


COUNCIL POLICY

Gifts, Benefits & Hospitality	Adopted By Council:	18/10/11	
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	*(may be subject to legislative changes)		
	Document No:	CP009	
	Directorate:	CEO	
	Responsible Officer:	Chief Executive Officer	

CONTEXT

Receipt of a gift can result in a conflict of interest, or a perceived conflict of interest, in a matter. The *Local Government Act 2020* (the Act) sets out legislative requirements in relation to conflict of interest and each Councillor and Council officer is responsible to familiarise themselves with the provisions contained in the Act. Nothing in this policy shall be construed to override the provisions of the Act. In the event of any apparent inconsistency, the provisions of the Act will prevail.

PURPOSE

The purpose of this policy is to address the offer, received or declined, of gifts or hospitality to Councillors or to Council officers by ensuring that:

- a high standard of probity and accountability is maintained;
- legislative requirements and community expectations are met;
- Council activities are not influenced, or perceived to be influenced, by the receipt of gifts, benefits or hospitality; and
- gifts that are received or declined are properly disclosed and managed.

DEFINITIONS

Benefit: Something which is believed to be of value to the receiver, such as a service i.e. access to a sporting event, preferential treatment, access to confidential information, accommodation, personal services, pleasure or vacation trips.

Bribe: A corrupt inducement to reward.

Gift: A 'gift' will be as defined in the *Local Government Act 2020*.

'gift' is defined as 'any disposition of property otherwise than by will made by a person to another person without consideration in money or money's worth or with inadequate consideration, including— (a) the provision of a service (other than volunteer labour); and (b) the payment of an amount in respect of a guarantee; and (c) the making of a payment or contribution at a fundraising function;

Gift Disclosure Threshold A disclosable gift means any gift valued at or above \$500 or a higher prescribed amount that a relevant person received in the preceding five years if:

- the relevant person was a councillor, member of council staff or member of a delegated committee at the time the gift was received, or
- the gift was an election campaign donation.

If multiple gifts are received from a person, they must be treated as a single gift with an aggregate value.

Gift of appreciation: Refers to a gift that is presented to an individual to express thanks and a feeling of goodwill on behalf of the giver where there is no expectation of repayment. These gifts are generally a one-off occurrence.

Hospitality Where a meal or service is offered which has a more than nominal value and is not viewed as being connected to official Council business or part of the accepted meal at a conference or seminar.

Monetary gift: Defined as cash, cheques, money orders, travellers' cheques and direct deposits.

Official gift A gift received by Councillors or Council officers as representatives of the Borough of Queenscliffe or the Council. These gifts may be received from a Sister City, organisations or corporations that are bestowing a corporate gift (e.g. plaques, plates, vases, trophies, art work) or souvenir to the Borough of Queenscliffe, or as a token of appreciation for a contribution to a conference or industry event.

Token gift: Is of such a nature and value that it could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter. The gift also does not create a sense of obligation in the receiver that will influence, or appear to influence, the exercise of their official duties. In the event that a gift might reasonably be perceived to influence, or appear to influence, the recipient, it cannot be defined as a token gift.

Value: Value means the face value or estimated retail value.

POLICY

1. Gifts must never be sought

Councillors and Council officers must not solicit, demand or request gifts or any personal benefit for themselves or another person by virtue of their position.

2. No sense of obligation

No gift may be accepted that could influence, or be perceived to influence, a Councillor or Council officer in the performance of their public or professional duties.

3. Prohibited Gifts

In addition to other limitations imposed by this policy, monetary gifts (of any value) must never be accepted.

In accordance with section 137 of the Local Government Act 2020, anonymous gifts (i.e. where the giver of the gift is not known) are not to be accepted. Section 137 of the Act states:

- (1). *Subject to subsection (2), a Councillor must not accept, directly or indirectly, a gift for the benefit of the Councillor the amount or value of which is equal to or exceeds the gift disclosure threshold unless—*
- (a) *the name and address of the person making the gift are known to the Councillor; or*
 - (b) *at the time when the gift is made—*
 - (i) *the Councillor is given the name and address of the person making the gift; and*
 - (ii) *the Councillor reasonably believes that the name and address so given are the true name and address of the person making the gift.*

Penalty: 60 penalty units.

- (2) *If the name and address of the person making the gift are not known to the Councillor for whose benefit the gift is intended, the Councillor is not in breach of subsection (1) if the Councillor disposes of the gift to the Council within 30 days of the gift being received.*
- (3) *In addition to the penalty specified in subsection (1), a Councillor who is found guilty of a breach of that subsection must pay to the Council the amount or value of the gift accepted in contravention of that subsection.*

4. Token Gifts

Gifts of token value may be accepted by Councillors or Council officers provided that the gift does not create a real or perceived sense of obligation that may lead to a perception of preferential service as a result of the gift.

