

COUNCIL POLICY



Policy Name	Gifts and Benefits
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Abstract

This Policy provides information and guidance to Council officials on the appropriate handling of offers of gifts, hospitality or benefits.

Dates	Policy or amendment approved	21 Oct 2020
	Policy or amendment takes effect	04 Nov 2020
	Policy is due for review (up to 4 years)	04 Nov 2024
Endorsed by	Council's Executive Management Team	
Approved by	Gunnedah Shire Council at its Ordinary Meeting of Council held 21 Oct 2020 Resolution number: 7.10/20	
Policy Custodian	Manager Governance and Legal	
Relevant to	All Council Officials including Councillors, Council officers, Council Committee or Reference Group members, volunteers or delegated persons.	
Superseded Policies	Anti-Corruption – Gifts and Benefits	
Related Documents	Model Code of Conduct Councillor Induction and Professional Development Guidelines Statement of Business Ethics Policy – Fraud and Corruption Prevention	
Related Legislation	Local Government 1993 Local Government (General) Regulation 2005 Crimes Act 1900 (NSW)	

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1. Purpose

This Policy provides information and guidance to Council officials on the appropriate handling of offers of gifts, hospitality or benefits.

Whilst Council's Code of Conduct sets out the minimum requirements of conduct for Council officials carrying out their functions and includes reference to gifts and benefits, it is intended that this Policy provides clarity around those provisions and puts mechanisms in place to protect the integrity, security and reputation of Council as well as that of the Council official.

2. Scope

2.1 This Policy applies to all Council officials as defined herein.

2.2 It relates to the offer of gifts, hospitality and benefits to individual Council officials and to Council services. For the purposes of this Policy, reference to a gift or benefit does not extend to:

- (a) Items with a value of ten dollars (\$10.00) or less;
- (b) A political donation for the purposes of the *Electoral Funding Act 2018*;
- (c) A gift provided to Council as part of a cultural exchange or sister-city relationship that is not converted for the personal use or enjoyment of any individual council official or someone personally associated with them;
- (d) A benefit or facility provided by the Council to an employee or Councillor;
- (e) Attendance by a Council official at a work-related event or function for the purposes of performing their official duties; or
- (f) Free or subsidised meals, beverages or refreshments ~~of token value~~ provided to Council officials in conjunction with the performance of their official duties, such as, but not limited to:
 - The discussion of official business
 - Work-related events such as Council-sponsored or community events, training, education sessions or workshops
 - Conferences
 - Council functions or events

- Social functions organised by groups, such as Council committees and community organisations.
- (g) Items provided to Council on a product or service trial basis.

2.3 This policy should be read and used in conjunction with the latest adopted version of Council's Model Code of Conduct.

3. Definitions

See **Annexure A**

4. Principles

4.1 Council officials will from time to time find themselves in a position where gifts, hospitality or benefits are offered for various reasons, but as highlighted by ICAC, there are real risks associated with the offer and acceptance of gifts or benefits in the course of exercising official duties.

4.2 Gifts or benefits may influence an official's behaviour and may cause that person to act partially towards an individual or organisation rather than impartially, objectively and on merit as is required of an official in his/her public duties. At the very least, such behaviour can create perception of misbehaviour that brings the individual and Council into disrepute.

4.3 Council officials are to act with integrity at all times and must avoid situations in which the appearance may be created that any person or organisation, through the provision of gifts or benefits (including hospitality) of any kind, is securing or attempting to secure favorable treatment from the Council official or the Council.

4.4 Council officials must not use their position to influence other Council officials in the performance of their official functions to obtain a private benefit for himself or herself or someone else. A Councillor will not be in breach of this clause where they seek to influence other Council officials through the proper exercise of their role as prescribed by the LGA.

4.5 Council officials must not take advantage, or seek to take advantage of their status or position with Council, or of functions he or she performs for Council, in order to obtain a private benefit for themselves or for any other person or body.

5. Policy statement

5.1 Gift register

5.1.1 Details of all gifts and benefits accepted or rejected (including those valued at less than token value) shall be recorded in Council's Gifts register through the completion of Gifts & Benefits Declaration Forms.

