

**PURPOSE**

This policy is to:

- (a) outline the obligations and responsibilities of Council officials when dealing with offers of gifts or benefits, and
- (b) assist Council officials to make appropriate judgements in relation to gifts and benefits.

The policy intends to prevent Council officials from becoming vulnerable to undue influence and to minimise any threats to the community's confidence in the fairness, impartiality, and integrity of the Council.

**SCOPE**

This policy applies to all Council Officials.

**RELATED DOCUMENTS**

- Elected Member Code of Conduct
- Audit Panel Code of Conduct
- Code for Tender and Contracts
- Recruitment Directive
- Conflict of Interest Policy

**STATUTORY REQUIREMENTS**

<b>Acts</b>	<i>Local Government Act 1993</i> <i>Public information Disclosures Act 2002</i>
<b>Regulations</b>	The <i>Local Government (General Regulations) 2005</i>
<b>Australian/International Standards</b>	<i>N/A</i>

**DEFINITIONS**

**Benefit** means a non-tangible item which is believed to be of value to the receiver (e.g. preferential treatment such as queue jumping, access to confidential information and hospitality).

**Bribe** means a gift or benefit given specifically for the purpose of winning favours or to influence the decision or behaviour of a Council Official to benefit someone or something.

**Cash** means money or vouchers which are readily convertible into money.

**Collective gifts** means a non-token gift given by an authority or organisation to Council, such as protocol gifts, not intended to reward a particular individual. Such gifts may be given as an expression of gratitude, without obligation on the receiver to respond. The gratitude usually extends to the work of several people in the Council.

**Conflict of interest** means any situation in which an individual or corporation (either private or government) is in a position to exploit a professional or official capacity in some way for their personal or corporate benefit.

**Contract management staff** means staff who:

- (a) procure contracts for goods and services;
- (b) have ongoing interaction with contractors performing those services;
- (c) a manager or senior executive or any other employee or officer that is responsible for making a purchasing decision or exercising a financial or legal delegation in relation to a purchasing decision; or
- (d) a member of a purchasing panel or committee that is able to influence or assists in making a purchasing recommendation.

**Council official** includes the Mayor, Deputy Mayor, Aldermen, council staff (including staff engaged through an employment agency), council committee members, Audit Panel members, volunteers and contractors.

**Gift** Usually a tangible item provided at no charge or a discounted price. Gifts may include, but are not limited to, items such as cash, property (real or otherwise), goods and services made available at heavily discounted prices, alcohol, clothes, products, invitations to social functions and tickets to sporting, theatrical or music events.

**Hospitality** The provision of accommodation, meals, refreshments or other forms of entertainment, whether free or subsidised. To avoid doubt, 'Hospitality' does not include a Council official's attendance at functions or events which is required as part of the performance their duties or which is recognised part of the Council official's normal work functions, duties, and responsibilities.

**Modest refreshment** means food or refreshment which generally is not in conjunction with a sit-down meal, such as coffee, biscuits, sandwiches, cake, hors d'oeuvres, fruit, or any other snack.

**Nominal value** means the amount set in the *Local Government (General) Regulations 2015 Regulation 29A which is, as at May 2023*, a value of \$50 or above – measured by adding together the gifts and benefits from any one source received in a financial year)

**Non-token** includes items that are above the nominal value or of a character that is not minor or trivial. Non-Token gifts could include, free or discounted travel, the use of holiday homes, corporate hospitality at major sporting events, free training excursions, tickets to major events and access to confidential information, discounted products for personal use, goods and services provided via a determination in a will.

**Token souvenirs** means mass produced items of below the nominal value often carrying corporate advertising such as pens, calendars, or ties, that are offered in business situations for promotional purposes.

**Token** includes items below the nominal value that is not a prohibited gift (see Clause 4) and other issues like improper influence have been considered and do not apply.

**POLICY STATEMENT****1. General**

Council officials may be offered gifts or benefits. In the limited circumstances set out in this policy, gifts and benefits may be accepted.

