



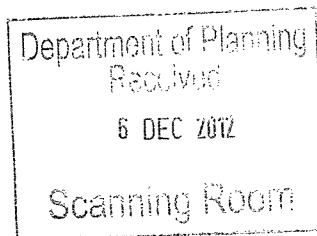
PCU012669



**DEXUS**

PROPERTY GROUP

6 December 2012



Attention: Ms Dianne Sarkies

Mr Glenn Snow  
Manager of Rail and Ports  
Department of Planning and Infrastructure  
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SYDNEY NSW 2000

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**By Email and Courier: glenn.snow@planning.nsw.gov.au**

Dear Mr Snow

**SSI/5414: North West Rail Link (NWRL): Stations, Rail Infrastructure and Systems (SSI Application)**

DEXUS Funds Management Limited (DEXUS) is the responsible entity of the trust in which 3 Brookhollow Avenue, Baulkham Hills (Premises) is held as an asset by Perpetual Trustee Company Ltd as registered proprietor. The Premises is within Norwest Business Park and is occupied for the purposes of a data centre by IBM. Data centres are sensitive to movement and vibration.

The underground corridor for the proposed NWRL will pass beneath the Premises. DEXUS is concerned that the construction and operation of the NWRL will have an unreasonable adverse impact on the Premises and the operations of the tenant on the Premises and that the assessment undertaken for the purposes of the SSI Application is inadequate such that the predicted impacts in the assessment cannot be relied upon.

DEXUS submits that the SSI Application should not be approved unless:

1. detailed testing and assessment is undertaken in the vicinity of the Premises to more accurately predict the geotechnical and vibration impacts of construction and operation of the NWRL on the building and the sensitive operations on the Premises; and
2. detailed conditions are imposed on the approval that ensure the predictions of no or negligible impact are met and that any damage caused by the construction and operation of the NWRL are mitigated and rectified.

**The geotechnical and vibration assessment is inadequate**

DEXUS submits that there has not been a proper and reasonable assessment in the EIS of the likely geotechnical and vibration impacts from construction and operation of the NWRL as proposed in the SSI Application.

The assessment in the Environmental Impact Statement by Transport for NSW "Stage 2 - Stations, Rail Infrastructure and Systems" for the SSI Application (EIS) is largely a desktop analysis and to a

large extent no site specific testing (other than for contaminants) or analysis appears to have been conducted for the purposes of the SSI Application. The EIS relies heavily on work completed for the concept plan application approved on 6 May 2008, namely the:

- Environmental Assessment Report by GHD dated 6 November 2006 (**Concept Plan EAR**) including various Appendices;
- Preferred Project Report by GHD dated May 2007 (**Concept Plan PPR**); and
- Supplementary Submissions Report by TIDC dated March 2008 (**Concept Plan SSR**).

(together referred to as the **Concept Plan Reports**).

The Concept Plan Reports and the EIS contain generic geotechnical information. The EIS is essentially a summary of the geotechnical content of the Concept Plan Reports.

The Technical Papers on vibration impacts do not consider the sensitive use of the Premises and adopts generic vibration impact criteria. In addition, the assessment has been prepared on the basis of a number of assumptions which may not be representative of the subject locality, construction methodology and operational requirements, such as train speed and geotechnical composition.

No specific predictions of impacts on the ground surface as a result of tunnel construction and operation are made in the Concept Plan Reports, they merely list the types of impacts that may occur.

Furthermore, there has not been any specific consideration in the EIS of the use of the Premises as a data centre which is particularly sensitive to noise and vibration.

#### **Conditions of approval cannot replace proper assessment of impacts**

It appears to be contemplated in the EIS and the Statement of Commitments for the SSI Application that the geotechnical and vibration impacts will be considered in more detail and mitigated by appropriate conditions placed on the proponent of the SSI Application, if approved.

However, it is not appropriate and potentially an error of law for the planning authority to not fully assess the impacts of a development and to attempt to defer assessment of those impacts by way of condition of approval.

The proponent should be required to assess the impacts of the construction and operation of the NWRL on the Premises as a commercial facility containing highly sensitive equipment.