5.1.2 Council's Gift register will capture the following information:

- The nature of the gift or benefit
- The estimated monetary value of the gift or benefit;
- The name of the person who provided the gift or benefit;
- The date on which the gift or benefit was offered/received; and
- Decision on the treatment of the gift or benefit and reasons for such.

5.1.3 **Note:** Disclosure of gifts in this manner does not relieve Councillors or staff from their obligations to make disclosures in association with annual Disclosure Returns required of Councillors and designated persons under Section 449(3) of the LGA.

5.2 General rules

5.2.1 In accordance with Council's Code of Conduct, Council officials must not:

- Seek or accept a bribe or other improper inducement;
- Seek gifts or benefits of any kind;
- Accept any gift or benefit that may create a sense of obligation on their part or may be perceived to be intended or likely to influence them in carrying out their public duty;
- Accept any gift or benefit of more than token value, unless the gift or benefit cannot reasonably be refused or returned (if the gift or benefit cannot reasonably be refused or returned, it must be surrendered to Council, unless the nature of the gift makes this impractical);
- Accept an offer of cash or cash-like gift;
- Participate in competitions for prizes where eligibility is based on Council being in, or entering into, a customer-supplier relationship with that competition organiser;
- Personally benefit from rewards points programs (eg frequent flyer schemes) when
- purchasing on behalf of Council.

5.2.2 Whilst Council's Code of Conduct does allow for the acceptance of token gifts in suitable circumstances, it is not encouraged. Council officials must prioritise being able to carry out and be seen to carry out, their duties ethically, honestly and impartially.

5.2.3 Council officials must also take all reasonable steps to ensure that their immediate family members or other persons they are closely associated with do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment.

5.2.4 Any offer of a gift or benefit is deemed to have been accepted by a Council official if it is received by the official or someone they are personally associated with.

5.3 Purpose of the gift or benefit

5.3.1 Gifts or benefits can have one or more defined purpose:

- To influence the recipient
- To show gratitude
- Be token in nature
- Support a ceremony

5.3.2 Regardless of the purpose, any gift or benefit should be rejected (if possible). This Policy outlines the limited circumstances in which the acceptance of certain gifts or benefits would be acceptable.

5.3.3 Where the likely view or perception of the offer is that it would, or is intended to, *influence* a Council official in their official function to be partial to an individual or organisation, the gift or benefit (regardless of value) must be rejected outright. This influence is distinct from normal marketing activities frequently displayed by individuals or companies who distribute inexpensive token items and the like containing company logos.

5.3.5 In circumstances where the nature or circumstances of the offer or benefit, including its value, is considered to be significant enough to warrant concern, the General Manager is to be advised (or in the case an offer is made to the General Manager, the Mayor is to be advised) immediately. This would include attempts to bribe and influence and the offer of items that would not normally, in the course of business, be offered to officials.

5.4 Gifts or benefits of token value

5.4.1 Gifts or benefits of token value usually do not create a sense of obligation in the receiver that will influence, or appear to influence, the exercise of his/her official duties. As such, gifts or benefits where there is a genuine collective value of no more than token value *may* be retained by an official (subject to the restrictions on acceptance by certain Council officials as outlined in this Policy) but must be declared.

5.4.2 If a Council official is concerned however, that the intent of an offer (even if only of token value) may be inappropriate, the gift or benefit should not be accepted.

5.4.3 Examples of gifts or benefits of token value may include (but are not limited to):

- Invitations to and attendance at local social, cultural or sporting event;
- A modest bottle of alcohol;
- Ties, scarves, coasters, tie pins, diaries, chocolates or the like;
- Prizes or awards that do not exceed token value.

5.4.4 **Note:** Where there is more than one gift or benefit given at any one time or within any financial year the value will be the total or cumulative value of all gifts and benefits received from the same individual or organisation.

Therefore, where a Council official has accepted a gift or benefit of token value from a person or organisation, they must not accept a further gift or benefit from that same person or organisation (or any person associated with them) within a single twelve-month period where the value of the gift, added to the value of earlier gifts received would exceed token value.