**2. Making ethical decisions**

When dealing with a gift, the situation may be unusual, and way forward may not seem clear. Always make an ethical decision. The Integrity Commission sets out a three-step process for ethical decision-making:

**Step 1 – Is it legal?**

- What legislation, employment directions or industry standards apply to this decision or action? What is the legal basis for taking this action or making this decision? If unsure - seek advice.
- Follow both the letter and the spirit of the law.
- Do you have the authority (delegation) to make the decision, take the action or expend public money?
- Do you need a legal opinion?
- If legislation, guidelines or instructions appear to conflict – seek advice.
- Apply your organisation's Code of Conduct. Common considerations:
  - conflicts of interest – if in doubt, disclose!
  - efficient use of resources
  - information use, confidentially
  - declare gifts given and received, and
  - respect and equity in all dealings with colleagues and stakeholders.

**Step 2 – Is it informed?**

- Does this decision or action align with your organisation's vision, mission and values?
- How do your organisation's policy, practices and procedures apply?
- Have you sought advice from a more experienced or senior colleague?
- What if everyone did this?

**Step 3 – Is it right?**

- What would a reasonable person, knowing the facts, think about the decision?
- What is the effect of your decision or action on:
  - the public sector, the community, colleagues, and

- key stakeholders of the agency, including customers and the public.

If in doubt, ask for assistance and disclose the gift.

### **3. Appropriate behaviour towards gifts**

A Council official must:

- not encourage or solicit offers of gifts and benefits;
- not take advantage of their official position to secure a benefit or gift;
- make reasonable efforts to ensure that they are seen to be fair, impartial and unbiased;
- be aware of the wider situation in which an offer of a gift or benefit is being made. For example, Council officials should consider whether the donor is in, or may be seeking to enter into, a business relationship with Council or may be applying to Council in relation to the exercise of Council's functions, and
- avoid situations that suggest that a person or body, through the provision of gifts or benefits is to secure favourable treatment from Council.

Council officials must attempt to discourage people undertaking or carrying on business with the Council from offering gifts. They should be assisted to understand that they do not need to give gifts or benefits to Council officials in order to obtain a high-quality service.

### **4. Gifts that are not to be accepted or must be immediately returned**

- Gifts or benefits that may be perceived to constitute a conflict of interest with the role of a Council official (see clauses 2 and 10 for more details).
- Cash of any value.
- Non-token gifts or benefits (unless otherwise authorised by this policy).
- Any gifts or benefit (other than Modest Refreshment, or Token Souvenirs) offered to contract management staff by current or prospective Council contractors,
- Gifts otherwise accepted or retained in contravention of this policy.
- No gifts are to be accepted in relation to any recruitment process.

### **5. Gifts that may be accepted**

Subject to the other restrictions set out in this policy:

- Token gifts may be received by any Council Officials who are not Contract Management Staff. (Only token souvenirs and modest refreshment may be received by contract management staff).
- Non-token gifts or benefits that cannot be declined or immediately returned must be disclosed in compliance with this policy.

## **6. Official activities not considered to involve gifts or benefits**

- Tickets to, or moderate hospitality at, approved social functions organised by Council-controlled entities or community organisations where attendance is a part of an official contribution made by a Council official.
- Modest refreshment provided for training sessions, official functions, and Council business meetings including meetings between contract management staff and contractors or prospective contractors of the Council.
- Internal Council gatherings, or gift presentations where Council officials are rewarded by the Council for service to the Council.
- professional education seminars that are made available by a Council service provider if they are:
  - broadly available to all professionals in the service provider's customer base;
  - do not include other gifts or benefits (such as free flights or restaurant meals);
  - are not tied to any expectation of future reward; and
  - are disclosed to and authorised by the General Manager.

## **7. Collective gifts**

Such gifts or benefits given for a group project or task may be accepted on behalf of the Council (as an organisation) but must be surrendered to the Council for appropriate disposal.

