

Councillor Gifts

COUNCIL POLICY NO. 144

1. SCOPE

This policy sets out the Council's standards and procedures for responding to gift offers. It applies to all Councillors of Gannawarra Shire Council.

2. PURPOSE

The purpose of this policy is to provide clear guidelines to ensure Councillors are not compromised in the performance of their duties by accepting gifts or benefits which may result in a sense of obligation or could be interpreted as an attempt to influence. This helps to protect and promote public confidence in the integrity of the Council.

3. DEFINITIONS

<p>Gift (s3 LGA)</p>	<p>Means 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—</p> <ul style="list-style-type: none"> (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.
<p>Gifts explanation to support definition</p> <p>includes:</p> <ul style="list-style-type: none"> • Items & services • Benefits • Hospitality 	<p>A gift is anything of monetary or other value that is offered by an external organisation or individual to a Councillor as a result of their role with the Council. It includes free or discounted items or services, benefits or hospitality that exceeds common courtesy. Examples include:</p> <ul style="list-style-type: none"> • A bottle of wine or spirits • Tickets to sporting events • Gift Voucher • Corporate hospitality at a corporate facility • Discounted products for personal use • Use of a holiday home • Free or discounted travel • Free training excursions • Door prize or voucher if an individual has not personally paid to attend.

<p>Gift disclosure threshold</p>	<p>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:</p> <ul style="list-style-type: none"> • 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. <p>If multiple gifts are received from a person, they must be treated as a single gift with an aggregate value.</p> <p>A gift includes any good or service (other than volunteer labour) that is provided for free or at an inadequate price. It includes a payment or contribution at a fundraising function.</p> <p>A failure to comply is an offence that can be prosecuted in court. If found guilty a fine of up to 60 penalty units may be imposed, the value of the gift must be paid to the Council and the Councillor may be required to pay the costs of the prosecution.</p>
<p>Benefits</p>	<p>For example:</p> <ul style="list-style-type: none"> • Preferential treatment • Privileged access • Access to discount or loyalty programs • Promise of a new job
<p>Hospitality</p>	<p>Hospitality is considered a gift unless the hospitality was reasonable and you were attending the function or event in an official Council capacity.</p> <ul style="list-style-type: none"> • <u>Reasonableness test</u>: the hospitality must be of a standard and type that an independent observer would consider appropriate and not excessive. • <u>Official capacity test</u>: it must clearly be your duty as a Councillor to attend the relevant function or event. <p>Hospitality that <u>exceeds</u> common courtesy includes:</p> <ul style="list-style-type: none"> • A ‘fine dining and wines’ working lunch at another organisation’s premises • An offer to pay for a working lunch at a café • An offer of a free spot on an industry golf day <p>Hospitality that does <u>not</u> exceed common courtesy and is therefore <u>not</u> a gift includes:</p> <ul style="list-style-type: none"> • Sandwiches and pastries over a lunchtime meeting • A cup of coffee at another organisations premises • A cup of coffee at a café (unless there is a conflict of interest)
<p>Gestures that are not considered gifts</p>	<ul style="list-style-type: none"> • A souvenir received from a person or company as a result of attending a seminar or conference held, conducted or sponsored by them, for which an appropriate fee was paid to attend. For example ties, pens or mugs. • Small gestures of appreciation from the community or customers such as cut flowers from their garden or homemade baked goods. • Door prizes and raffle prizes at functions or conferences are <u>not</u> considered a gift if the individual has personally paid for their attendance, or where the individual has paid for the raffle ticket.

Bribe	A bribe is an offer of money or other inducement made with the intention to corruptly influence a Councillor, officer or contractor in the performance of their duties. Bribery or attempted bribery of a public official is a criminal offence.
Conflict of interest	The Local Government Act 2020 requires Councillors to declare General or Material Conflicts of Interest. A conflict of interest is a conflict between a Councillor's public duty to act in the best interest of the Council and their private interests (financial or non-financial). A conflict exists whether it is: <ul style="list-style-type: none"> • Real – it currently exists • Potential – it may arise, given the circumstances • Perceived – members of the public could reasonably form the view that a conflict exists, or could arise, that may improperly influence the person's performance of their duty to the Council, now or in the future.
Value	Value means the face value or estimated retail value.

4. POLICY

The acceptance of gifts, benefits or hospitality can involve a conflict of interest or the perception of a conflict of interest. Before accepting any gift, benefit or hospitality Councillors must ask themselves; would it result in a sense of obligation or could it be interpreted as an attempt to influence?