5.5 Gifts valued at more than token value

5.5.1 Gifts or benefits valued at more than token value should not be accepted.

5.5.2 Examples of gifts or benefits that would usually exceed token value may include (but are not limited to):

- Tickets to major sporting events
- Corporate hospitality at a corporate facility at major sporting events;
- Free or discounted products or services for personal use provided on terms that are not available to the general public or a broad class of persons;
- The use of holiday homes;
- Artworks;
- Free or discounted travel.

5.5.3 In the event that a Council official is offered a gift or benefit of more than token value, they should:

- (i) Politely decline to accept the gift or benefit;
- (ii) Make notes immediately following the incident, setting out as clearly as possible what occurred, including: the date, time and place of the incident, to whom the offer was made and the response given. Any such notes should be signed and dated;
- (iii) Notify their supervisor or General Manager as soon as possible and follow the procedure for declaration.

5.5.4 Obviously there will be times when a gift or benefit cannot reasonably be refused or returned, or has been inadvertently received for example, wrapped gifts not opened in the presence of the gift-giver, gifts that are accepted for protocol or other reasons where returning it would be inappropriate, gifts sent anonymously or a gift received in a public forum where attempts to refuse or return it would cause embarrassment. In these cases, the gift or benefit must be promptly declared and surrendered to Council for disposal through the approved process (unless of course the nature of the gift or benefit makes this impractical).

5.6 Exceptions

The following are exceptional circumstances where a gift or benefit of more than token value may be retained by Council (provided that the gift is not converted for the personal use or enjoyment of any individual council official or someone personally associated with them), but is still to be declared and recorded in Council's Gift Register:

(a) Special donations

Special donations to the whole of Council (the community) may be accepted on behalf of Council by the Mayor or General Manager.

(b) Ceremonial gifts

A ceremonial gift is an official gift from one organisation to another organisation. Such gifts are provided to a host organisation when conducting official business with delegates from another organisation. Although these gifts may sometimes be offered to express gratitude, the gratitude usually extends to the work of several people in the organisation and therefore the item is considered gifted to the organisation and not a particular individual.

5.7 Restrictions on acceptance by certain Council officials

Council officials involved in procurement, tendering or sales activities for a particular area of Council business must not accept any gift or benefit, of **any** value, from potential or current suppliers relating to that area of business.

Council officials that have discretionary roles in regulatory or approval function must not accept any gift or benefit from individuals or companies seeking the exercise of Council's decision making discretion or where an individual or company has sought the exercise of Council's decision making discretion within the previous twelve months.

5.8 Procedure for declaration

5.8.1 All gifts and benefits (regardless of value) offered to Council officials in association with their duties and responsibilities with Council, whether accepted or rejected, are to be declared by completing a Gifts & Benefits Declaration Form– see **Annexure B** (available on Council's intranet).

5.8.2 The Form is to be completed as soon as possible after the offer has been made and then promptly forwarded to the office of the General Manager.

5.8.3 The General Manager (or Mayor) will then make a decision on any resulting action, including the management of surrendered gifts.

5.8.4 For a summary of the process for dealing with gifts and benefits – see **Annexure C**.

5.9 Return or disposal of gifts or benefits

5.9.1 If a gift or benefit of value is to be returned in person, through be preferably be done in the presence of a witness.

5.9.2 Some options for the disposal of gifts or benefits n(once declared and surrendered) include:

- (a) Sharing the gift amongst all staff (such as perishable items);
- (b) Re-distribution to not-for-profit charitable organisations for use in delivering services to the community;
- (c) The running of a raffle or auction with the proceeds going to charitable organisations for community benefit.

The preferred method of disposal will largely depend on the nature of the gift or benefit and will be at the discretion of the General Manager (or Mayor).

5.10 Giving of gifts or benefits to other agencies or officials

There may be occasions when it is appropriate for Council officials to give gifts or benefits to individuals from other public or private bodies, such as a modest token of appreciation or a presentation of a gift for protocol reasons. Permission for the giving of gifts or benefits by Council officials must be obtained by the General Manager.