The following should be used as a guide for Councillors or Council officers in determining whether to accept token gifts. Such gifts may be accepted only when the following have been considered:

- such a gift is offered in an open or public forum and refusal would be obviously discourteous;
- acceptance would not cause any potential perceived or actual compromise or conflict of interest;
- the gift does not have a significant monetary value (as a guide, less than \$10);
- the gift is not offered on a regular basis.

There is no requirement to record token gifts in the Council Gifts Register.

5. Official Gifts

From time to time individuals or organisations may offer gifts of goodwill to the Council. The Chief Executive Officer or relevant Manager will ensure that any such official gift is recorded in the Council Gifts Register as a gift to the Council.

Individuals may be involved in conferences or social, cultural, community, industry events where official gifts are presented or exchanged. Where it would appear not to be polite or inappropriate to decline the offer, it is reasonable for official representatives of the Council to accept official gifts on behalf of the Council. Unless otherwise determined as set out below, such gifts shall be considered to be the property of the Council and may be displayed in an appropriate and secure location for public viewing.

In some circumstances, including where the item may not be suitable for public display or the gift is of a personal nature to the recipient, the Chief Executive Officer will use their discretion as to the appropriate use of the official gift.

A record will be made in the Council Gifts Register in the event that the gift is used for other than Council purposes.

6. Gifts of Appreciation

Demonstrating appreciation for services received from the Council or Council officers from external organisations or individuals should not involve the presentation of a gift or benefit. Acceptable alternatives may include a letter of thanks or a thank you card as these are considered less likely to result in a situation that may compromise or be perceived to compromise either party.

No individual is to accept a gift of appreciation that has significant monetary value (as a guide, more than \$20) for personal effort. Where such gifts are offered, the individual should politely refuse the offer explaining that it is against the Council's policy to accept such a gift.

Multiple gifts from the same person/organisation are considered inappropriate and should not be accepted.

All gifts of appreciation, whether accepted or declined, are to be recorded in the Council Gifts Register.

7. Hospitality

Councillors and Council officers, in an official capacity, will from time to time receive invitations of hospitality to attend various functions and events.

Where hospitality is only modest in nature and provides an opportunity to network or undertake business of a common purpose, it may be appropriate to accept such invitations. Such incidental refreshments at meetings, working lunches, or similar, are not considered to be a gift and need not be recorded unless they occur at a frequency that may give rise to the perception of a conflict of interest under the Act.

In some circumstances a Councillor or Council officer may attend the event if the Council either fully reimburses the organisation for the full cost of the hospitality or if the Councillor or Council officer personally pays for their own attendance.

If acceptance of the hospitality is likely to create the impression that an attempt is being made to compromise the impartiality of the Councillor or Council officer, or could be perceived as a conflict of interest, the offer of hospitality should be politely declined.

8. Reporting

All gifts or benefits received by Councillors or Council employees (regardless of their value) must be declared by completing the Gift Declaration form and returned to the Executive Assistant to the Mayor, Councillors & Chief Executive Officer for inclusion in the Council Gifts Register. The Chief Executive Officer must also be advised immediately.

Gifts or benefits that are declined must also be recorded in the Council Gifts Register, however any gift that is declined shall not be treated as an 'Official Gift'.

The Council Gifts Register will contain the following information:

- Date the gift or benefit was received or declined
- Description of the gift or benefit
- Recipient of the gift or benefit
- Name and address of gift/benefit provider
- Estimated value of the gift or benefit

The Council Gifts Register will be made available for public inspection and a report will be provided to the Chief Executive Officer annually.

Particulars of any gift of or above the value of \$500 received by a Councillor or nominated officer will also be declared on the Register of Personal Interests Return, which is available for inspection if the person wishing to inspect the register has previously made written application to the Chief Executive Officer to do so and the application meets the requirements of the *Local Government (Governance and Integrity I) Regulations 2020*.

9. Improper Behaviour

If a Councillor or staff member believes they have been offered a bribe it is important that they immediately act to minimise any potential for negative consequences by following the 'Reporting and Investigation of Fraud' process outlined in Council's CP008 Fraud Prevention policy.

CONTINUOUS IMPROVEMENT

This policy will be reviewed on a continuous basis, but as a minimum every three years from the date of adoption.

OTHER REFERENCES

Local Government Act 2020

Local Government (Governance and Integrity) Regulations 2020

Council Policy – CP005 Councillor Code of Conduct

Council Policy – CP008 Fraud Prevention

Organisational Policy – OP006 Staff Code of Conduct

END