or modification of such application) or applications or requests made by a public authority on its own behalf or applications or requests that are excluded by regulations.

These amendments to the EP&A Act and Local Government Act complement amendments to the Election Funding and Disclosures Act 1981. The amendments to Election Funding and Disclosures Act commenced on the 11 July, 2008. The amendments to the EP&A Act and Local Government Act will commence on 15 September 2008.

A circular setting out the implications of the amendments to the Local Government Act is available on the Department of Local Government Website [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au).

## 2. What are political donations and gifts?

The political donations and gifts have the same meaning as under the *Election Funding and Disclosure Act, 1981*.

A *gift* includes:

- any disposition of property made by a person to another person (other than by will)
- a disposition in money or money's worth (made without consideration or with inadequate consideration)
- the provision of a service other than volunteer labour (made for no consideration or for inadequate consideration)
- an amount paid as a contribution, entry fee or other payment to entitle a person to participate in or otherwise obtain any benefit from a fund-raising venture or function
- an annual or other subscription paid to a party by a member of the party, or a person or entity (including an industrial organisation) for affiliation with the party.

A *political donation* is:

- (a) a gift made to or for the benefit of a party, or
- (b) a gift made to or for the benefit of an elected member, or
- (c) a gift made to or for the benefit of a candidate or a group of candidates, or
- (d) a gift made to or for the benefit of an entity or other person (not being a party, elected member, group or candidate), the whole or part of which was used or is intended to be used by the entity or person:
  - (i) to enable the entity or person to make, directly or indirectly, a political donation or to incur electoral expenditure, or
  - (ii) to reimburse the entity or person for making, directly or indirectly, a political donation or incurring electoral expenditure.

A *reportable political donation* is a donation of:

- \$1,000 or more made to or for the benefit of the party, elected member, group or candidate; or
- \$1,000 or more made by a major political donor to or for the benefit of a party, elected member, group or candidate, or made to the major political donor; or
- less than \$1,000 if the aggregated total of the donations made by the entity or person to the same party, elected member, group, candidate or person within the same financial year (ending 30 June) is \$1,000 or more.

A reportable political donation made to a local councillor of any local council includes any donation made at the time the person was a candidate for election to the council.

### **3. How to make a Disclosure of a Political Donation or a Gift?**

A disclosure statement of a reportable political donation or gift must accompany a planning application or submission if the reportable donation or gift is made before the application or submission is made. If the donation or gift is made afterwards, a disclosure statement must be sent to the person to whom the relevant planning application or submission was made within 7 days after the donation or gift is made.

#### **a) What details of each political donation needs to be disclosed?**

The following information must be disclosed:

- (a) the name of the party or person for whose benefit the donation was made,
- (b) the date on which the donation was made,
- (c) the name of the donor,
- (d) the residential address of the donor (in the case of an individual) or the address of the registered or other official office of the donor (in the case of an entity),
- (e) the amount (or value) of the donation,
- (f) In the case of a donor that is an entity and not an individual—the Australian Business Number (ABN) of the entity.

#### **b) What details of each gift needs to be disclosed?**

The disclosure of gifts is to include disclosure of:

- (a) the name of the person to whom the gift was made,
- (b) the date on which the gift was made,
- (c) the name of the person who made the gift,
- (d) the residential address of the person who made the gift (in the case of an individual) or the address of the registered or other official office of the person who made the gift (in the case of an entity),
- (e) the amount (or value) of the gift.

See Attachment 1 for an example of a disclosure statement.

### **4. When must an applicant/proponent make a disclosure?**

#### **a) General provisions**

A disclosure must be made by any person who has a *financial interest* in a *planning application* and who has made a *reportable political donation* in the 2 years before a planning application is made and/or determined.