4.1 Prohibited gifts

Any gift that is inconsistent with community values and could bring a Councillor's integrity, or that of the Council, into disrepute (eg if accepting a gift could be perceived as an endorsement of a product or service) must be declined. Councillors must refuse the following gift offers:

a. Gift Disclosure threshold

Councillors are prohibited from accepting gifts that equal or exceed the gift disclosure threshold unless they know the name and address of the person making the gift.

b. Anonymous Gifts

Section 137 of the Local Government Act 2020 - Anonymous gift not be accepted

- (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.

If for any reason a Councillor finds themselves in possession of a gift when they don't know the name and address of the person who gave the gift, the Councillor can give the gift to the Council within 30 days to avoid committing an offence.

c. Conflict of Interest

Councillors are prohibited from accepting a gift that creates a conflict of interest (real, potential or perceived).

d. Money or equivalent

Councillors are prohibited from accepting gift cards (eg gift vouchers) or those gifts that are easily converted into money (eg shares).

e. Regulatory processes

Councillors are prohibited from accepting gifts from individuals or groups that may be involved with the permit application or regulatory activity (eg a planning permit application; infringement appeal).

f. Bequests/Wills

Any bequests to Councillors resulting from their position with Council, must not be accepted. Arrangements may be made to donate the bequest to a charitable institution in the name of the donor or returned to the donor's immediate family.

g. Rewards Programs

Councillors are prohibited from collecting rewards for personal use via rewards programs for any Council related transactions (ie fly buys or frequent flyers). This relates to any claims for reimbursement of expenses incurred in accordance with Policy No. 092 - Councillor Allowances and Support.

h. Procurement and Tender Process

Councillors must not accept any gifts, benefits and hospitality from a current or prospective supplier, or any offer that is made during a procurement or tender process by a person or organisation involved in the process.

i. Consequence of accepting prohibited gifts

Accepting a prohibited gift may constitute misuse of a Councillor's position, a breach of this policy may result in a serious misconduct allegation. In addition, if the gift was offered with the expectation of something in return, such as preferential treatment, accepting it may constitute a bribe or other form of corruption and lead to criminal prosecution.

4.2 Attempts to bribe

A Councillor who receives a gift offer that they believe is an attempted bribe must refuse the offer and:

- Report the matter to the CEO or Public Interest Disclosure Co-ordinator (Manager Human Resources) who should report any criminal or corrupt conduct to Victoria Police or the Independent Broad-based Anti-Corruption Commission.
- A Councillor who believes another person within the Council may have solicited or been offered a bribe which they have not reported, must notify the CEO or report the matter as a public interest disclosure in accordance with Council's Public Interest Disclosure Procedures.

4.3 No soliciting of gifts

Councillors must not solicit gifts for themselves or anyone else, in any form. To do so may constitute misuse of their position and may result in a serious misconduct allegation. It may also constitute corruption and lead to criminal prosecution.

4.4 Gestures that are not gifts

Individuals may accept gestures without approval or declaring the offer on Council's Gifts Register (refer clause 3 – Definitions for examples of gestures).

4.5 Gift offers

Accept	<p>Councillors may accept token gift offers, benefits and hospitality, but all gifts accepted, must be declared and submitted to the Governance Department and included in the Gifts Register. This is to ensure that the combined total value of gifts received from a single source does not exceed the prescribed disclosure threshold.</p> <p>It is also appropriate to accept a gift where refusal may cause offence or embarrassment, in which case the gift will be accepted on behalf of Council and included in the Gifts Register with a notation that the gift is the property of Council.</p>
Decline	<p>Councillors should decline gift offers that:</p> <ul style="list-style-type: none">• Are likely to influence them, or would be perceived to influence them, in the course of their duties,• Are likely to raise a conflict of interest, whether real, potential or perceived,• Are made by a person or organisation about which they are likely to make a decision,• Are likely to be a bribe,• Have no legitimate business benefit,• Consist of money, gift vouchers or something easily converted into money,• Could be perceived to be an endorsement of a product or service and will bring the individual or Council into disrepute,• Are made in secret. <p>Declined gift offers must be declared and included in the Gifts Register.</p>

4.6 Hospitality and Conferences

Hospitality that exceeds common courtesy must be avoided as it is inconsistent with community expectations and has a high risk of creating a conflict of interest. Examples of gift offers of hospitality that exceed common courtesy include:

- Attending as a guest in a corporate box at sporting or other events
- Attending a concert or theatre event
- Attending an industry golf day at a reduced fee
- Being 'shouted' a meal at a restaurant
- Accepting discounted or complimentary tickets for a family member to attend an event.