#### **The track should not be located directly underneath the Premises and its sensitive use should be recognised in undertaking and setting the impact assessment and approval criteria**

The use of the Premises as a data centre makes it particularly sensitive to vibration and noise both during construction and operation of the NWRL. The EIS does not consider the foundations of the Premises and the depth to which they penetrate the surface nor does it consider the sensitive use of the Premises as a data centre. Impact assessment criteria, such as vibration criteria, that have been adopted for the EIS do not consider this sensitive use. According to Technical Paper 3 Figure 6.7 attached to the EIS, the predicted operational ground-borne vibration levels on the Premises are likely to exceed the BBN-C criterion curve for highly vibration sensitive equipment. This suggests there is a real risk that the operation of the NWRL will have an adverse impact on the data centre operations.



Considering the above, DEXUS submits that the Proponent should be required to more rigorously assess the potential operational and construction related ground-borne noise and vibration impacts on the Premises. In this respect, any impact assessment criteria should reflect that the use of the Premises is highly sensitive to vibration. DEXUS requests that the results of any further investigations and assessment be provided to DEXUS or be placed on public exhibition.

DEXUS requests that if approval is to be granted to the SSI Application, that conditions be imposed that:

- restrict construction of the track underneath the Premises;
- require compliance with vibration criteria (during construction and operation) that reflects the sensitive use of the Premises and not general structural or amenity vibration criteria. Such criteria should relate to, among other things, ground-borne vibration during construction and operation; and
- requires the proponent to mitigate and compensate for any damage.

**Any conditions of approval should take into account the sensitive use of the Premises and the potential risk to business and property**

We have reviewed the conditions of approval for the Concept Plan Approval dated 6 May 2008 (**Concept Plan Approval**), the State Significant Infrastructure Application for Major Civil Construction Works for the NWRL dated 25 September 2012 (**SSI Civil Works Approval**) and for the Epping to Chatswood Rail Link dated February 2002 (**ECRL Approval**).

DEXUS submits that if the SSI Application is to be approved that at a minimum the following conditions of approval should be incorporated into any approval as per the table below to mitigate the potential impacts.

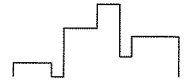
CONDITION		COMMENT
1	The Proponent shall design and construct the SSI as far as is feasible and reasonable, in a manner that minimizes: (a) impacts to groundwater hydrology including capture, drawdown and quality and (b) <u>vibration impacts to sensitive premises such as data centres.</u>	This condition is similar to condition C12 in the SSI Civil Works Approval.
2	A geotechnical model of representative geological and groundwater conditions shall be prepared prior to excavation and tunnelling in subject area(s) to identify geological structures and groundwater features. This model shall include details of proposed excavations and tunnels, construction staging, and identify surface and sub-surface structures and infrastructure which may be impacted by the SSI, including the specific attributes of those structures. The Proponent shall use this model to assess the predicted settlement, ground movement, stress redistribution and horizontal strain profiles caused by excavation and tunnelling on adjacent property and infrastructure.	This condition is the same as condition C17 in the SSI Civil Works Approval.
3	The Proponent shall undertake an assessment of property and infrastructure at risk from damage to determine appropriate settlement <u>and vibration</u> criteria to prevent damage, <u>including without limitation:</u> ▪ <u>3 Brookhollow Avenue, Baulkham Hills which contains a data centre.</u>	This condition is similar to condition C18 in the SSI Civil Works Approval however we have added vibration and specifically identified that the Premises is at risk because of the sensitive use of the Premises as a data centre.



