

Application for determination that a person or another entity is not a prohibited donor



ELECTORAL ACT 1992 - SECTION 277

LOCAL GOVERNMENT ELECTORAL ACT 2011 - SECTION 113D

Pursuant to provisions in the *Electoral Act 1992* and *Local Government Electoral Act 2011* it is an offence for a prohibited donor to make a political donation. It is also an offence to accept a political donation from a prohibited donor. This form must be used by a person that seeks a determination by the Electoral Commissioner that the person, or another entity, is not a prohibited donor.

A *prohibited donor* is defined under Part 11 Election funding and financial disclosure, Division 8 Rules about particular gifts and loans, Subdivision 4 Political donations from property developers, to mean a property developer; or an industry representative organisation, a majority of whose members are property developers.

A *political donation* is a gift or loan (other than from a financial institution) for the benefit of (1) a political party; (2) an elected official; (3) a candidate in an election or (4) a third party entity to make a gift to any of the groups in (1) to (3) or incur its own electoral expenditure.

Please refer to Part F – Definitions for further details on the meaning of terms used in this application form. You must complete all fields and answer all the questions in this form. Where not applicable, write N/A.

The *Information Privacy Act 2009* protects the personal information you submit. Consideration of your application may involve consultation and if so, details may be disclosed to third parties. Your information will not be otherwise disclosed outside the Electoral Commission of Queensland unless required or authorised by law.

PART A - Applicant's details

YOUR NAME

YOUR STREET ADDRESS

YOUR POSTAL ADDRESS (IF DIFFERENT FROM ABOVE)

TELEPHONE

EMAIL

STATE YOUR RELATIONSHIP TO THE PERSON OR ENTITY FOR WHICH A DETERMINATION IS SOUGHT

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Information for applicants

To make a determination the Electoral Commissioner (or delegate) relies on an applicant to fully complete the application form. The applicant must attach enough relevant information to satisfy the Electoral Commissioner that a determination should be made.

- ECQ staff may contact the applicant (or the subject of the application if different) to request further or clarifying information in connection with the application after the application has been lodged with ECQ.
- ECQ staff may liaise directly with government agencies who administer Queensland's planning regime and local government councils to seek relevant information to assist in their assessment of an application.
- ECQ is required by law to maintain a public register of determinations and revocations of determinations (available on ECQ's website). Personal information, such as a subject's name and/or company, may be included on the public register.
- A determination is in force for 12 months after it is made by the Electoral Commissioner (or delegate) but can be revoked by the Electoral Commissioner (or delegate) at any time by notice in writing to the applicant and relevant entity, if the entity was not the applicant.
- ECQ determinations are conclusively presumed to be correct in favour of a person for the purposes of a political donation that the person makes or accepts while the determination is in force (even if a determination is subsequently revoked or set aside).
- ECQ determinations are not presumed to have effect in favour of a person who makes or accepts a political donation knowing the information provided to ECQ to enable the making of the determination was false or misleading in a material particular.
- Applications are to be sent to Electoral Commission of Queensland, GPO Box 1393, Brisbane QLD 4001 or emailed to fad@ecq.qld.gov.au.

Applicant declaration

WARNING: A person who provides information to ECQ in connection with an application for a determination by the Electoral Commissioner (or delegate) knowing that the information is false or misleading in a material particular is guilty of an offence. The maximum penalty for the information offence is 400 penalty units (\$53,380 as at 1 July 2019) or 2 years imprisonment.

I,

YOUR NAME

do solemnly and sincerely declare that the information provided in this application form and any attachments is, to the best of my knowledge and belief, true and correct.

YOUR SIGNATURE

DATE

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PART B - Details of the person or other entity subject to this application

FULL NAME OF THE PERSON OR ENTITY

STREET ADDRESS OF THE PERSON OR ENTITY

POSTAL ADDRESS OF THE APPLICANT (IF DIFFERENT FROM ABOVE)

LEGAL ELEMENT (FOR EXAMPLE PTY, LTD ETC)

ABN/ACN OR OTHER ASIC IDENTIFICATION

TELEPHONE

EMAIL

WEBSITE ADDRESS

Note: Close associate applications to provide details of the corporation with which they are associated.

PART C - Details of the entity subject to this application

1. Is the corporation or other entity governed by a written constitution? (please circle) **NO YES**

If yes, please attach a copy of the constitution to the application.

2. Is the corporation or other entity registered with the Australian Securities and Investments Commission (ASIC)? **NO YES**

If yes, please ensure the registration number is shown in Part B of the application.

3. For what purpose was the corporation or other entity established?

4. What business/activities is the corporation or other entity engaged in or has been established to be engaged in?

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5. Is the corporation or entity part of a business group? **NO YES**

If yes, attach information on group structure and/or organisational structure (e.g. organisational chart)

PART C - Responses to further questions (cont.)

6. Has the corporation or other entity ever made, or intends to make, by or on behalf of the corporation or other entity, a relevant planning application? **NO YES**

If yes, provide details below, including the number of applications during the last five years.

6.1 If you answered yes to Question 6, were/are any of the relevant planning application/s linked to the development of residential or commercial land? **NO YES**

If yes, provide details below.

6.2 If you answered yes to Question 6.1, is or was the purpose of any of the development/s for the sale or lease of the land for profit? **NO YES**

If yes, provide details below.

6.3 Does the corporation or other entity provide commercial premises at which it will carry on business or its activities? **NO YES**

If yes, provide details below, including the percentage of the premises available for sale or leasing.

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PART D - Details of close associates of entity identified in Parts B and C

List the following details of directors and officers of the entity.