5.11 Policy breaches

Any breaches of this Policy could constitute a possible act of misconduct and may lead to disciplinary action under Council's Code of Conduct. Serious breaches by Council officials such as soliciting, or attempt to solicit, or knowingly accepting a bribe, will be reported to the General Manager, or Mayor for referral to ICAC.

6. Accountability, roles and responsibilities

6.1 Policy Custodian – Manager Governance and Legal

The Policy Custodian is the primary contact point for advice on the policy or its implementation; is responsible for establishing and maintaining Council's records in relation to the policy; proposing amendments; and managing the consultation process when the policy is due for review.

6.2 Responsible Officers

6.2.1 Mayor and General Manager are responsible for:

- Reporting any suspected bribery attempts to ICAC, and the Police, if appropriate;
- Deciding the method of disposal, or otherwise dealing with gifts and benefits surrendered by Council officials;
- Duly signing off on Council's Gift register.

6.2.2 The office of the General Manager is responsible for:

Processing of Gift & Benefit Declaration Forms and management of Council's Gift register.

6.2.3 Council Officials

All Council officials must at all times comply with this Policy and have a responsibility to disclose instances of being offered or receiving gifts and benefits in accordance with this Policy and its associated procedures.

7. Acknowledgements

- 7.1 Council's Model Code of Conduct adopted 20 February 2019.
- 7.2 City of Parramatta – Gifts & Benefits Policy
- 7.3 Broken Hill City Council – Gifts & Benefits Policy
- 7.4 Wingecarribee Shire Council – Gifts & Benefits Policy
- 7.5 Uralla Shire Council – Draft Gifts & Benefits Policy
- 7.6 NSW OLG – Media Release – Tough New Behaviour Code for Councillors – 2 September 2018.

8. Annexures

A – Glossary

B – Gifts & Benefits Declaration Form (UNDER SEPARATE COVER)

C – Flowchart: Gifts and Benefits Process

9. Version control and change history

Date	Version	Approved by and Resolution No	Amendments
Jan 2020	Update		Updated to incorporate changes in accordance with Model Code of Conduct, ICAC recommendations to reflect Council's formatting.
19 Feb 2020	Version 1	Council Resolution 12.02/20	
20 Feb 2020	Version 1		Public exhibition expired 26/03/20
16 Sep 2020	Version 1	Council Resolution 9.09/20	Annexure A – Token Value in Glossary amended in accordance with new Model Code of Conduct
21 Oct 2020	Version 1	Council Resolution 7.10/20	Updated to incorporate changes in accordance with Model Code of Conduct.

Annexure A - Glossary

Benefit	A non-tangible item of value that one person or organisation confers on another.
Bribe	A gift or benefit offered to or solicited by a Council official to influence that person to act in a particular way.
Cash-like gift	Include but are not limited to gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internet credit, lottery tickets, memberships or entitlements to discounts that are not available to the general public or a broad class of persons.
Council officer	A member of Council staff.
Council official	Councillors, Council officers, Council Committee or Reference Group members, volunteers or delegated persons as defined in the Local Government Act 1993.
Corruption	The abuse of public office for private or personal advantage.
Gift	An item of value which one person or organisation presents to another.
Gift register	An official record that details gifts and benefits received by Council Officers and how they are managed.
Hospitality	The provision of meals, refreshment or other forms of entertainment at events and activities involving workers and external organisations or individuals, during or in relation to work activities. This includes hospitality provided outside of normal working hours in relation to work activities.
ICAC	Independent Commission of Corruption.
LGA	Local Government Act 1993
Pecuniary interests return	A return completed by Councillors and designated staff as required by the Local Government Act 1993 which includes disclosure, inter alia, of gifts as required under the Local Government (General) Regulation 2005.
Token value	Goods or services received from a person or organisation over a 12-month period that, when aggregated, the amount as defined in the Model Code of Conduct as enacted by Council.
Value	The monetary value of a gift or benefit, inclusive of GST.

Annexure C – Flowchart – Gifts and Benefits Process

