



PLANNING SYSTEM

Development assessment and plan making

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Related	

Disclosure of political donations and gifts

This circular provides an overview of the new reporting requirements under the planning and local government legislation in relation to political donations and gifts.

Introduction

The *Local Government and Planning Legislation Amendment (Political Donations) Act 2008* (the Act) was passed by both houses of the NSW Parliament on 30 June 2008 and will become **effective from 15 September 2008**.

The Act amends the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Local Government Act 1993*. These amendments require the disclosure of relevant political donations or gifts when planning or development applications are made to minimise any perception of undue influence by:

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

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

The amendments include requirements that are to be observed by councils, elected councillors and applicants regarding development and development-related matters (e.g. environmental planning instruments, development control plans, development applications and formal requests to the Minister or Director-General for development on a particular site to be made State significant development or declared a project to which Part 3A applies).

The amendments also impose disclosure obligations on persons who make a written submission regarding a development application or other

planning matter either in support of or opposing such an application.

The amendments include requirements for matters that are to be determined under Part 3, Part 3A and Part 4 of the EP&A Act.

However, the 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.

Disclosure required for reportable political donations or gifts

The amendments to the EP&A Act require that:

- a **reportable political donation** as defined in the *Election Funding and Disclosures Act 1981* (a donation of \$1000 or more made to or for the benefit of the party, elected member, group or candidate or 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
- a **gift** (as defined in the *Election Funding and Disclosures Act 1981*) to any local councillor or council employee (and includes a disposition of property or a gift of money or the provision of other valuable or service for no consideration or for inadequate consideration)

must be disclosed when a relevant planning application is made to a council. Only reportable political donations need to be disclosed when a relevant planning application is made to the Director-General or the Minister.

A donation of less than \$1000 can be a reportable political donation if the aggregated total of such donations made by an entity or person to the same party, elected member, group or candidate or person within the same financial year (ending 30 June) is \$1000 or more.

A disclosure is required to be made in a statement accompanying the relevant development or planning application by the person who makes the application. In addition, a person who makes a written submission either objecting to or supporting a relevant development or planning application must also make a disclosure if the person has made a reportable political donation.

Such disclosures are required to cover a period of two years before the application or submission is made and end when the application is determined.

If a donation or gift is made after the lodgement of the required disclosure statement, a further statement is required to be provided within seven days after the donation or gift is made.

Disclosure details required

A disclosure statement is required to provide:

- the name of the party or person for whose benefit the donation was made
- the date on which the donation was made
- the name of the donor
- the residential address of the donor (if an individual) or the registered or official office of the donor (if an entity)
- the amount (or value) of the donation
- if the donor is an entity, the Australian Business Number (ABN).

Similar disclosure details are required in relation to gifts.

Disclosures to be made available to the public

Disclosures of reportable political donations and gifts are to be made available to the public within 14 days by the disclosure being placed on a website maintained by the council (in the case of matters lodged with council) and on a website maintained by the Department of Planning (in the case of matters lodged with the Minister or Director-General) or by advising arrangements for their access on such websites.

Political donation disclosure register required

The amendments to the *Local Government Act 1993* require councils to keep a register of copies of current declarations 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).

General Manager may refer suspected non-compliance to the Director General of the Department of Local Government

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 who may refer it to the Pecuniary Interest and Disciplinary Tribunal.

Register of planning decisions required

The General Manager is required to keep a 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. To maintain the register, the amendments require that a division be called whenever a planning decision is put at a council or committee meeting, including meetings closed to the public.

Offence to fail to disclose reportable donations or gifts

The amendments to the EP&A Act make it an offence if a disclosure of a reportable political donation or gift is not made in accordance with the Act.

Further Information

A copy of the *Local Government and Planning Legislation Amendment (Political Donations) Act 2008* is available on the NSW Parliamentary Counsel's office website: www.legislation.nsw.gov.au.

A circular setting out the implications of the amendments to the *Local Government Act 1993* is available on the Department of Local Government Website www.dlg.nsw.gov.au.

A guideline has been prepared by the Department of Planning to assist councils in the implementation of the requirements of the EP&A Act. The Department plans to provide councils with further communication material to assist with the introduction of the new requirements.

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practicenotes

Authorised by:
Sam Haddad
Director-General

Important note: This circular does not constitute legal advice. 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 circular.

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