4	<p>Should the geotechnical model in condition 2/C17 indicate that exceedances of the criteria established in condition 3/C18, 5/C20 or in Table 1 (which ever is the lower), the Proponent shall identify and implement mitigation measures such as appropriate support and stabilisation structures in consultation with the relevant land and/or infrastructure owners prior to the commencement of construction to ensure where possible that underground services, infrastructure and adjacent buildings will not experience settlements exceeding the criteria.</p> <p>[Table 1 has 20 mm settlement criteria for buildings &gt;3 levels]</p> <p>The above criteria does not remove any responsibility from the Proponent for the protection of existing structures or for rectifying any damage resulting from the SSI.</p>	<p>This condition is similar to condition C19 in the SSI Civil Works Approval, however the potentially sensitive data centre may have lower tolerable movement than the 20 mm settlement criteria in Table 1 so we have added a reference to the criteria established in 3/C18 as well as 5/C20, because 5/C20 applies only to utility and infrastructure.</p>
5	<p>Settlement criteria for individual utility structures and infrastructure shall be determined in consultation with the relevant authorities prior to the commencement of construction.</p>	<p>This condition is the same as condition C20 in the SSI Civil Works Approval.</p>
6	<p>The proponent shall design and construct the SSI with the objective of minimising impacts to, and interference with, third party property and infrastructure, and that such infrastructure and property is protected during construction and operation.</p>	<p>This condition is the same as condition E25 in the SSI Civil Works Approval.</p>
7	<p>The proponent shall, prior to the commencement of construction (including demolition and excavation works), or each part of the SSI that may impact on surrounding properties at risk from damage (including those properties identified in condition 3/C18):</p> <p>a) Where agreed with the property owner, undertake independent inspections of these properties prior to construction in accordance with AS 4349.1 'Inspection of Buildings' (including for commercial buildings). This inspection shall be undertaken by appropriately qualified and experienced geotechnical and construction engineering experts <u>in consultation with the property owner</u>, and report on property features that may be affected by construction <u>including defects that exist and that are of a type that can be affected by ground vibration or movement</u>.</p> <p>b) Contact the owners of all buildings on which property inspections are to be conducted before the inspection, or as otherwise agreed by the affected property owner, and advise of the scope and methodology for the inspection, and of the process for making a property damage claim;</p> <p>c) Provide a copy of the property inspection report to the owner of each property inspected prior to construction that could affect the property;</p> <p>d) Determine an appropriate property vibration criteria and management and protection measures to ensure that property damage (including cosmetic damage) will be avoided. <u>The criteria is to take into account the uses of the property;</u> and</p> <p>e) Maintain a register of all properties inspected by the Proponent, indicating whether the owner accepted or refused the property inspection offer, and provide a copy of the register to the Director General upon request.</p> <p>Reports from the geotechnical engineer advising on the risk of damage to properties shall be made available upon request to the <u>property owner</u>, Director General and the Independent Property Impact Assessment Panel.</p>	<p>This condition is similar to condition E26 in the SSI Civil Works Approval however:</p> <ul style="list-style-type: none"> <li>- AS 4349 is for residential buildings and only requires major defects to be observed. The Premises contains a commercial building and is strictly speaking out of the scope of AS 4349.1.</li> <li>- We have clarified that the assessment includes the Premises.</li> <li>- the geotechnical report should be made available to owners as well as Director General.</li> </ul>



