



## GIFTS, BENEFITS & HOSPITALITY POLICY

Responsible Officer: <b>Governance and Risk Advisor</b>	Adoption Date:	August 2015
	Approved By:	Council
Authorising Officer: <b>Director Corporate Services</b>	Review Date:	March 2018
	Policy Type	Council

### BACKGROUND

Council's operations are founded on values of community leadership, accountability, integrity, respect, trust and excellence. These ideals underpin Council's behaviours and therefore service delivery. To support this, on all occasions, all actions of Councillors and Council employees shall be undertaken in line with the highest ethical standards and probity.

### PURPOSE

The purpose of this policy is to establish guidelines for the receiving of gifts, benefits and hospitality by Councillors and Council employees to avoid any potential conflicts of interest or breaches of the *Local Government Act 1989* (the Act).

### SCOPE

This policy applies in relation to all gifts, benefits or hospitality offered to or received by Councillors and Council employees from sources external to Council subject to the following exclusions.

This policy does not relate to donations of cash received by Council for specific purposes such as appeals. These will be recorded in the Council accounts and used for the purposes of the appeal.

If the gift is offered to Council or to a Councillor or Council employee in their capacity as Council's agent, purely for redistribution by Council, this does not constitute a gift under this policy. When the gift is redistributed to another person(s) this does not fall under this policy or the conflict of interest rules. The gift to the final recipient(s) is classed as coming from Council rather than the original donor.

Reasonable hospitality provided and paid by a party external to Council and received by a Councillor or Council employee at an event or function they have attended in an official capacity is excluded from this policy.

Reasonable hospitality provided by a party external to Council, paid by Council and received by a Councillor or Council employee at an event or function they have attended in an official

capacity is excluded from this policy provided all relevant function, travel and accommodation approvals are obtained.

## LEGISLATIVE COMPLIANCE

Legislative requirements of the Act include:

### **Councillors:**

- Section 59 (Bribery, treating and undue influence);
- Division 9 Election campaign donations Section 62 (Return by candidate);
- Division 9 Election campaign donations Section 62B (Certain gifts not to be accepted);
- Section 76B (Primary principle of Councillor conduct);
- Section 76BA (General Councillor conduct principles);
- Section 76D (Misuse of position);
- Section 77A (Direct and indirect interests);
- Section 77B (Direct interest);
- Section 78 (Indirect interest by close association);
- Section 78A (Indirect interest that is an indirect financial interest);
- Section 78B (Indirect interest because of conflicting duties);
- Section 78C (Indirect interest because of receipt of an applicable gift);
- Section 79 (Disclosure of conflict of interest);
- Section 79B (Conflicting personal interest);
- Section 79C (Certain situations where Councillor taken to not have a conflict of interest);
- Section 80A (Requirements to be observed by an assembly of Councillors);
- Section 81 (Register of interests);
- Section 188 (Power to accept gifts);
- Section 239 (Persons who are liable for offences);

### **Council employees:**

- Section 80B (Members of Council employees to disclose conflicts of interest in respect of delegated functions);
- Section 80C (Persons to disclose interests to Council when providing advice);
- Section 81 (Register of interests);
- Section 95 (Conduct principles);
- Section 186A (Procurement policy);
- Section 188 (Power to accept gifts);
- Section 239 (Persons who are liable for offences);

This policy and supporting processes will ensure adherence to all these provisions.

## POLICY

Council acknowledges that as part of business or cultural practices, at times, Councillors and Council employees will be presented with gifts as a form of appreciation. While Council is appreciative of such acts of generosity it is Council policy that gifts should not be accepted and be politely refused unless that refusal has the potential to offend the giver and potentially damage critical Council relationships or because of cultural sensitivities around gift giving and receiving.

Gifts, benefits or hospitality could be offered innocently in good faith or could be an attempt to influence. Feelings of obligation can arise if Councillors or Council employees accept a gift, benefit or hospitality. Once it has been accepted, their official position may be compromised as often persons attempting to corrupt Councillors or Council employees start with small inducements that appear to have no improper motive behind them.