Reasonable hospitality that does not exceed common courtesy does not need to be declared. Refer to the definitions of Hospitality and the reasonableness test.

Conferences

Gift offers in relation to conferences (sponsored attendance, participation, travel or accommodation) must be declined unless the invitation is issued by a government department or a Local Government affiliated peak body, such as Municipal Association of Victoria, and Rural Councils Victoria.

4.7 The G.I.F.T. Test – Conflict of Interest and reputational risks

Before accepting an offer of a gift, Councillors should first consider if the offer could be perceived as influencing them in performing their duties or lead to reputational damage. The more valuable the offer, the more likely that a conflict of interest or reputational risk exists. The GIFT test should be used when deciding whether to accept or decline a gift, benefit or hospitality.

G	Giver	<p>Who is providing the gift, benefit or hospitality and what is their relationship to me?</p> <p>Does my role require me to select contractors, award grants, regulate industries or determine government policies? Could the person or organisation benefit from a decision I make?</p>
I	Influence	<p>Are they seeking to gain an advantage or influence my decisions or actions?</p> <p>Has the gift, benefit or hospitality been offered to me publicly or privately? Is it a courtesy or a token of appreciation or valuable non-token offer? Does its timing coincide with a decision I am about to make?</p>
F	Favour	<p>Are they seeking a favour in return for the gift, benefit or hospitality?</p> <p>Has the gift, benefit or hospitality been offered honestly? Has the person or organisation made several offers over the last 6-12 months? Would accepting it create an obligation to return a favour?</p>
T	Trust	<p>Would accepting the gift, benefit or hospitality diminish public trust?</p> <p>How would the public view acceptance of this gift, benefit or hospitality? What would my colleagues, family, friends or associates think?</p>

4.8 Corporate gifts

Councillors may be involved in social, cultural or community events where official gifts are presented or exchanged.

It is reasonable for Councillors in performing official duties as representatives of Council to accept official gifts on behalf of the Council, when it would appear impolite or inappropriate to decline the offer of a gift.

Where a gift is received on behalf of the Council with a value greater than \$30, the gift becomes the property of the Council.

All corporate gifts received will be considered the property of Council and disclosed and recorded in the Gifts Register with a notion that it is the property of the Council.

4.9 Disclosure of gifts

- A Councillor must disclose any gift valued at or above the gift disclosure threshold in their Personal Interest Return unless the gift is from a family member.
- A Councillor who has a conflict of interest as a result of receiving a gift, or gifts, from a person must disclose the conflict of interest in accordance with the procedures outlined in Council's Governance Rules.
- Gifts above the gift disclosure threshold that are election campaign donations must be disclosed in an election campaign donation return.
- All gifts received must also be declared and disclosed in the Gifts Register.

4.10 Declaration of gifts

Councillors must complete the “Declaration of Gifts” form within 14 days of being offered the gift (or 14 days of the date of returning to Australia if the gift was offered overseas). The declaration must include:

- The date the gift was offered;
- A description of the gift;
- Estimated monetary value of the gift;
- The name of the person who offered the gift;
- If the gift was offered on behalf of another person or body, the name of that person or body; and
- The outcome, ie what was done with the gift (retained, declined, donated etc).

4.11 Gifts, Benefits and Hospitality Register

The Governance Department maintains the Gifts Register for all gift declarations.

All gifts offered will be included in the Gifts Register. The Gifts Register contains:

- The date the gift was offered;
- A description of the gift;
- Estimated monetary value of the gift;
- The name of the person or body who offered the gift; and
- The outcome (retained by the Councillor, declined, donated, etc.); and

In accordance with Council’s Public Transparency Policy, the Gifts Register is available on Council’s website.

The Gifts Register will be monitored by the Governance Department to identify any trends and patterns that may be referred to the Audit and Risk Committee.

Consideration will be given to maintaining reasonable confidentiality in situations where public disclosure will prejudice a proposed development or business venture, legal advice or legal proceedings.

5. POLICY REVIEW

Council will review the Councillor Gift policy as required but always within twelve months after a general election of the Council.

At the time of review, this policy was compliant with the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

6. FURTHER INFORMATION

Members of the public may inspect all Council policies at Gannawarra Shire Council’s Kerang and Cohuna offices or online at www.gannawarra.vic.gov.au.

Any enquiries in relation to this policy should be directed to the Manager Governance on (03) 5450 9333.

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