

## Property & Planning Alert September 2008

### Development Proposals: new requirements for the disclosure of Political Donations and Gifts in NSW

From 1 October 2008, if you intend to lodge an application for development or planning approval, or if you wish to make written submissions opposing or in support of a development application, you must ensure that you disclose any reportable political donations or gifts made by you or any associated person who has a financial interest in the relevant planning application.

On 1 October 2008, the Local Government and Planning Legislation Amendment (Political Donations) Act 2008 (NSW) (the Act) will commence. The Act amends the Environmental Planning & Assessment Act 1979 (EP&A Act) and the Local Government Act 1993.

#### The aims of the legislation

The Act requires applicants or persons making submissions in relation to relevant planning applications, to disclose any political donations or gifts.

The object of the amendments is to require the disclosure of relevant political donations or gifts when planning applications are made to minimise the perception of undue influence by:

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

#### The purpose of the legislation is to:

- > improve the transparency and accountability of government;
- > reduce corruption;
- > minimise the perception of bias; and
- > identify any potential or actual conflicts of interest in the planning approval process.

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

#### How is a political donation or gift defined?

A “**reportable political donation**” is a donation made to a local councillor (or a candidate for election to council) totalling \$1000.00 or more in a financial year.

A “**gift**” to a local councillor or council employee includes a disposition of property, a gift of money or other valuable or the provision of a service for no consideration or for inadequate consideration.

#### Who does the Act apply to?

The Act imposes obligations of disclosure of political donations and gifts on:

- > councils;
- > elected councillors;
- > applicants for development and development related matters;
- > persons who make written submissions in support of or in opposition to a development application or planning proposal; and
- > any person who has a financial interest in a relevant planning application, including the applicant, the person on whose behalf the application is made, the owner of the site and any associated person or entity.

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 two years before a planning application is made and/or determined.



## What planning applications does the Act apply to?

“**Relevant planning applications**” include applications made to the Minister, Director-General or a Council for:

- > an environmental planning instrument;
- > a development control plan;
- > declaration as State significant development or Part 3A project;
- > a concept plan or modification;
- > a Part 3A project;
- > development consent under Part 4 or modifications of consent.

The new requirements for disclosure of political donations or gifts do not apply to applications for a complying development certificate or an application or request made by or on behalf of a public authority.

## How must disclosure be made?

A disclosure statement of a reportable political donation or gift must accompany a planning application or submission if the 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 relevant consent authority within 7 days after the donation or gift is made.

Disclosures of reportable political donations and gifts are to be made available to the public within 14 days after the disclosures are made on a website maintained by the Council or Department of Planning.

## Non-disclosure or false disclosure - offences under the EP&A Act

A person is guilty of an offence if the person fails to make a disclosure of a reportable political donation or gift if the person knows, or ought reasonably to know, that the donation or gift was made and should

have been disclosed. It is also an offence to make a false disclosure statement.

The maximum penalty for any such offence is \$22,000.00 or 12 months imprisonment, or both.

## What steps should be taken?

From 1 October 2008, if you intend to lodge an application for development or planning approval, or if you wish to make written submissions opposing or in support of a development application, you must ensure that your application or submission is accompanied by a statement disclosing any reportable political donations or gifts made by you or any associated person who has a financial interest in the relevant planning application.

If you have any queries regarding your obligations under this new legislation, please do not hesitate to contact us.

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## For more information on this topic please contact:



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