By politely refusing such gifts, benefits or hospitality, Councillors or Council employees can avoid feeling compromised and contributing to a public perception of bias either at the time of receiving the gift or potentially in any future dealings. Before accepting any gift, benefit or hospitality, Councillors and Council employees must consider the ramifications and perceptions that may arise from any such offer and ask themselves whether a conflict of interest may arise.

In some circumstances, gifts, benefits or hospitality must never be accepted. These circumstances are described below.

Should any gifts be received they will be recorded in Council's Register of Gifts, Benefits and Hospitality.

### **Soliciting & Influence**

A Councillor or Council employee must not seek or accept a bribe or other improper inducement by virtue of their position, or acquire a personal profit or advantage, which has a monetary value.

Councillors must not take advantage of their position to improperly influence Council employees in the performance of their public or professional duties to secure a private benefit for themselves, or for somebody else.

Councillors or Council employees, must not take advantage (or seek to take advantage) of their status or position with, or functions performed for, Council in order to obtain unauthorised or unfair benefit by seeking or accepting any payment, gift or benefit intended or likely to influence, or that can be reasonably perceived by an impartial observer as intended or likely to influence them to:

- Act in a particular way (including making a particular decision);
- Fail to act in a particular circumstance; or
- Otherwise deviate from the proper exercise of their duties.

### **When Gifts, Benefits or Hospitality Should Never Be Accepted**

The following gifts, benefits or hospitality are considered inappropriate and must never be accepted:

- In any circumstances, the transfer of money regardless of value, by cash, vouchers or loan, other than as part of an assistance program approved by Council.;
- Where there is or may be, the perception of a conflict of interest with past, present or future duties or where the object of the gift is to maintain or return a favour;
- Where full disclosure of the gift would be embarrassing or damaging to Council;
- It is not appropriate in any circumstances that Councillors or Council employees accept gifts from persons or bodies engaged in any procurement process;

- Where a planning or building permit application or any other regulatory process is underway, a Councillor or Council employee involved in such instances, must not accept any gifts from any individual or group that may be involved with the permit application or regulatory activity;
- Access to confidential information;
- Promise of a new job;
- Preferential treatment which may include reciprocal favours;
- Disposition of property or bequest, not necessarily land but can include goods and chattels (e.g. furniture, vehicles etc.), by one person to another without payment. Arrangements may be made to donate the bequest to a charitable institution in the name of the person or returned to the immediate family; or
- Goods or services at heavily discounted prices that are not generally publicly available.

In each of the preceding circumstances it is possible that corrupt or improper conduct is in play. If Councillors or Council employees refuse a gift for any of the foregoing reasons or on the basis that they believe that the gift was a deliberate attempt to receive 'special treatment', then they must report such instances to the Chief Executive Officer, relevant Director or Council's Protected Disclosure Coordinator.

### **Awards and Prizes Won at Conferences and Seminars**

Prizes or awards valued at over \$500 that are won at functions attended at Council's expense, must immediately become the property of Council.

The Supreme Court has ruled that such prizes or awards are owned by the person or organisation providing 'consideration' for the attendance. Councillors and Council employees attending functions as Council representatives, and who make no financial contribution to the attendance, lose entitlement to any award or prize won as a result of attending the function.

Circumstances in which a person may be entitled to keep a prize or award over \$500 are where personal payment has been made for the attendance, or the person pays for a raffle ticket that wins a prize. In each case the recipient has provided consideration for the prize/award and may lay legal claim to its title.

From an ethics point-of-view, recipients of such prizes could potentially be seen as being influenced by the sponsor of the prize. Prizes and awards valued at over \$500 must therefore be reported as soon as possible to the Chief Executive Officer, who must determine the ownership of the item and the appropriate action to be taken.

### **Campaign Donations**

Division 9 of the Act outlines the requirements in relation to Campaign Donation Returns Section 62B – Certain gifts not to be accepted.