*Planning Applications* include applications made either to a Council, the Director-General or the Minister:

- (a) a formal request to the Minister, a council or the Director-General to initiate the making of an environmental planning instrument or development control plan in relation to development on a particular site; or
- (b) a formal request to the Minister or the Director-General for development on a particular site to be made State significant development or declared a project to which Part 3A applies; or
- (c) an application for approval of a concept plan or project under Part 3A (or for the modification of a concept plan or of the approval for a project); or
- (d) an application for development consent under Part 4 (or for the modification of a development consent); or
- (e) any other application or request prescribed by the regulations; but does not include:

- (i) an application for (or for the modification of) a complying development certificate, or
- (ii) an application or request made by a public authority on its own behalf or made on behalf of a public authority, or
- (iii) any other application or request that is excluded from the definitions in the Act by the regulations.

*Note: At this stage there are no relevant regulations.*

A person has a *financial interest* in a planning application if:

- (a) the person is the applicant or the person on whose behalf the application is made, or
- (b) the person is an owner of the site to which the application relates or has entered into an agreement to acquire the site or any part of it, or
- (c) the person is associated with a person referred to in paragraph (a) or (b) and is likely to obtain a financial gain if development the subject of the application is authorised or carried out (other than a gain merely as a shareholder in a company listed on a stock exchange). or
- (d) The person has any other interest relating to the application, the site or the owner of the site that is prescribed by the regulations. *Note: At this stage there are no relevant regulations.*

The person is *associated* with another person if:

- (i) they carry on a business together in connection with the relevant planning application (in the case of the making of any such application) or they carry on a business together that may be affected by the granting of the application (in the case of a relevant planning submission), or
- (ii) they are related bodies corporate under the *Corporations Act 2001* of the Commonwealth, or
- (iii) one is a director of a corporation and the other is any related corporation or a director of any related corporation, or
- (iv) they have any other relationship prescribed by the regulations.

#### **b) Disclosure when applications lodged with the Minister or Director General**

Any persons with a financial interest in the application, is required to disclose all reportable political donations made within the previous 2 years when making a planning application to the Minister or the Director General. A disclosure must also be made of any reportable political donations made during the period the planning application is being considered prior to it being determined.

#### **c) Disclosures when applications lodged with the Local Council**

Any persons with a financial interest in the application, is required to disclose all reportable political donations and gifts made within the previous 2 years when making a planning application to the Council. A disclosure must also be made of any reportable political donations or gifts made during the period the planning application is being considered prior to it being determined. These include:

- (i) all reportable political donations made to any local councillor of the council
- (ii) all gifts made to any local councillor or employee of that council.

A reportable political donation made to a local councillor of any local council includes any donation made at the time the person was a candidate for election to the council.

## **5. When must a person making a submission make a disclosure?**

A *relevant public submission* means a written submission made by a person objecting to or supporting a planning application or any development that would be authorised by the granting of the application.

### **a) Disclosure if submissions lodged with the Minister or Director General**

A person who makes a *relevant public submission* in relation to a planning application lodged with the Minister or the Director General must make a disclosure of any reportable political donation made in the previous 2 years (and up to the time the matter is determined) to anyone by that person or any associate of that person.

### **b) Disclosure if submissions lodged with the Local Council**

A person who makes a *relevant public submission* in relation to a planning application lodged with the Council must make a disclosure of any reportable political donation or gift made in the previous 2 years (and up to the time the matter is determined) to anyone by that person or any associate of that person including:

- (i) all reportable political donations made to any local councillor of the council
- (ii) all gifts made to any local councillor or employee of that council.

A reportable political donation made to a local councillor of any local council includes any donation made at the time the person was a candidate for election to the council.

## **6. When must a councillor make a disclosure?**

The amendments to the Local Government Act require councils to keep a register of copies of disclosures of political donations lodged with the Election Funding Authority by or on behalf of councillors (including in their capacity as candidates for election as councillors).

Part 6 of the *Election Funding and Disclosures Act* makes provisions for disclosure by councillors and candidates for civic office (and parties registered in connection with local government elections) of political donations and electoral expenditure. A public register is to list all current donations and expenditure declarations lodged by councillors with the Election Funding Authority. Where a General Manager reasonably suspects that a councillor has failed to comply with his or her obligation to disclose and manage a conflict of interest arising from a political donation, the General Manager must refer the matter to the Director General of the Department of Local Government.