## **8. Working out the value of gifts and benefits**

Council officials must add together the values of gifts and benefits received from any single source in each financial year (from 1 July to 30 June each year). When the annual gifts from a single source exceeds the nominal value for a financial year, the gift must be declared.

For example, a customer's gift of a bunch of flowers worth \$35.00 is followed soon after by a gift of chocolates worth \$15.00 from the same customer. This has to be declared, as it is no longer a token gift as all the gifts from that customer add up to \$50.00.

If a Council official has any doubt if a gift or benefit is token or of nominal value, they should discuss it with their manager, the General Manager or the Mayor.

If the likely monetary value of a gift or benefit cannot be determined, the gift is not a token gift and is to be treated in accordance with clause 4

Where goods are discounted the value of the gift or benefit is the full value not the discounted value.

## **9. Disclosing non-token gifts or benefits**

If token gifts or benefits are accepted by Council officials in accordance with this policy, then the gift or benefit does not need to be disclosed.

If a non-token gift or benefit is offered and:

- i) cannot reasonably be refused (e.g. because it would cause embarrassment or a breach of protocol); or

- ii) some other exceptional circumstances apply where it cannot reasonably be refused or returned, such as anonymous gifts sent without a return address, then

the offer and receipt of the gift or benefit must be declared to the General Manager using Council's approved Gifts and Benefits Declaration Form (Attachment 1)

Council officials who receive more than the permissible annual value of gifts from the same person or organisation in a financial year must disclose, as soon as that limit is reached, disclose the details of all the relevant separate gifts.

## **10. Recording the gift or benefit**

The details of any disclosed gift or benefit must be recorded in the Gifts and Benefits Register (Attachment 2) by the General Manager.

The Gifts and Benefits Register is to be made available for public inspection at Council's customer service counter, Council's website or by electronic means, on request. The Register will be made available on our website.

The General Manager will report annually on the content of the Gifts and Benefits Register to Council.

## **11. Actual or perceived effect of the gift or benefit**

Accepting gifts where a reasonable person could consider that there may be influence applied as a result of accepting the gift or benefit is prohibited. Where it is suspected that a gift or benefit has been offered for the purpose of influencing the behaviour of someone acting in their official capacity, the gift or benefit must be declined and the matter should be reported immediately to the Council official's manager, director, the General Manager or the Mayor.

When deciding whether to accept or decline a gift or benefit, consideration should be given to both the value of the gift or benefit and also the intent of the gift or benefit being offered.

## **12. Improper influence**

If a Council official refuses a gift or benefit because they believe that the gift was a deliberate attempt to receive special treatment or otherwise secure some form of advantage, the incident must be reported to their manager, director, the General Manager or the Mayor, as appropriate.

## **13. Bribes**

Council officials must not, under any circumstances, offer or seek a bribe. A Council official who is offered a bribe should refuse it and report the incident as soon as possible to their manager or director, the General Manager or the Mayor. Council will take steps to report the matter to Police immediately.

Receiving a bribe is an offence under State and Commonwealth legislation.

## **14. Family members**

Council officials must take all reasonable steps to ensure that immediate family members do not receive non-token gifts or benefits which are connected with the Council official's role.

Immediate family members include parents, spouses, children and siblings. A gift to a family member is treated as if the Council official received it.

## **15. Use/ownership of gifts**

A recipient's manager, the General Manager, or the Mayor may approve the retention of a non-token gift or benefit by a Council official.

A recipient's manager, the General Manager, or the Mayor may decide that a non-token gift or benefit is to become the property of the Council and be:

- retained by Council for future operational use;
- distributed among selected Council officials (provided a reasonable person would agree that the allocation was appropriate); or
- donated to an appropriate charity or community group.

## 16. Breaches of policy

All Council officials are required to comply with this policy and sanctions may be applied if the policy is breached.

