

Application for declaration that a corporation is not a property developer

The *Electoral Act 1992* was amended to give effect to a ban on property developers, their close associates or a person acting on their behalf, giving gifts to, or their acceptance by, a political entity. The amendments took effect from 1 July 2021.

This form is to be used by applicants seeking a declaration by the ACT Electoral Commission that a corporation is not a property developer. The applicant must complete all fields and answer all questions. Where relevant, applicants can write N/A.

Please refer to *PART E – Definitions*, for details on what constitutes a property developer for the purpose of the Electoral Act prohibition.

Further information can be found in the Elections ACT factsheet - Ban on gifts from property developers at www.elections.act.gov.au/funding_and_disclosure/funding_and_disclosure_handbooks

Protection of personal information

The ACT Electoral Commission is committed to the privacy protection of all personal information it collects, manages and stores.

Personal information collected from the application will be used by the Electoral Commission to assess the application and make a declaration that a corporation is not a property developer pursuant to section 222K of the *Electoral Act 1992*.

A declaration made by the Electoral Commission is a notifiable instrument. This means that the declaration will be made publicly available on the ACT Legislation Register www.legislation.act.gov.au. A list of declarations will also be available on the Elections ACT website www.elections.act.gov.au/funding_and_disclosure. The personal information of the applicant may be included on the declaration.

An Electoral Commission declaration remains in force for 12 months after it is made but can be revoked by the Electoral Commission at any time by giving written notice to the applicant seven days before the repeal.

For information about how the Electoral Commission protects the privacy of personal information, refer to the Privacy policy on the Elections ACT website at www.elections.act.gov.au/privacy.

Important information for the applicant

The ACT Electoral Commission is authorised to make a declaration that a corporation is not a property developer if the Electoral Commission is satisfied that it is more likely than not that the corporation is not a property developer. The Electoral Commission must make its declaration solely on the basis of information provided by the applicant.

The Electoral Commission will consider the nature of the relationship of the applicant to the corporation for which a declaration is being sought, as well as the applicant's access to information relating to the corporation's business affairs.

The Electoral Commission's declaration is conclusively presumed to be correct in favour of any person for the purposes of a gift that the person makes or accepts while the declaration is in force (even if the declaration is subsequently found to be incorrect).

The Electoral Commission's declaration is not presumed to be correct in favour of any person who makes or accepts a gift knowing that information given to the Electoral Commission, on which the declaration is based, was false or misleading in a material particular.

A person who provides information to the Electoral Commission in connection with an application for declaration by the Electoral Commission knowing that the information is false or misleading, or produces a false or misleading document, is guilty of an offence (see Part 3.4 of the ACT Criminal Code).

Part A – Applicant Details

<input type="text"/>	<input type="text"/>	<input type="text"/>	
TITLE	GIVEN NAME/S (AS ON ELECTORAL ROLL)	SURNAME (AS ON ELECTORAL ROLL)	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
RESIDENTIAL ADDRESS	SUBURB	STATE	POSTCODE
<input type="text"/>			
POSTAL ADDRESS (IF DIFFERENT TO REGISTERED ADDRESS)			
<input type="text"/>	<input type="text"/>	<input type="text"/>	
MOBILE	PHONE	EMAIL	

Applicant Declaration

I,

declare that the information in this application and any attachments are true and correct. I understand that giving information that is false or misleading in a material particular is an offence punishable under the ACT Criminal Code.

<input type="text"/>	<input type="text"/>
SIGNATURE OF APPLICANT	DATE

Part B – Details of the Corporation subject of this application

<input type="text"/>			
FULL NAME OF THE CORPORATION, INCLUDING ITS LEGAL ELEMENT (eg PTY, LTD, etc)			
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
REGISTERED ADDRESS OF THE CORPORATION	SUBURB	STATE	POSTCODE
<input type="text"/>			
POSTAL ADDRESS OF THE CORPORATION (IF DIFFERENT TO REGISTERED ADDRESS)			
<input type="text"/>	<input type="text"/>		
ABN/ACN OR OTHER ASIC IDENTIFICATION	WEBSITE		
<input type="text"/>	<input type="text"/>	<input type="text"/>	
MOBILE	PHONE	EMAIL	

OFFICE USE ONLY

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
APPLICATION NO.	DATE RECEIVED	PROCESSED BY	FILE NO.

Part C – Further Questions

1. **Is the corporation governed by a written constitution?**

If YES, attach a copy of the constitution to the application.

☐

YES

☐

NO

2. **Is the corporation registered with ASIC?**

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

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YES

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NO

3. **For what purpose was the corporation established?**

4. **What business is the corporation engaged in or has been established to be engaged in?**

5. **Does the corporation have one relevant planning application which is pending, OR has the corporation made three or more relevant planning applications which were determined during the last seven years?**

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YES

☐

NO

- 5.1) **If you answered YES to question 5, is the relevant planning application in connection with a residential or commercial development of land?**

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YES

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NO

If NO, go to question 6.

If YES, provide details, then go to question 5.2:

- 5.2) **If you answered YES to question 5.1, is the ultimate purpose of the development for the sale or lease of the land for profit?**

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YES

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NO

If NO, go to question 6.