The Electoral Commission NSW has established a dedicated enquiry line to assist councillors and candidates. In order to ensure that councillors and prospective candidates receive consistent information, any enquiries regarding disclosure of political donations returns and electoral legislation generally, should be made to Elections Enquiries on 1300 135 736.

## **7. What records of councillor decisions are required?**

The General Manager is required (under the amendments inserting Part 8A to the Local Government Act) to keep a public register containing for each planning decision made at a council or committee meeting, the names of councillors who supported the decision and those that opposed the decision. This provision applies to planning decisions made by councillors in relation to:

- Development applications
- Environmental planning instruments
- Development control plans
- Development contribution plans.

New section 375A requires General Managers to record which councillors vote for and against each planning decision of the council, and to make this information publicly available. For the purposes of section 375A General Managers of councils will need to establish a register that contains:

- a description or identifier of the development or planning matter considered by council
- the decision in relation to the matter or a reference to the minutes of the meeting where the decision is recorded
- names of the councillors who supported the decision
- names of the councillors who opposed the decision

To maintain the register, the Act requires that a division be called (in accordance with the council's meeting regulations) whenever a planning decision is put at a council or committee meeting including meetings closed to the public. Each decision recorded in the register is to clearly describe or identify the matter being determined. A regulation may be made to set out information required in the register.

## **8. Consideration of political donations or gifts in determinations**

The fact that political donations or gifts have been made by applicants/proponents of a planning application should not affect whether the application is approved or refused. Political donations or gifts should not be relevant in making a determination. The matter should be determined on its merits.

Nor do they provide grounds for challenging the determination of any applications.

The proposed amendments to the Local Government Act are intended to assist in identifying any potential or actual conflict of interest. A circular setting out the implications of the amendments to the Local Government Act is available on the Department of Local Government Website [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au).

Under s124A of the EP&A Act, special provisions are set out to deal with development consent where there is the potential that the decision is tainted by corruption. In these circumstances, the Minister or the Court may suspend the decision pending the institution and determination of proceedings in respect of the decision. The Minister is to give the consent authority and the applicant for the grant or modification of the development consent written notice of the suspension as soon as practicable after it is imposed.

## **9. Making disclosures of political donations and gifts public**

Under the EP&A Act, disclosures of reportable political donations and gifts will be required to be made available to the public on, or in accordance with arrangements notified on the Council's or the Department's website or made publicly available in accordance with arrangements notified on the website, within 14 days after the disclosure is made.

This requirement applies to all applications or submissions made after the commencement of the amendments to the Act and extends to any political donations or gifts made before the commencement of the amendments.

### **a) Applications made to the Department of Planning or Minister**

Where the application is lodged with the Department of Planning, the disclosure statements of reportable donations by the applicant or those making submissions must be either placed on the Department's website or made publicly available in accordance with arrangements notified on the Department's website, within 14 days of receipt.

### **b) Applications made to the Local Council**

Where the application is lodged with the Council, the disclosure statements of reportable donations and gifts by the applicant or those making submissions must be placed on the Council's website or made publicly available in accordance with arrangements notified on the Council's website within 14 days of receipt.

## **10. What are the penalties for not making disclosure?**

### **a) Under the EP&A Act**

A person is guilty of an offence under s125 of the EP&A Act if the person fails to make a disclosure of a reportable political donation or gift if it is reasonable for that person to know that such a reportable donations or gifts should have been disclosed. It is also an offence to make a false disclosure statement.

The maximum penalty for any such offence is the maximum penalty under Part 6 of the *Election Funding and Disclosures Act, 1981*. Currently the maximum penalty is \$22,000 (200 penalty points) or imprisonment for 12 months, or both.

### **b) Under the Local Government Act**

If a General Manager reasonably suspects that a councillor has not complied with the provisions of the code of conduct under Section 440 of the *Local Government Act* (relating to the disclosure of political donations or the manner of dealing with any perceived conflict of interest in relation to political donations), the General Manager is to refer the matter to the Director General of the Department of Local Government.

The Director General may refer the matter to the Pecuniary Interest and Disciplinary Tribunal under s440N and the referral may be made without the councillor concerned having previously been suspended for misbehaviour.