Any person must report a likely breach of this policy by a Council official to the General Manager or Mayor, as appropriate. The General Manager or Mayor are to investigate any report received and take such action as is considered necessary.

If this policy has been breached, action taken against the Council official may include counselling, censure motions, disciplinary action (including termination of employment), the laying of charges or the taking of civil action.

## BACKGROUND

From time to time, Council officials may receive or be offered gifts or benefits related to the performance of their duties.

In order to maintain public confidence in the integrity, transparency and accountability of Council, it is necessary to clearly identify the circumstances under which it is appropriate and not appropriate for officials to accept gifts, and the procedures to be followed when accepting or refusing gifts.

## DOCUMENT CONTROL

<b>Version:</b>	2.0	<b>Commencement Date:</b>	31 October 2023
<b>Minutes Reference</b>	Council meeting, 30 October 2023, Item 7		
<b>Previous Versions:</b>	Council Meeting, 28 July 2020 (Item 11)		
<b>Responsible Directorate</b>	Corporate Services	<b>Controller:</b>	Manager People & Governance
<b>ECM Document No.:</b>	Policies by Directorate		

**APPENDIX 1 – Gifts and Benefits Declaration****Gifts and Benefits Declaration Form**

Please refer to Council's *Receipt of Gifts and Benefits Policy* when completing this form.

**Council Official's Details\***

Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position No: \_\_\_\_\_

Directorate: ☐ CS ☐ I&W Department: \_\_\_\_\_

Supervisor: \_\_\_\_\_

\*A 'Council Official' includes the Mayor, Aldermen, Council staff (including staff engaged through an employment agency), Council Committee Members, Audit Panel Members, volunteers and contractors.

**Details of Gift or Benefit Received**

Date gift or benefit received: \_\_\_\_\_

Description of the gift or benefit received:

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What is the estimated value of the gift: \_\_\_\_\_

Name of the Donor: \_\_\_\_\_

Donor's organisation: \_\_\_\_\_

Location/situation at which the gift was offered:

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Recipient's relationship to the donor: \_\_\_\_\_

Council policy authorising receipt of the gift (which part)? \_\_\_\_\_

Was an effort made to politely refuse the gift? \_\_\_\_\_



**Recipient's Signature:**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

*Please send completed form to People and Governance Department**Please note: unless the receipt of the gift is approved by the General Manager then the gift must be returned.***Manager's/supervisor's Recommendation**Should the gift or benefit be accepted or declined: Accepted ☐ Declined ☐

Comments on compliance with policy: \_\_\_\_\_

**Gift or Benefit Disposal**

If Accepted, should the gift/benefit be:

- ☐ Retained by recipient
- ☐ Retained by Council
- ☐ Donated to a charity
- ☐ Transferred on loan to any Council department and/or building for display
- ☐ Transferred in ownership to a museum, gallery, library, archives or special interest collections, education or community institution

**General Manager Signature:**

- ☐ Recommendation approved
- ☐ Recommendation not approved. Appropriate action is to be taken to return or otherwise manage the gift. The staff member is to be reminded of the policy requirements.

Further comments: \_\_\_\_\_

Signed by General Manager: \_\_\_\_\_ Date: \_\_\_\_\_

**Office Use Only:**

*The General Manager's signature must be obtained prior to this form being added to the register. The Register is maintained by Corporate Governance department and held at <W:\Internal Compliance\Corporate Registers\Gifts and Benefits Register>*

Date Registered: \_\_\_\_\_ Date Disposed: \_\_\_\_\_

Recipient's Details: \_\_\_\_\_

**Method of Disposal:**

- ☐ Retained by recipient
- ☐ Retained by Council
- ☐ Donated to a charity
- ☐ Transferred on loan to any Council department and/or building for display
- ☐ Transferred in ownership to a museum, gallery, library, archives or special interest collections, education or community institution

## APPENDIX 2 – Gifts and Benefits Flowchart

Please note: an initial effort should be made to discourage gift giving, customers do not need to give gifts to get good service.