It is unlawful for a Councillor or Candidate or a person acting on behalf of a Councillor or Candidate to receive during the donation period a gift made to or for the benefit of the Councillor, being a gift 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 person receiving the gift; or

- b) At the time when the gift is made:
- (i) The person making the gift gives to the person receiving the gift the person's name and address; and
  - (ii) The person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.

### **Conflict of Interest Arising from Receipt of an Applicable Gift**

A conflict of interest arises where a Councillor or Council employee has an interest that is in conflict with his or her official duty. It is wholly the responsibility of the individual to decide if he or she has an interest. The penalties for failing to disclose a conflict of interest are significant. A Councillor who fails to disclose a conflict of interest is guilty of an offence and liable to a considerable fine. If convicted, he or she would be disqualified from continuing to be a Councillor for a period of seven years after the conviction.

Interests can be direct or indirect. One class of indirect interests concerns the receipt of an applicable gift. An indirect interest having received an applicable gift arises when a Councillor or Council employee has received one or more gifts with a total value of, or more than, the gift disclosure threshold (currently \$500), from a single source in the five years preceding the decision or the exercise of the power, duty or function but excludes:

- Reasonable hospitality received by the person at an event or function the person attended in an official capacity; or
- A gift, other than an election campaign donation, that was received more than 12 months before he or she assumed official duties.

A person has an indirect interest in a matter if the person has received an applicable gift, directly or indirectly, from

- a) A person who has a direct interest in the matter; or
- b) A director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
- c) A person who gives the applicable gift to the person on behalf of a person, company or body that has a direct interest in the matter.

The offer of a gift to a specific person has the same implications for the purposes of Primary and Ordinary Returns, Conflict of Interest rules and this policy, even if the gift is not accepted, or is passed to the CEO for disposal. It should be noted that it is the intention of the person giving the gift that is the critical factor, regardless of what is done with it by the Council employee or Councillor. Therefore if the gift is intended for that particular person it should be declared, even if not retained, and recorded on the appropriate return(s).

## **PROCEDURES**

Where a gift, benefit or hospitality is offered and it is appropriate for a Councillor or Council employee to accept the gift, benefit or hospitality because a refusal may potentially damage Council's relationship with the giver, the intent of this policy and the following procedures must be observed.

## **Property of Council**

Any gift, benefit or offer of hospitality received by Councillors or Council employees immediately becomes the property of the Council.

### **Human Services Exemption**

Gifts of home-made items or home grown produce with a value of up to \$20 given by Human Services clients may be accepted and kept by the Councillor or Council employee receiving the gift where a refusal is likely to offend the giver. Human Services clients include Children's Services, HACC or Packaged Care clients. The requirements for declaration of the gift are to be adhered to.

### **Hospitality Exemption**

Councillors and Council employees, in the normal course of their duties will from time to time receive invitations of hospitality to attend various functions and events.

Where such hospitality is reasonable in nature and provides an opportunity to network or undertake business of a common purpose, it may be appropriate to accept such invitations. Where practical, approval should be obtained prior to attendance. Examples include:

- A business meeting to discuss matters of Council interest at which a meal or refreshments are served;
- Attendance as a representative of the Council at promotional events, site inspections, meetings or activities where there is value to Council in its Councillors or employees gaining or providing information of benefit to Council operations;

The requirements for declaration of the gift are to be adhered to.

If, however, 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 employee, or could be perceived as a conflict of interest, then the offer of hospitality should be politely declined.

## **Disposition**

Gifts, benefits and offers of hospitality given as a sign of gratitude recognise outcomes collectively achieved by Council, Councillors or a group of Council employees. Therefore, as far as is reasonably practical, such gifts are to be 'pooled' to be shared by Council and/or employee work group(s) concerned. Otherwise the disposition of the gift, benefit or offer of hospitality will be decided by the CEO.

The Chief Executive Officer may dispose of gifts by any of the following methods:

- Return to the original recipient;
- Return to sender;
- Disposal by resolution of Council;
- Transfer to other public agencies or authorities;
- Transfer as a gift to a recognised charitable, aid or not-for-profit organisation;
- Archival action by the Victorian Museum or State Library;
- Reduction to scrap; or
- Destruction.