8	<p>For the purpose of condition 7/E26 properties at risk from damage include, but are not necessarily limited to:</p> <p>(a) <u>those properties identified in condition 3/C18;</u>  (b) buildings and structures determined following geotechnical and vibration analysis as certified by a qualified geotechnical engineer; and  (c) <del>other sensitive structures within 60 metres from the edge of the works unless otherwise determined following geotechnical and vibration analysis as certified by a qualified geotechnical engineer as not likely to be adversely affected. properties need surveys.</del> all buildings/structures within a plan distance of 60 metres from the edge of the tunnel where the tunnel is in solid rock/sandstone to a minimum invert depth of 30 metres or a plan distance equal to twice the invert depth from the edge of the tunnel where the invert depth is less than 30 metres</p>	<p>This condition is similar to condition E27 in the SSI Civil Works Approval however we have adopted stricter wording from the ECRL Approval which was more prescriptive in specifying which properties need surveys.</p> <p>The SSI Civil Works Approval conditions do not automatically include the Premises in the condition surveys. "Not likely" sets a low bar, and there is a real risk that the Premises does not get inspected. This is not appropriate if the SSI Application is to be approved based largely on a desktop assessment of predicted geotechnical impacts.</p>
9	<p>The proponent shall install appropriate equipment to monitor construction sites and the tunnel route during construction and for a period of not less than six months after settlement has stabilised with particular reference to risk areas identified in the building and infrastructure condition surveys required by condition 7/E26 and/or the geotechnical analysis required by condition 2/C17. If monitoring during construction indicates exceedance of the criteria then all work affecting settlement shall cease immediately and shall not resume until fully rectified or a revised method of work has been established that will ensure protection of affected structures.</p>	<p>This condition is the same as condition E27 in the SSI Civil Works Approval. Please note our earlier submission that the criteria should be set such that it reflects the sensitive use of the Premises.</p>
10	<p>The proponent shall establish an Independent Property Impact Assessment Panel prior to relevant construction or demolition works commencing. The Panel shall be approved by the Director General and comprise geotechnical and engineering experts independent of the design and construction team, unless otherwise agreed by the Director General. The Panel shall be responsible for independently verifying assessments undertaken under conditions 2/C17 and 7/E26, the resolution of property damage disputes and the establishment of ongoing settlement monitoring requirements.</p> <p>Either the affected property owner or the Proponent may refer unresolved disputes arising from potential and/or actual property impacts to the Panel for resolution. All costs incurred in establishing and implementing the Panel shall be borne by the Proponent.</p>	<p>This condition is the same as condition E29 in the SSI Civil Works Approval.</p>
11	<p>Notwithstanding the requirements of condition 9/E27, the Proponent shall monitor settlement for any period as may be specified through the Independent Property Impact Assessment Panel referred to in condition 8/E26. The results of this monitoring shall be made available to the Director General upon request.</p>	<p>This condition is the same as condition E30 in the SSI Civil Works Approval.</p>
12	<p>Any damage caused to property, <u>buildings, structures, lawns, sheds, trees, gardens etc</u> as a result of the SSI shall be rectified or the property owner compensated, within a reasonable timeframe, with the costs borne by the Proponent. This condition is not intended to limit any claims that the property owner may have against the Proponent.</p>	<p>This condition is the same as condition E31 in the SSI Civil Works Approval however the additional wording has been derived from the ECRL Approval to make it clear that property includes buildings and other improvements.</p>



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13	The Construction Management Plan for the stage that includes 3 Brookhollow Avenue, Baulkham Hills shall be prepared in consultation with the owner and occupier and take into account the sensitive use of the site as a data centre.	This condition is similar to conditions imposed on the ECRL Approval for sensitive sites.
14	The design and construction of the tunnel shall avoid 3 Brookhollow Avenue, Baulkham Hills and allow for potential future excavation of basement car parks.	
15	The Construction Noise and Vibration Management Plan shall take into account sensitive uses of premises such as data centres and set criteria that prevents adverse impacts on the use of those premises for sensitive uses.	DEXUS assumes that the general conditions of approval will require preparation and approval of such a plan as per the ECRL Approval.
16	Unless otherwise agreed by the Director-General, following consultation with the EPA, construction and operational ground-borne vibration levels shall not exceed <u>criteria agreed with the property owners for sensitive structures including data centres.</u> [The condition should also include a process whereby if <u>certain levels are exceeded appropriate measures are to be taken to mitigate the concerns of the business. If those mitigation measures still cause damage, the Proponent should be required to compensate for any residual impact</u> ]	This condition should override similar conditions 66 and 67 imposed in the ECRL Approval and DEXUS submits that at a minimum the blasting, vibration and noise conditions for the ECRL Approval should be imposed on the SSI Application. Any mitigation measures are similar to condition 76 of the ECRL Approval.

If you have any queries in relation to this submission, please contact Michelle Grady of DEXUS Property Group. Attached is a complete political donations disclosure statement.

Executed by DEXUS Funds Management Ltd by its Attorneys  
Pursuant to Power of Attorney Registered No 23  
Book 4615 dated 15.6.11 in the presence of

ANNE RIEDL  
Witness

ANNE RIEDL  
Name

ANNE RIEDL  
Witness

ANNE RIEDL  
Name

ROGER CRUICKSHANK  
Power Of Attorney

ROGER CRUICKSHANK  
Name

JOHN SWADLOW  
Power Of Attorney

JOHN SWADLOW  
Name

# Political donations disclosure statement



NSW GOVERNMENT  
Department of Planning

Office use only:

Date received: \_\_\_\_/\_\_\_\_/\_\_\_\_

Planning application no. \_\_\_\_\_

This form may be used to make a political donations disclosure under section 147(3) of the *Environmental Planning Assessment Act 1979* for applications or public submissions to the Minister or the Director-General.