Name	Office Held	Address	Spouse

List the following details of persons whose voting power is greater than 20 per cent with respect to the entity or any of the entities' related bodies corporate and any spouses of such persons.

Name	Office Held	Address	Spouse

List stapled entities (if applicable).

List the following details of persons who hold more than 20 per cent of the units in a relevant unit trust (a trust of which the entity is a trustee, manager or responsible entity).

Name	Address

List the beneficiaries of a relevant discretionary trust (a discretionary trust of which the entity is a trustee, manager or responsible entity).

Name	Address

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PART F - Definitions

Term	Definition
Close associate	<p>Close associate of a corporation means each of the following:</p> <ul style="list-style-type: none"> • a director or officer of the corporation, or the spouse of such a director or officer; • a related body corporate of the corporation; • a person whose voting power in the corporation or a related body corporate of the corporation is greater than 20% or the spouse of such a person; • if the corporation or a related body corporate of the corporation is a stapled entity in a stapled security - the other stapled entity in relation to that stapled security; and • if the corporation is a trustee, manager or responsible entity in relation to a trust - a person who holds more than 20% of the units in the trust (in the case of a unit trust) or is a beneficiary of the trust (in the case of a discretionary trust).
Director	<p>Director, of a corporation, see the <i>Corporations Act 2001</i> (Cwlth), section 9.</p> <p>Director of a company or other body means:</p> <p>(a) a person who:</p> <ul style="list-style-type: none"> (i) is appointed to the position of a director; or (ii) is appointed to the position of an alternate director and is acting in that capacity; <p>regardless of the name that is given to their position; and</p> <p>(b) unless the contrary intention appears, a person who is not validly appointed as a director if:</p> <ul style="list-style-type: none"> (i) they act in the position of a director; or (ii) the directors of the company or body are accustomed to act in accordance with the person's instructions or wishes. <p>Subparagraph (b)(ii) does not apply merely because the directors act on advice given by the person in the proper performance of functions attaching to the person's professional capacity, or the person's business relationship with the directors or the company or body.</p> <p>Note: Paragraph (b)--Contrary intention--Examples of provisions for which a person referred to in paragraph (b) would not be included in the term "director" are:</p> <ul style="list-style-type: none"> • section 249C (power to call meetings of a company's members) • subsection 251A (3) (signing minutes of meetings) • section 205B (notice to ASIC of change of address).
Officer	<p>Officer has the same meaning as in section 9 of the <i>Corporations Act 2001</i> (Cwlth):</p> <ul style="list-style-type: none"> • a director or secretary of the corporation; or • a person: <ul style="list-style-type: none"> - who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or - who has the capacity to affect significantly the corporation's financial standing; or - in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation); or • a receiver, or receiver and manager, of the property of the corporation; or

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PART F - Definitions (cont.)

Term	Definition
Office r (cont.))	<ul style="list-style-type: none"> • an administrator of the corporation; or • an administrator of a deed of company arrangement executed by the corporation; or • a liquidator of the corporation; or • a trustee or other person administering a compromise or arrangement made between the corporation and someone else.
Political donatio n	<p>Political donation means:</p> <p>a. a gift made to or for the benefit of</p> <p>- for the <i>Electoral Act 1992</i>:</p> <ul style="list-style-type: none"> (i) a political party; or (ii) an elected member; or (iii) a candidate in an election. <p>for the <i>Local Government Electoral Act 2011</i>:</p> <ul style="list-style-type: none"> (i) a political party; or (ii) a councillor of a local government; or (iii) a candidate or group of candidates in an election; <p>b. a gift made to or for the benefit of another entity -</p> <ul style="list-style-type: none"> (i) to enable the entity (directly or indirectly) to make a gift mentioned in paragraph (a) or to incur electoral expenditure; or (ii) to reimburse the entity (directly or indirectly) for making a gift mentioned in paragraph (a) or incurring electoral expenditure; <p>c. a loan from an entity other than a financial institution that, if the loan were a gift, would be a gift mentioned in paragraph (a) or (b).</p> <p>Refer to related fact sheet for treatment of private gifts, and fundraising contributions and political party membership subscriptions.</p>
Prohibited donor	<p>Prohibited donor means:</p> <ul style="list-style-type: none"> • a property developer; or • any industry representative organisation if the majority of its members are property developers.
Property developer	<p>Property developer includes:</p> <p>a. a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit; or</p> <p>b. a person who is a close associate of such a corporation.</p> <p>Any activity engaged in by a corporation for the dominant purpose of providing commercial premises at which the corporation or related body corporate of the corporation will carry on business is disregarded for the purpose to determine if it is a property developer unless that business involves the sale or leasing of a substantial part of the premises.</p>

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PART F - Definitions (cont.)

Term	Definition
Related body corporate	Related body corporate has the same meaning as in the <i>Corporations Act 2001</i> (Cwlth). Section 9 of that Act defines a related body corporate as a body corporate that is related to another body corporate because it is one of the following: <ul style="list-style-type: none">• a holding company of the other body corporate;• a subsidiary of the other body corporate; or• a subsidiary of a holding company of the other body corporate.
Relevant planning application	Relevant planning application takes into account a person's activities that relate to making applications to an agency that administers planning and development laws under the: <ul style="list-style-type: none">• <i>Planning Act 2016</i> or the former <i>Sustainable Planning Act 2009</i>; or• <i>State Development and Public Works Organisation Act 1971</i>; or• <i>Economic Development Act 2012</i>.
Spouse	Spouse of a person includes a de facto partner or civil partner of that person.
Stapled entity	Stapled entity means (a) an entity the interests in which are traded along with the interests in another entity as stapled securities and (b) in the case of a stapled entity that is a trust, includes any trustee, manager or responsible entity in relation to the trust.