If YES, provide details, including the percentage of the premises available for sale or leasing:

6. List the following details of directors and officers of the corporation:

Name	Office Held	Address	Full name of spouse, de-facto partner, domestic partner

7. List the following details of persons whose voting power is greater than 20 per cent with respect to the corporation, or any of the corporation's related body corporate:

Name	Office Held	Address	Full name of spouse, de-facto partner, domestic partner

8. List stapled entities, if applicable:

9. 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 corporation is a trustee, manager or responsible entity)

Name	Address

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

Name	Address

Part D – Applicant’s statement

Please provide any other information that is relevant for the Electoral Commission to consider in making its declaration including why the applicant considers that the corporation, the subject of the application for a declaration, is not a property developer under the provisions of the *Electoral Act 1992*. If more space is required reprint this page and attach to the application.

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Part E – Definitions

Close associate of a property developer	<p>A close associate of a property developer is any of the following:</p> <ul style="list-style-type: none"> (a) a related body corporate; (b) an officer of the corporation or a related body corporate; (c) a person whose voting power in the corporation or a related body corporate is more than 20%; (d) any domestic partner of a person mentioned in paragraph (b) or (c); (e) if the corporation or a related body corporate is a stapled entity in relation to a stapled security—the other stapled entity in relation to the stapled security; (f) if the corporation is a trustee, manager or responsible entity in relation to a trust— <ul style="list-style-type: none"> (i) for a unit trust—a person who holds more than 20% of the units in the trust; or (ii) for a discretionary trust—a person who is a beneficiary of the trust; (g) any other person or body prescribed by regulation.
Decided	<p>a relevant planning application is decided if</p> <ul style="list-style-type: none"> (a) for an application to make a variation to the territory plan— <ul style="list-style-type: none"> (i) for a draft special variation—the planning and land authority has prepared a draft special variation under the Planning and Development Act 2007, section 85B; and (ii) for a technical amendment—the plan variation is notified under the Planning and Development Act 2007, section 89; and (iii) in any other case—the planning and land authority has prepared a draft plan variation under the Planning and Development Act 2007, section 60; and (b) for any other case—it is decided in accordance with the Planning and Development Act 2007.
Development	in relation to land - see the Planning and Development Act 2007, section 7.
Gift	<p>In addition to the existing definition below, for gifts from property developers, their close associates and persons on their behalf, gift also includes a loan, other than a loan given by a financial institution on a commercial basis.</p> <p>The existing definition of gift:</p> <p>Gift means each of the following:</p> <ul style="list-style-type: none"> ▪ a disposition of property made by a person or organisation to someone else, without consideration in money or money's worth or with inadequate consideration; ▪ the provision of a service, other than volunteer labour, for no consideration or inadequate consideration; ▪ the part of an annual subscription paid to a party for membership of the party that is more than \$250; and ▪ gifts given to MLAs in their capacity as a Minister. <p>A gift does not include:</p> <ul style="list-style-type: none"> ▪ a disposition of property under a will; ▪ an annual subscription paid to a party for membership of the party that is \$250 or less; ▪ a gift that is given to an individual in a private capacity for the individual's private use and the individual does not use the gift solely or substantially for a purpose related to an election; ▪ administrative expenditure funding paid by the ACT Electoral Commission; or ▪ election funding paid by an electoral commission.
Make	a relevant planning application, means make, or cause another person to make the application.
Officer	see the Corporations Act, section 9.
Political entity	<ul style="list-style-type: none"> (a) an MLA; or (b) a party grouping; or (c) a non-party candidate; or (d) an associated entity.

Property developer	<p>(a) a corporation that carries on a business involving the residential or commercial development of land to sell or lease for profit; but</p> <p>(b) does not include the following:</p> <ul style="list-style-type: none"> (i) an incorporated association under the Associations Incorporation Act 1991; (ii) a corporation operated on a not-for-profit basis; (iii) a corporation declared by the Electoral Commission as not being a property developer; (iv) any other corporation prescribed by regulation. <p>Examples—subpar (ii)</p> <ul style="list-style-type: none"> 1 a company under the Corporations Act limited by guarantee that is prevented by its governing documents from distributing the company's profits or assets to its shareholders 2 a corporation registered with the Australian Charities and Notforprofits Commission
Relevant planning application	<p>1(a) a request, in any form, to a Minister or the planning and land authority to make a variation, special variation or technical amendment to the territory plan under the Planning and Development Act 2007;</p> <p>(b) a development application for a development proposal in the merit track or impact track under the Planning and Development Act 2007;</p> <p>(c) a request or application under the Planning and Development Act 2007, division 7.3.1 (Pre-application matters) in relation to a development proposal in the merit track or impact track;</p> <p>(d) an EIS exemption application under the Planning and Development Act 2007, part 8.2 (Environmental impact statements);</p> <p>(e) any other application, request or other action under the Planning and Development Act 2007 prescribed by regulation.</p> <p>(2) However, a relevant planning application does not include a development application if the dominant purpose of the application is to provide—</p> <ul style="list-style-type: none"> (a) residential premises to be occupied by the applicant; or (b) commercial premises to be occupied by the applicant to carry on business, and no substantial part of the premises are sold or leased to another person. <p>(3) For (2) above, if the property developer is the applicant, a reference to the applicant includes a close associate of the property developer.</p>
Stapled entity	<p>(a) means an entity the interests in which are traded along with the interests of another entity as a stapled security; and</p> <p>(b) for a stapled entity that is a trust—includes any trustee, manager or responsible entity for the trust.</p>
Voting power	see the Corporations Act section 9