Please read the following information before filling out the Disclosure Statement on pages 3 and 4 of this form. Also refer to the 'Glossary of terms' provided overleaf (for definitions of terms in *italics* below). Once completed, please attach the completed declaration to your planning application or submission.

## Explanatory information

### Making a planning application or a public submission to the Minister or the Director-General

Under section 147(3) of the Environmental Planning and Assessment Act 1979 ('the Act') a person:

- (a) who makes a *relevant planning application* to the Minister or the Director-General is required to disclose all *reportable political donations* (if any) made within the *relevant period* to anyone by any *person with a financial interest* in the application, or
- (b) who makes a *relevant public submission* to the Minister or the Director-General in relation to the application is required to disclose all *reportable political donations* (if any) made within the *relevant period* to anyone by the person making the submission or any *associate of that person*.

### How and when do you make a disclosure?

The disclosure to the Minister or the Director-General of a *reportable political donation* under section 147 of the Act is to be made:

- (a) in, or in a statement accompanying, the relevant planning application or submission if the donation is made before the application or submission is made, or
- (b) if the donation is made afterwards, in a statement of the person to whom the relevant planning application or submission was made within 7 days after the donation is made.

### What information needs to be included in a disclosure?

The information requirements of a disclosure of reportable political donations are outlined in section 147(9) of the Act.

Pages 3 and 4 of this document include a Disclosure Statement Template which outlines the information requirements for disclosures to the Minister or to the Director-General of the Department of Planning.

Note: A separate Disclosure Statement Template is available for disclosures to councils.

**Warning:** A person is guilty of an offence under section 125 of the *Environmental Planning and Assessment Act 1979* in connection with the obligations under section 147 only if the person fails to make a disclosure of a political donation or gift in accordance with section 147 that the person knows, or ought reasonably to know, was made and is required to be disclosed under section 147.

The maximum penalty for any such offence is the maximum penalty under Part 6 of the *Election Funding and Disclosures Act 1981* for making a false statement in a declaration of disclosures lodged under that Part.

Note: The maximum penalty is currently 200 penalty units (currently \$22,000) or imprisonment for 12 months, or both.

## Glossary of terms (under section 147 of the *Environmental Planning and Assessment Act 1979*)

**gift** means a gift within the meaning of Part 6 of the *Election Funding and Disclosures Act 1981*. Note. A gift includes a gift of money or the provision of any other valuable thing or service for no consideration or inadequate consideration.

Note: Under section 84(1) of the *Election Funding and Disclosures Act 1981* gift is defined as follows:

**gift** means any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration.

**local councillor** means a councillor (including the mayor) of the council of a local government area.

**relevant planning application** means:

- 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 under or for the purposes of this Act that is prescribed by the regulations as a relevant planning application, but does not include:
  - f) an application for (or for the modification of) a complying development certificate, or
  - g) an application or request made by a public authority on its own behalf or made on behalf of a public authority, or
  - h) any other application or request that is excluded from this definition by the regulations.

**relevant period** is the period commencing 2 years before the application or submission is made and ending when the application is determined.

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

**reportable political donation** means a reportable political donation within the meaning of Part 6 of the *Election Funding and Disclosures Act 1981* that is required to be disclosed under that Part. Note. Reportable political donations include those of or above \$1,000.