## Declaration

All gifts, benefits and offers of hospitality are to be declared, by

1. Completing a 'Gifts, Benefits & Hospitality Declaration';
2. Advising the appropriate supervisor or manager; and
3. Recording it in Council's 'Gifts, Benefits & Hospitality Register'.

Declarations must be made within 14 days of receiving the gift or, 14 days of the date of returning to Australia, if the gift was received overseas.

## Acknowledgement

As soon as is practicable, all gifts, once properly declared, are to be formally acknowledged to the giver, with a note from the recipient, stating that (as applicable):

1. The goodwill sentiment conveyed by the giving of the gift is appreciated;
2. Where practical, the gift has been pooled for the appreciation of the Council or Council employees of a designated work area; or
3. The gift has been retained by Council and is on display; or
4. The gift has been otherwise dealt with (other public agency, recognised charitable, aid or not-for-profit organisation, archived with the Victorian Museum or the State Library); and
5. Council is an organisation committed to the highest ethical standards of openness, probity and equity.

## Declaration & Disposition Guide

The following table can be used to guide declaration and disposition decisions based on the provider, receiver, and type of gift and dollar value scale.

Provider	Receiver	Type & Value	Declare to	Disposition
Community Services clients	Council's Human Services employees or Councillors	Home-made gifts or home grown produce Value up to \$20	Supervisor	Receiver retains
All providers	Council employees or Councillors	Reasonable hospitality Value up to \$50	Manager (Council employees) or Director with governance responsibility (Councillors)	Receiver retains (prior approval where practical)
All providers	Council employees	All gifts & benefits other than reasonable hospitality Value up to \$50	Manager	Work team 'pool' where practical and/or CEO disposition decision
All providers	Council employees	All gifts & benefits other than reasonable hospitality Value over \$50	Director	Work team 'pool' where practical and/or CEO disposition decision
All providers	Councillor	All gifts & benefits other than reasonable hospitality Value up to \$50	Director with governance responsibility	Director with governance responsibility disposition decision

All providers	Councillor	All gifts & benefits other than reasonable hospitality Value over \$50	CEO	CEO disposition decision
---------------	------------	--	-----	--------------------------

## GIFTS, BENEFITS & HOSPITALITY REGISTER

A Register will be maintained by the manager with responsibility for governance matters and reported to the Audit Advisory Committee and the Chief Executive Officer every six months. The Register contains the following information:

- Date gift, benefit or hospitality received;
- Description of the gift, benefit or hospitality;
- Estimated value;
- Recipient;
- Provider Name (Individual or Company); and
- Disposition of the gift, benefit or hospitality.

## RESPONSIBILITIES

### Councillors

Resolve to formally adopt this policy as a policy of Council.

Provide oversight and review of this policy as advised by the Audit Advisory Committee.

Comply with the requirements of the policy related to Councillors.

### Audit Advisory Committee

Monitor this policy and the gifts, benefits and hospitality register on a six monthly basis.

Report on the adequacy of this policy to Council.

### Chief Executive Officer

Lead the establishment and maintenance of an appropriate culture of ethics and probity throughout the organisation.

Maintain ultimate responsibility for the organisation's treatment of gifts, benefits and hospitality.

Monitor this policy and the gifts, benefits and hospitality register on a six monthly basis.

### Corporate Management Team

Lead, coordinate and monitor implementation of this policy.

Review the status of gifts, benefits and hospitality received. In particular, address any arising situation where gifts, benefits and hospitality received by Councillors or Council employees is forecast to approach or exceed the gift disclosure threshold of the conflict of interest provisions of the Act.

Receive declarations of gifts as provided for in this policy.



Endorse this policy.

### **Manager with governance responsibilities**

Facilitate implementation and review of this policy.

Maintain the gifts, benefits and hospitality register.

Report on gifts, benefits and hospitality received by Councillors and Council employees to the CEO and the Audit Advisory Committee on a six monthly basis.

### **Management**

Receive declarations of gifts as provided for in this policy.

Comply with this policy.

Ensure that Council employees adhere to this policy.