## **11. Actions to be taken by Councils to comply with requirements**

It is suggested that councils take the following actions as a minimum to address the requirements of the Local Government and Planning Legislation Amendment (Political Donations) Act 2008:

### **Forms**

- Develop appropriate Disclosure Forms - for use:
  - by applicants to accompany development applications or planning matters, or
  - by applicants where a political donation and/or gift is made after the lodgement of the application and the required declaration
  - by persons making written submissions to applications, or
  - by persons who have made a written submission in circumstances where a political donation and/or gift is made after the lodgement of a written submission and required declaration.

Forms should ideally capture political donations under \$1,000 in order that it can be determined whether a reportable political donation has been made upon aggregation.

### **Website**

- Arrange a general notification message for inclusion on council's website to inform the public of the requirements of the Act.
- Arrange processes that will ensure that disclosures of political donations and/or gifts are made public as required by the Act (i.e. within 14 days after the disclosure is made in accordance with the Act). This can be done by
  - making the disclosure statement available on the Council's website; or
  - making the information available in accordance with arrangements notified on Council's website (such as a Register available at the information desk).

### **Communication/Notification**

- Consider appropriate wording for inclusion in advertisements and notifications (including notifications/letters to the public, residents and neighbours) about development applications and development matters that are to be considered by the council, such wording to ensure awareness by the public of the requirements of the Act.

### **Records**

- Ensure councillors, and councillors that chair council meetings or committee meetings that deal with development, are aware of the requirements of the Act for a division and the recording of voting by councillors in respect of each development matter before the meeting.
- Ensure committee clerks have systems that can accurately record such divisions and voting by councillors and for inclusion in the minutes of council and committee meetings.
- Ensure that the general manager keeps a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of the councillors who opposed (or are taken to have opposed) the decision. (Note: Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations (if any) )
- Ensure the general manager keeps a register of copies of disclosures of political donations lodged with the Election Funding Authority by or on behalf of councillors (including in their capacity as candidates for election as councillors).

### **Education and Training**

- Consider the need for education and training of councils including planning and front counter staff, relevant staff that may have input into councils planning processes or systems and elected members both prior to and following the 2008 local government elections.
- The Department plans to provide councils with further communication material to assist with the introduction of the new requirements.

### **Authorised by:**

Sam Haddad  
Director General

### **Important Note**

*This Guideline does not constitute legal advice. The information is provided as a basic summary only. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this guideline.*

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Attachment 1: Example

## Disclosure Statement of Political Donations and Gifts where Minister is approval authority

A disclosure statement of a reportable political donation or gift must accompany a planning application or submission if the reportable donation or gift is made within 2 years before the application or submission is made. If the donation or gift is made after the lodgement of the application, a disclosure statement must be sent to the relevant consent or approval authority within 7 days after the donation or gift is made.

<b>Name of person making donation or gift</b>		
<ul style="list-style-type: none"> <li>• Residential address or Registered/official office</li> <li>• ABN if not an individual</li> </ul>		
<b>Name /address of development application or planning matter</b>		
<ul style="list-style-type: none"> <li>• Date application lodged</li> <li>• Consent or approval authority</li> </ul>		
<b>Person's interest in application</b>		
<ul style="list-style-type: none"> <li>• Applicant</li> <li>• Person with a <i>financial interest (explain)</i></li> <li>• Person making submission in opposition</li> <li>• Person making submission in support</li> </ul>		
<b>Name of the party, group or person to benefit from the donation</b>	<b>Date donation made</b>	<b>Amount of the donation<sup>1</sup></b>
<b>Name of the party, group or person to whom gift is made</b>	<b>Date gift made</b>	<b>Amount or value of the gift<sup>1</sup></b>

Note 1: A *reportable political donation* is a donation of:

- \$1,000 or more made to or for the benefit of the party, elected member, group or candidate; or
- \$1,000 or more made by a major political donor to or for the benefit of a party, elected member, group or candidate, or made to the major political donor; or
- less than \$1,000 if the aggregated total of the donations made by the entity or person to the same party, elected member, group, candidate or person within the same financial year (ending 30 June) is \$1,000 or more.