Note: Under section 86 of the *Election Funding and Disclosures Act 1981* reportable political donation is defined as follows:

### 86 Meaning of "reportable political donation"

- (1) For the purposes of this Act, a reportable political donation is:
  - (a) in the case of disclosures under this Part by a party, elected member, group or candidate—a political donation of or exceeding \$1,000 made to or for the benefit of the party, elected member, group or candidate, or
  - (b) in the case of disclosures under this Part by a major political donor—a political donation of or exceeding \$1,000:
    - (i) made by the major political donor to or for the benefit of a party, elected member, group or candidate, or
    - (ii) made to the major political donor.
- (2) A political donation of less than an amount specified in subsection (1) made by an entity or other person is to be treated as a reportable political donation if that and other separate political donations made by that entity or other person to the same party, elected member, group, candidate or person within the same financial year (ending 30 June) would, if aggregated, constitute a reportable political donation under subsection (1).
- (3) A political donation of less than an amount specified in subsection (1) made by an entity or other person to a party is to be treated as a reportable political donation if that and other separate political donations made by that entity or person to an associated party within the same financial year (ending 30 June) would, if aggregated, constitute a reportable political donation under subsection (1). This subsection does not apply in connection with disclosures of political donations by parties.
- (4) For the purposes of subsection (3), parties are associated parties if endorsed candidates of both parties were included in the same group in the last periodic Council election or are to be included in the same group in the next periodic Council election.

**a person has a financial interest** in a relevant 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 that would be authorised by 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.

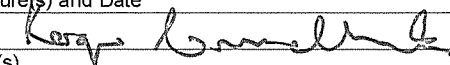
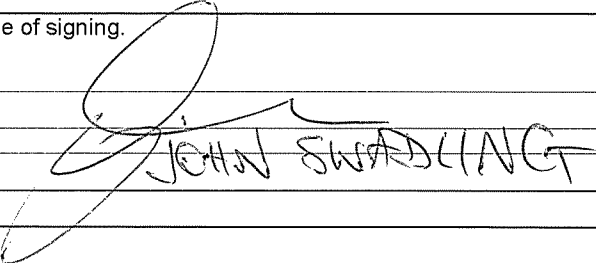
**persons are associated with each other** if:

- a) 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
- b) they are related bodies corporate under the *Corporations Act 2001* of the Commonwealth, or
- c) one is a director of a corporation and the other is any such related corporation or a director of any such related corporation, or
- d) they have any other relationship prescribed by the regulations.



# Political Donations Disclosure Statement to Minister or the Director-General

If you are required under section 147(3) of the Environmental Planning and Assessment Act 1979 to disclose any political donations (see Page 1 for details), please fill in this form and sign below.

<b>Disclosure statement details</b>				
Name of person making this disclosure  Dexus Funds Management Ltd		Planning application reference (e.g. DA number, planning application title or reference, property address or other description)  SS1/5414 - 3 Brookhollow Ave, Bowdham Hills.		
Your interest in the planning application (circle relevant option below)				
You are the APPLICANT      YES / NO      OR		You are a PERSON MAKING A SUBMISSION IN RELATION TO AN APPLICATION      (YES) / NO		
<b>Reportable political donations made by person making this declaration or by other relevant persons</b>				
<p>* State below any reportable political donations <b>you have made</b> over the 'relevant period' (see glossary on page 2). If the donation was made by an entity (and not by you as an individual) include the Australian Business Number (ABN).</p> <p>* If you are the <b>applicant</b> of a relevant planning application state below any reportable political donations that you know, or ought reasonably to know, were made by any persons with a financial interest in the planning application, OR</p> <p>* If you are a <b>person making a submission</b> in relation to an application, state below any reportable political donations that you know, or ought reasonably to know, were made by an associate.</p>				
Name of donor (or ABN if an entity)	Donor's residential address or entity's registered address or other official office of the donor	Name of party or person for whose benefit the donation was made	Date donation made	Amount/ value of donation
Nil Donations				
Please list all reportable political donations—additional space is provided overleaf if required.				
By signing below, I/we hereby declare that all information contained within this statement is accurate at the time of signing.				
Signature(s) and Date				
 6 DEC 2012				
Name(s)				
Roger Cruickshank				
Witness: ANNE RIEDL				
				

Cont...

## Political Donations Disclosure Statement to Minister or the Director-General

Name of donor (or ABN if an entity)	Donor's residential address or entity's registered address or other official office of the donor	Name of party or person for whose benefit the donation was made	Date donation made	Amount/ value of donation