### **Council employees and Contractors**

Comply with this policy.

## **DEFINITIONS**

<b>the Act</b>	<i>Local Government Act 1989.</i>
<b>Audit Advisory Committee</b>	Advisory Committee appointed by Council under section 86 of the <i>Local Government Act 1989</i> with responsibility to oversee and monitor audit processes, including internal control activities.
<b>Bequest</b>	The act of giving or leaving personal property by a will or something that is bequeathed; a legacy.
<b>Bribe</b>	Means money, reward or service offered to procure action, decision, or preferential treatment in favour of the giver or another person.
<b>Cash</b>	Means money or vouchers which are readily convertible.
<b>Chief Executive Officer (CEO)</b>	Chief Executive Officer of the Rural City of Wangaratta.
<b>Conflict of Interest</b>	Means any private or personal interest, which could prejudicially influence, or be perceived to influence, a person in the performance of his or her public or professional duties (refer <i>Local Government Act, 1989</i> for a comprehensive definition).
<b>Corporate Management Team (CMT)</b>	Executive committee of Council comprising the CEO, Directors and Executive Managers.

<b>Council</b>	Section 5(1) of the <i>Local Government Act 1989</i> defines a council in the following way: “A Council consists of its Councillors, who are the representatives, elected in accordance with this Act, of persons who are residents in the Council’s municipal district or ratepayers of the Council.” In this case Council refers to the Rural City of Wangaratta.
<b>Council employee</b>	Any person employed directly by Council, including the Chief Executive Officer, and any person engaged as a short term employee or a contractor undertaking duties on behalf of Council.
<b>Councillor</b>	Means an elected person who holds the office of member of the Council.
<b>Gift, benefit or hospitality</b>	<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"> <li>• The provision of a service (other than volunteer labour); and</li> <li>• The payment of an amount in respect of a guarantee; and</li> <li>• The making of a payment or contribution at a fundraising function.</li> </ul> <p>For the purposes of this policy, this definition includes:</p> <ul style="list-style-type: none"> <li>• Generally all goods or services intended for a specific person;</li> <li>• Hospitality, including meals, entertainment and accommodation other than attendance in an official capacity on behalf of Council;</li> <li>• Travel;</li> <li>• Items which can be regarded as mementoes, such as ties, cuff-links, pens, stationery and the like;</li> <li>• Campaign donations;</li> <li>• Tickets to functions or events that invite a named person;</li> <li>• ‘Season’ tickets or a book of tickets that may or may not be used in full;</li> <li>• Transfer or gift of money or vouchers;</li> <li>• The transfer of property of a presentational or charitable nature or otherwise;</li> <li>• The provision of services or goods free of charge or at a reduced or discounted rate not generally publicly available;</li> <li>• Loans of money in capacity of Council employee or Councillor; and</li> <li>• The sale of virtual property with a sale price below proper valuation.</li> </ul>

<b>Gift disclosure threshold</b>	Means \$500 or a higher amount or value prescribed by the Regulations.
<b>Hospitality</b>	The provision of food or beverages, travel, accommodation or entertainment offered to convey goodwill on behalf of the giver.
<b>Register of Interest Returns</b>	These are completed by nominated officers, Councillors, and members of special committees to declare any interests they may have (e.g. property owned, gifts over \$500 received) as required by the <i>Local Government Act 1989</i> . The Primary return is completed initially, followed by Ordinary returns twice yearly.
<b>the Regulations</b>	<i>Local Government (General) Regulations 2004</i>
<b>Soliciting</b>	The seeking or requesting of undue reward in order to influence the decision or provision of service.

## REFERENCES

*Local Government Act 1989*

*Local Government (General) Regulations 2004*

*Protected Disclosure Act 2012*

Conflict of Interest in Local Government – A Guide - Local Government Victoria 2010

Register of Interests Guide - Primary and Ordinary Returns - Local Government Victoria 2009

Rural City of Wangaratta Audit Advisory Committee Charter

Council Policy – Councillor Code of Conduct

Council Policy – Employee Code of Conduct

## REVIEW

This policy will be reviewed every three years.